

**PROSECUTION SERVICES AGREEMENT**  
**WALKER LAW OFFICE AND THE CITY OF WEISER**

THIS AGREEMENT, is made between WALKER LAW OFFICE, a law firm authorized to practice law in the State of Idaho, hereinafter referred to as "CITY PROSECUTOR," and the CITY OF WEISER, a municipal corporation, hereafter referred to as "CITY," and is pursuant to Idaho Code § 50-208A, which authorizes cities to enter into agreements for prosecution of those violations of city ordinances, state traffic infractions, and state misdemeanors committed within the municipal limits. Collectively, these entities are hereinafter referred to as the "PARTIES."

WHEREAS, CITY, pursuant to Idaho Code § 50-208A(2), desires to obtain professional services for violations of city ordinances, state traffic infractions, and state misdemeanors committed within the municipal limits; and

WHEREAS, WALKER LAW OFFICE, as CITY PROSECUTOR acknowledges the services to be performed under this Agreement and agrees to perform the work in accordance with the terms of payment as described in this Agreement.

It is mutually agreed by the PARTIES that:

**SECTION 1**

**1.1 Data And Services To Be Provided By City**

The following data and services are to be provided by CITY without cost to CITY PROSECUTOR:

A. Provide ongoing review of CITY PROSECUTOR's work and timely consideration of policy issues at a time acceptable to both CITY and CITY PROSECUTOR.

B. Provide access to relevant records as needed for successful prosecution of cases and for furtherance of justice. CITY will provide access to Police Officers, Code Enforcement, Clerical Staff and any other employee for the purpose of furtherance of cases.

**1.2 Data And Services To Be Provided By City Prosecutor**

CITY PROSECUTOR will provide the following data and services to CITY:

A. Prosecute violations of Weiser City Code ordinances, state traffic infractions, and state misdemeanors committed within the municipal limits of the City of Weiser. The services rendered in accordance with this subsection are understood to include the provision of an "on-call" prosecutor twenty-four (24) hours a day and training for CITY law enforcement upon request of CITY's Police Chief.

B. Exercise absolute discretion as to charging, case strategy, dismissal, case management, staffing, control of personnel rendering service, and other matters incident to the performance of the services provided hereunder.

C. WALKER LAW OFFICE as the CITY PROSECUTOR specifically shall not be the CITY’s attorney on any civil matters, including Asset Forfeiture, and shall not render legal advice to any CITY officials except as to cases specifically referring to criminal investigation, charging, and resolution of misdemeanors, infractions, or CITY code violations, unless otherwise agreed upon in a separate agreement. It is understood by this Agreement that Asset Forfeiture cases are civil matters. Legal services for Asset Forfeitures may be provided through a separate agreement if the CITY so desires.

D. CITY PROSECUTOR does not assume liability or responsibility for, or in any way release the CITY from any liability or responsibility which arises from the existence or effect of CITY ordinances, policies, rules or regulations.

**SECTION 2**

**ADDITIONAL PROVISIONS**

**2.1 Independent Contractor**

In all matters pertaining to this Agreement, CITY PROSECUTOR shall be acting as an independent contractor, and neither CITY PROSECUTOR nor any officer, employee, or agent of CITY PROSECUTOR, will be deemed an employee of CITY.

**2.2 Notices**

All notices required to be given by any of the PARTIES hereto, unless otherwise stated in this Agreement, shall be in writing and be deemed communicated when mailed in the United States mail, certified, return receipt requested, addressed as follows:

CITY	CITY PROSECUTOR
City of Weiser	Walker Law Office
Office of the Mayor	232 E Main St
55 W Idaho	Weiser, Idaho 83672
WEISER, Idaho 83672	

**2.3 Assignment**

It is expressly agreed and understood by the PARTIES hereto, that CITY PROSECUTOR shall not have the right to assign, transfer, hypothecate or sell any of its rights under this Agreement except upon the prior express written consent of CITY.

#### **2.4 Indemnification**

The CITY PROSECUTOR shall be covered by the CITY's insurance provided through ICRMP. Any acts, errors, or omissions rising directly from the performance of this Agreement by the CITY PROSECUTOR giving rise to a cause of action shall be defended by the Weiser City Civil Attorney.

In regard to all acts or omissions which do not arise directly out of the performance of professional services include, but are not limited to, those acts or omissions normally covered by general and automobile liability insurance, WALKER LAW OFFICE agrees to indemnify, defend, and hold harmless the CITY, its officers, agents, employees, representatives, and volunteers from and against any and all claims, demands, defense costs, liability, or consequential damages of any kind or nature arising out of or in connection with WALKER LAW OFFICE's performance or failure to perform, under the terms of this Agreement; excepting those which arise out of the sole negligence of the CITY.

To the extent allowed by Idaho Law, including Article VIII, Section 4 of the Idaho Constitution and the Idaho Tort Claims Act (Idaho Code § 6-901), *et seq.*, the CITY agrees to indemnify and hold harmless WALKER LAW OFFICE, its officers, employees, and WALKER LAW OFFICE-designated volunteers from and against any and all claims, demands, defense costs, liability or consequential damages of any kind or nature arising directly out of the CITY's negligent acts, errors, or omissions in the performance of its services under the terms of this Agreement.

#### **2.5 Insurance**

Without limiting the CITY's right to indemnification, WALKER LAW OFFICE shall secure prior to commencing any activities under this Agreement, and maintain during the term of this Agreement, insurance coverage as follows:

- A. Worker's compensation insurance as required by Idaho Law.
- B. Comprehensive general liability insurance or commercial general liability insurance, including coverage for premises and operations, contractual liability, personal injury liability, and independent contractor's liability insurance (if applicable). The policy shall name and protect WALKER LAW OFFICE, all of WALKER LAW OFFICE's employees, from and against any and all claims, losses, actions, and judgments for damages or injury to persons or property arising out of or in connection with WALKER LAW OFFICE's acts.

#### **2.6 Reports and Information**

At such times and in such forms as CITY may require, CITY PROSECUTOR shall furnish to CITY such statements, records or other communication or information as

required by CITY.

**2.7 Publication, Reproduction and Use of Material**

No material produced in whole or in part under this Agreement shall be subject to copyright in the United States or in any other country. Subject to the limitations of law, CITY shall have unrestricted authority to publish, disclose and otherwise use, in whole or in part, any reports, data or other materials prepared under this Agreement.

**2.8 Compliance with Laws**

In performing the scope of services required hereunder, CITY PROSECUTOR shall comply with all applicable laws, ordinances, and codes of Federal, State, and Local governments and all Codes of Ethics applicable to the profession of Law.

**2.9 Changes**

CITY may, from time to time, request changes in the scope of services to be performed hereunder. Such changes, including any increase or decrease in the amount of CITY PROSECUTOR's compensation, and any changes in the time of completion, which are mutually agreed upon by and between CITY and CITY PROSECUTOR, shall be incorporated in written amendments to this Agreement.

**2.10 Termination**

Any party may terminate this Agreement at any time by giving at least ninety (90) days' notice in writing to the other PARTIES except as noted in the paragraph entitled "Non-appropriations".

If the Agreement is terminated by CITY, CITY PROSECUTOR will be paid amount which bears the same ratio to the total compensation as the services actually performed bears to the total services of CITY PROSECUTOR covered by this Agreement, less payments of compensation previously made.

In the event of a termination, all finished or unfinished documents, data, studies, case files, court dockets and schedules, defendant lists, victim records, case work notes, reports and all other writings and communication records prepared by CITY PROSECUTOR under this Agreement shall, at the option of CITY, become its property.

Notwithstanding the above, CITY PROSECUTOR shall not be relieved of liability to CITY for damages sustained by CITY by virtue of any breach of this Agreement by CITY PROSECUTOR, and CITY may withhold any payments to CITY PROSECUTOR for the purposes of setoff until such time as the exact amount of damages due CITY from CITY PROSECUTOR is determined. This provision shall survive the termination of this Agreement and shall not relieve CITY PROSECUTOR of its liability to CITY for damages.

**2.11 Losing Party Responsible for Reasonable Costs**

In the event of any action brought by either party against the other to enforce any of the obligations hereunder or arising out of any dispute concerning the terms and conditions hereby created, the losing party shall pay the prevailing party such reasonable amounts of fees, costs and expenses, including attorneys' fees, as may be set by the Court.

**2.12 Binding on Successors**

CITY and CITY PROSECUTOR each bind themselves, their partners, successors, assigns, and legal representatives to the other party to the Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. Neither CITY nor CITY PROSECUTOR shall assign, sublet or transfer his interest in this Agreement.

**2.13 Authorization to Proceed**

Execution of this Agreement by CITY and CITY PROSECUTOR shall constitute authorization for CITY PROSECUTOR to proceed with the work.

**2.14 Renewal**

The term of this Agreement shall automatically continue and be renewed for additional one-year periods following the expiration of the initial term hereof, unless either party shall have notified the other party by July 1 of the year in which this Agreement expires, in writing, that it does not elect to extend the term of this Agreement beyond its next expiration date.

All terms and conditions of a renewed Agreement during this renewal period shall be the same as during the initial term hereof, with the understanding that the compensation hereunder is subject to modification each year as outlined in Section 3 of this Agreement.

**2.15 Term**

The initial term for this Agreement shall commence January 13, 2025, and shall run through September 30, 2025.

**2.16 Non-appropriations**

In order to comply with the requirements of Article VIII, Section 3, of the Constitution of the State of Idaho, the CITY may cancel this Agreement for any fiscal year when the necessary funds for fulfillment of this Agreement are not budgeted for and appropriated by the CITY. The CITY may, solely at its option, at the end of any fiscal year of the City, cancel this Agreement without penalty if the CITY determines not to budget or appropriate funds from revenues legally available to it for the good and services contracted for. The CITY's fiscal year commences on the 1st day of October of each year and terminates on the 30th day of September of the following year.

**2.17 Extent of Agreement**

This Agreement represents the entire and integrated Agreement between CITY

and WALKER LAW OFFICE as the CITY PROSECUTOR, and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both CITY, and WALKER LAW OFFICE as the CITY PROSECUTOR.

**2.18 Severability**

If any clause, sentence, paragraph, article, or other part of this Agreement shall for any reason be declared invalid by a court of competent jurisdiction, such judgment shall not effect, impair, or invalidate the remainder of this Agreement, but shall be confined in its operation to the clause, sentence, paragraph, article or part thereof directly involved in the controversy in which the judgment is entered.

**SECTION 3**

**PAYMENT TO CITY PROSECUTOR**

**3.1** In consideration of CITY PROSECUTOR's performance of prosecutorial services contemplated by this Agreement, CITY agrees to pay to the WALKER LAW OFFICE Auditor in equal monthly installments as follows:

- A. For that period beginning January 13, 2025, and ending January 31, 2025, CITY shall pay for the contract labor on a prorated daily basis at the current monthly rate of \$5,150, resulting in a 19-day payment of \$3,156.44.
- B. For that period beginning February 1, 2025, and concluding September 30, 2025, CITY shall pay for the contract labor in monthly installments equal to Five Thousand One Hundred Fifty Dollars (\$5,150.00), hereinafter referred to as "Year 1 Fee".
- C. The WALKER LAW OFFICE Auditor will send monthly invoices to the CITY Manager, approximately a week and a half before the last working day of each month. CITY shall pay the invoice in full within fourteen (14) days of receipt of the invoice.
- D. The PARTIES agree that any Cost-of-Living Adjustment (hereinafter referred to as COLA) or other change in fees for Year 2 and subsequent years thereafter must be established by a mutually executed written Agreement between CITY and WALKER LAW OFFICE as the CITY PROSECUTOR.
- E. Each July and/or August as CITY and WALKER LAW OFFICE finalize their annual budgets, the WALKER LAW OFFICE Auditor will contact the CITY Manager regarding the possible COLA being allocated in the CITY budget as indicated above in this Section. Any COLA allocated to the CITY budget will also be added in the same percentages

to the Year 1 Fee of this Agreement.

F. Each July and/or August as CITY and WALKER LAW OFFICE finalize their annual budgets, the CITY PROSECUTOR will contact the CITY Manager regarding increases or decreases to the Year 1 Fee. Any increases or decreases will be based upon the CITY case workload, time expended for work performed under this Agreement, and other relevant factors.

### 3.2 Costs

A. All costs relating to the recruitment, hiring and remuneration of staff, including benefits, costs of production of discovery of video, audio, documents (reports), statements, and any other discoverable, requested information or evidence by a defendant or his counsel, office supplies, copiers (including repairs), training, association memberships, Idaho State Bar licensing, profit and any and all other costs related to the operations of the office or of CITY PROSECUTOR's commitment to the Agreement will be the responsibility of WALKER LAW OFFICE as the CITY PROSECUTOR.

B. Unless otherwise specified or otherwise agreed to, costs and fees under this Agreement covered by WALKER LAW OFFICE as the CITY PROSECUTOR, do not include membership dues with the Idaho Association of Cities and any continuing legal education credits and related expenses specific to city prosecution, transcript fees, or witness fees and related costs. The fees not included in this agreement are intermittent and may or may not arise. Before any such non-included costs are obligated to the CITY, WALKER LAW OFFICE as the CITY PROSECUTOR shall speak with the CITY Manager and obtain approval for such non-included costs.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals to date and year shown by the attestation.

WALKER LAW OFFICE PROSECUTING ATTORNEY

By: Delton Walker  
Delton Walker

Date: November \_\_\_\_\_, 2024.

\_\_\_\_\_  
CITY OF WEISER, Mayor

ATTEST: Natasha McDaniel, Clerk

By: \_\_\_\_\_  
City Clerk

Date: \_\_\_\_\_