

**PROFESSIONAL SERVICES AGREEMENT FOR REPRESENTATION OF
INDIGENT DEFENDANTS IN THE KINGMAN MAGISTRATE COURT**

This Agreement is made and entered into this 11th day of February, 2021, by and between the City of Kingman, Arizona, an Arizona municipal corporation ("City"), and Whitney and Whitney, PLLC, DBA Whitney/Whitney/Baldrige/Atkinson ("Attorney"), sometimes collectively referred to as the "Parties".

WHEREAS, the Presiding Magistrate of City's Municipal Court (hereinafter the "Municipal Court" or "Court") appoints defense attorneys to provide legal representation services to defendants; and **NOW, THEREFORE**, City agrees to retain and does hereby retain Attorney and Attorney agrees to provide the services required according to the terms and conditions set forth below:

1. SCOPE OF WORK: Attorney agrees to perform the following professional services:

Attorney shall serve as the City of Kingman's Contract Defense Attorney. The Attorney shall provide the legal defense of persons assigned by the City Magistrate whom have been deemed to be indigent.

Prepare for and appear at all Court proceedings pertaining to assigned defendants and veterans including, but not limited to, pretrial conferences, motions, jury and non-jury trials, evidentiary hearings, sentence reviews, revocation of probation hearings, special hearings, oral arguments, sentencings, order to show cause hearings, appellate proceedings, Veterans Court staffing, Veterans Treatment Court and special actions. Attorney will not be required to be present at arraignments except where defendants request appointment of counsel and qualify for legal defense facilitated by City. Once appointed, Attorney shall represent each defendant throughout all stages of the proceedings, including appeals and other appropriate post-conviction reliefs, until Attorney is relieved from the case by Court.

Provide personal consultation with clients prior to pretrial disposition conferences as required by Order Appointing Counsel. Attorney shall maintain personal contact with all clients until assigned cases are terminated and shall use reasonable diligence in notifying such clients of official Court action resulting from their clients' nonappearance at scheduled court sessions.

Conduct the defense of indigent defendants in conformance with the minimum standards and requirements set forth in *State v. Watson*, 134 Ariz. 1, 653 P.2d 351 (1982); and in *State v. Smith*, 140 Ariz. 355, 681 P.2d 1374 (1984); and in *State v. Lee*, Arizona 142 Ariz. 210, 689 P.2d 153 (1984). In the event that a case involves two or more defendants or Attorney declares a conflict of interest, a Magistrate or Pro Tem may assign one or more defendants to another Attorney.

Pay for interpreters for all out-of-court matters not approved by the Court. Municipal Court will provide interpreters for non-English speaking defendants for all in-court and pretrial proceedings held at the Court.

Pay all costs incurred in the representation of indigent defendants assigned by Municipal Court pursuant to this agreement including, but not limited to, office space, telephones, transportation, photocopies, office supplies, office overhead, reports, and secretarial services.

Obtain Court approval of all expert witnesses and costs.

Give precedence to court settings in the Municipal Court over civil cases and all other criminal cases in other courts which do not have precedence as provided by the Arizona Rules of Criminal Procedure.

2. OFFICE: Attorney shall have an office or make arrangements to use office that is located within the corporate limits of City to provide personal consultation with clients when requested and otherwise appropriate.

3. COMPENSATION: In accordance with the terms and conditions of this Agreement, City shall compensate Attorney for its professional services as follows:

Attorney shall receive compensation in the amount of \$150,000 annually, payable at quarterly installments of \$37,500.

4. TERM: This Agreement shall be effective beginning July 1, 2021, and shall continue through June 30, 2023, subject to the Termination provisions set forth in this Agreement.

5. CITY'S STANDARD OF PERFORMANCE: City shall furnish the Attorney with all data, information and other supporting services necessary and reasonable for Attorney to perform the services set forth within this agreement.

6. ATTORNEY'S STANDARD OF PERFORMANCE: While performing the services, Attorney shall exercise the reasonable professional care and skill customarily exercised by an attorney licensed to practice law in Arizona, and in accordance with the rules of professional conduct. Attorney shall be responsible for all errors and omissions Attorney commits in the performance of this Agreement.

7. NOTICES: All notices to the other party required under this Agreement shall be in writing and sent by first class certified mail, postage prepaid, return receipt requested, addressed to the following personnel:

If to City: Jeffrey Singer
Presiding Magistrate
City of Kingman
219 North 4th Street
Kingman, AZ 86401

And to: Annie Meredith
City Clerk
310 North 4th Street
Kingman, AZ 86401

If to Attorney: Whitney and Whitney, PLLC,
DBA Whitney/Whitney/Baldrige/Atkinson
111 North 4th Street
Kingman, AZ 86401

8. TERMINATION: This Agreement may be terminated by either party upon sixty (60) calendar days' written notice. If this Agreement is terminated, Attorney shall be paid for services performed to the date of receipt of such termination notice. In the event of such termination, Attorney shall deliver to successor counsel all work in any state of completion, not including personal attorney work product, at the date of effective termination.

9. INDEPENDENT CONTRACTOR: The relationship created under this agreement between Attorney and City shall be solely that of an independent contractor, and nothing contained herein shall be construed to create a relationship of principal-agent, employer-employee, partnership, joint venture, or any relationship of any kind other than independent contractor.

10. RECORDS: Records of Attorney's labor, payroll, and other costs pertaining to this Agreement shall be kept on a generally recognized accounting basis and made available to City for inspection on request. Attorney shall maintain records for a period of at least two (2) years after termination of this Agreement or for such time as is required by applicable ethical rules and/or opinions, and shall make such records available during that retention period for examination or audit by City personnel during regular business hours. City shall have no obligation to pay or withhold state or federal taxes or provide workers' compensation or unemployment insurance for or on behalf of Attorney.

11. INSURANCE: The Attorney agrees to:

- A. Obtain insurance coverage of the types and amounts required in this section and keep such insurance coverage in force throughout the life of this Agreement and until all work or services required to be performed under the terms of the Agreement is satisfactorily completed and formally accepted; failure to do so may, at the sole discretion of City, constitute a material breach of this Agreement.
- B. All policies will contain an endorsement providing that written notice be given to the City at least thirty (30) days prior to expiration, cancellation, or any material change to requirements herein.
- C. The Attorney agrees that the insurance hereunder will be primary and that any insurance carried by the City will be excess and not contributing.
- D. Provide and maintain minimum insurance limits as applicable.
 - Professional Liability Insurance (Errors and Omissions) - \$1,000,000 single limit
 - \$2,000,000 aggregate (Minimum)
- E. Attorney will present to the City written evidence (Certifications of Insurance and endorsement) of compliance with Items A, B, C and D above. Said evidence shall be to the City Attorney's satisfaction and underwritten by a company with an AM BEST rating of A+ or above.
- F. City shall not be obligated, however, to review or to advise Attorney of any deficiencies in such policies and endorsements, and such receipt shall not relieve Attorney from, or be deemed a waiver of, City's right to insist on strict fulfillment of Attorney's obligations under this Agreement.

- G. Any failure to comply with the claim reporting provisions of the insurance policies or any breach of an insurance policy warranty shall not affect coverage afforded under the insurance policies to protect City.

12. RIGHT TO CONTRACT WITH OTHERS: The City is not obligated to obtain the services described herein with only this particular Attorney, nor does this agreement prohibit the Attorney from providing services outside of this agreement as long as it does not conflict with the terms of this agreement.

13. UNCONTROLLABLE FORCES: City and Attorney shall exert all efforts to perform their respective responsibilities under this Agreement. However, neither party shall hold the other party responsible for inability to render timely performance if such inability is a direct result of a force beyond its control, including but not limited to the following: strikes, lockouts, embargoes, failure of carriers, inability to obtain transportation facilities, acts of God, terrorists, pandemic disease, or declared public enemies, or other events beyond the control of the other or the other's employees and agents.

14. INDEMNIFICATION: To the fullest extent permitted by law, Attorney shall defend, indemnify and hold harmless City, its agents, officers, officials and employees from and against all tortious claims, damages, losses and expenses (including but not limited to attorney fees, court costs, and the cost of appellate proceedings), relating to, arising out of, or alleged to have resulted from the acts, errors, mistakes, omissions, work or services of Attorney, its agents or employees. Attorney's duty to defend, hold harmless and indemnify City, its agents, officers, officials and employees shall arise in connection with any tortious claim, damage, loss or expense that is attributable to bodily injury, sickness, disease, death, or injury to, impairment, or destruction of property including loss of use resulting therefrom, caused by an Attorney's acts, errors, mistakes, omissions, work or services in the performance of this Agreement including any employee of the Attorney, or any other person for whose acts, errors, mistakes, omissions, work or services the Attorney may be legally liable. The amount and type of insurance coverage requirements set forth herein will in no way be construed as limiting the scope of the indemnity in this paragraph.

15. WAIVER OF TERMS AND CONDITIONS: The failure of City or Attorney to insist in any one or more instances on performance of any of the terms or conditions of this Agreement or to exercise any right or privilege contained herein shall not be considered as thereafter waiving such terms, conditions, rights or privileges, and they shall remain in full force and effect.

16. GOVERNING LAW AND VENUE: The terms and conditions of this Agreement shall be governed by and interpreted in accordance with the laws of the State of Arizona. Any action at law or in equity brought by either party for the purpose of enforcing a right or rights provided for in this Agreement shall be tried in Mohave County, State of Arizona. In the event either party shall bring suit to enforce any term of this Agreement or to recover any damages for and on account of the breach of any term or condition in this Agreement, it is mutually agreed that the prevailing party in such action shall recover all costs including: all litigation and appeal expenses, collection expenses, reasonable attorneys' fees, necessary witness fees and court costs to be determined by the court in such action.

17. MODIFICATION OF CONTRACT: This contract shall be automatically modified to comply and conform to any subsequent change (regarding indigent representation) imposed by case law or rules promulgated by the Arizona Supreme Court.

18. LICENSE: Attorney represents and warrants that any license necessary to perform the work under this Agreement is current and valid; such license includes but is not limited to an Arizona license to practice law and a City of Kingman business/privilege license.

19. MISCELLANEOUS:

All agreements shall be interpreted to avoid questions of unethical conduct by Attorney or City.

Attorney shall not collect or receive any payment or remuneration from defendants assigned to Attorney under this Agreement for services provided on the assigned cases.

Attorney shall maintain current case logs and disposition records.

Attorney shall not discriminate against any employee, or applicant for employment because of race, religion, color, sex, handicap, or national origin.

Attorney shall permit the authorized representatives of City to inspect and audit records of Attorney relating to his/her performance under this contract within the confines of confidentiality.

20. NONASSIGNMENT: This is a personal service contract based on the personal reputation, expertise, and qualifications of Attorney and Attorney's duties under this Agreement are therefore not assignable.

21. ENTIRE AGREEMENT: This Agreement and any attachments represent the entire agreement between City and Attorney and supersede all prior negotiations, representations or agreements, express or implied, written or oral. It is mutually understood and agreed that no alteration or variation of the terms and conditions of this Agreement shall be valid unless made in writing and signed by the parties hereto. Written and signed amendments shall automatically become part of the Supporting Documents, and shall supersede any inconsistent provision therein; provided, however, that any apparent inconsistency shall be resolved, if possible, by construing the provisions as mutually complementary and supplementary.

22. SEVERABILITY: If any part, term or provision of this Agreement shall be held illegal, unenforceable or in conflict with any law, the validity of the remaining portions and provisions hereof shall not be affected.

23. CONFLICTS OF INTEREST: The provisions of A.R.S. § 38-511 relating to cancellation of contracts due to conflicts of interest shall apply to this contract.

24. IMMIGRATION LAW COMPLIANCE WARRANTY: Immigration: Under the provisions of A.R.S. §41-4401, Contractor hereby warrants to the Company that the Contractor and each of its subcontractors ("Subcontractors") will comply with, and are contractually obligated to comply with, all Federal Immigration laws and regulations that relate to their employees and A.R.S. §23-214(A) (hereinafter "Contractor Immigration Warranty").

A breach of the Contractor Immigration Warranty shall constitute a material breach of this Agreement and shall subject the Contractor to penalties up to and including termination of this Agreement at the sole discretion of the Company.

The Company retains the legal right to inspect the papers of any Contractor or Subcontractor's employee who works on this Agreement to ensure that Contractor or Subcontractor is complying with the Contractor Immigration Warranty. The Company may, at its sole discretion, conduct random verification of the employment records of Contractor and any of Subcontractors to ensure compliance with Contractor's Immigration Warranty. Contractor agrees to assist the Company in regard to any such inspections. Contractor and its Subcontractors warrant to keep the papers and records open for random inspection during normal business hours by the Company. The Contractor and its Subcontractors shall cooperate with the Company's random inspections including granting the Company entry rights onto its property to perform the random inspections and waiving their respective rights to keep such papers and records confidential.

Neither Contractor nor any of its Subcontractors shall be deemed to have materially breached the Contractor Immigration Warranty if Contractor or Subcontractor establishes that it has complied with the employment verification provisions prescribed by sections 274A and 274B of the Federal Immigration and Nationality Act and the E-Verify requirements prescribed by A.R.S. §23-214(A).

25. BOYCOTT: Contractor certifies that it is not currently engaged in, and agrees for the durations of this Contract that it will not engage in, a boycott of Israel, as that term is defined in A.R.S. § 35-393.01.

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed by their duly authorized representatives as of the day and year first above written.

CITY OF KINGMAN,
an Arizona municipal corporation:




Jeffrey Singer, Presiding Magistrate


WHITNEY AND WHITNEY, PLLC,
DBA Whitney/Whitney/Baldridge/Atkinson



Bryan Whitney, Esq.



Andraya Whitney, Esq.

APPROVED AS TO FORM:


Carl Cooper, City Attorney