

PROFESSIONAL SERVICES AGREEMENT
Public Defender Services

THIS PROFESSIONAL SERVICES AGREEMENT (“Agreement”), made and entered into on _____, 2018, by and between Lake Havasu City, an Arizona municipal corporation (“City”), and _____ (“Counsel”), referenced collectively as the “Parties.” The Parties agree as follows:

RECITALS

City is required by law to provide legal counsel for the representation of indigent defendants. Counsel is an attorney, or law firm with attorneys, duly licensed to practice law in the State of Arizona and is otherwise professionally qualified to provide public defender services.

AGREEMENT

1. **EMPLOYMENT:** City hereby contracts with Counsel, as an independent contractor, to perform the services set forth herein, and Counsel hereby accepts under the terms and conditions set forth in this Agreement.

2. **TERM:** The term of this Agreement shall be for one (1) year commencing September 1, 2018. The parties may mutually agree to extend this Agreement in writing for four (4) additional one (1) year periods.

3. **COMPENSATION:** City shall make payment to Counsel in the amount specified in the Fee Schedule attached as Exhibit “A.” Payment shall not exceed the total amount set forth in Exhibit “A” unless otherwise authorized by the City.

4. **SERVICES:**

4.1. Counsel represents that Counsel and all attorneys working for Counsel will conduct the defense of assigned defendants diligently and professionally, consistent with the standards set forth in the Arizona Rules of Professional Conduct and case law defining the duties of the defense counsel in criminal cases. Counsel and all attorneys working for Counsel must at all times remain active members in good standing with the Arizona State Bar. Counsel must immediately inform the City of any changes to Counsel’s or attorneys working for Counsel active membership status and any adverse Bar rulings. Failure to satisfy this section may result in immediate termination of this Agreement.

4.2. When appointed as public defender by the City Court, Counsel shall furnish full and adequate legal representation to indigent defendants and Veterans Treatment Court participants meeting established criteria, and shall expend such time and effort as may be necessary to discharge the obligation of the City to provide representation, including the following:

A. Provide full and adequate representation to and through court appointment or screening through trial, sentencing, post-conviction review, post-adjudicated contempt, and any appeals of such persons as may be determined by the Court to be eligible for such representation at public expense (except where a conflict exists).

B. Counsel shall be excused from representing persons with whom an actual conflict of interest exists between Counsel and such person on legal or ethical grounds when the court having jurisdiction of the case determines that such a conflict exists. In such event, conflict representation shall be provided by court appointment, and the costs of such representation shall not be a charge against the compensation of Counsel provided for herein.

4.3. Counsel shall maintain an office in Lake Havasu City. Counsel shall maintain staff and support services adequate to assure prompt and reliable communications between Counsel and the court, and those persons whom Counsel represents under the terms of this Agreement.

4.4. Counsel's services shall be initiated in each case at the time of the appointment of Counsel by the court in which such case is pending. A defendant's indigence may be reassessed at each stage of the proceedings and if the defendant is found not indigent, public representation services for such defendant may be terminated by the court.

4.5. Counsel must provide adequate legal and support staff and equipment for the furnishing of all services required hereunder, at the sole expense of Counsel, in the event of travel, sickness, vacation, or any other unavailability of Counsel, except conflicts as set forth above.

4.6. Counsel shall comply with the Arizona Rules of Professional conduct in its communications with all clients.

4.7. To prevent the appearance of conflict of interest, Counsel shall not represent any client in any law suit against City or its employees. City and Counsel agree that the appearance of conflict and remedy under this Agreement and paragraph are only because of this Agreement, and any other alleged conflict, real or perceived, will be dealt with separate and apart from this Agreement on a case-by-case basis.

4.8. Counsel shall give their best professional efforts and first priority to cases assigned under this Agreement. However, except as otherwise provided herein, Counsel shall not be prohibited from the outside practice of law.

4.9. Counsel may subcontract cases either on a case-by-case basis or by a class of case. If Counsel subcontracts on a case-by-case basis, subcontracting counsel must be approved by the court. Subcontracting counsel must meet all qualifications of Counsel relevant to the class or type of case being subcontracted, and Counsel shall be solely responsible for all compensation and expenses of any subcontracted counsel.

4.10. Counsel agrees to maintain insurance in accordance with the requirement outlined in the attached Exhibit "B."

4.11. Counsel agrees to provide the City with a detailed quarterly report, as defined by the City's Court Administrator, of services performed. At a minimum, the report shall include each client who has been appointed to Counsel, the charges, cause number and disposition, bench or jury trial, and whether an appeal was filed. The report is due to the City's Court Administrator on or before the 15th day of the month following the end of each quarter as to clients represented in the previous quarter.

4.12. It is understood by Counsel that the duty to represent an assigned defendant continues until the case is terminated by dismissal, acquittal, sentencing, or satisfaction of appeal except that Counsel will be required to continue to represent assigned defendants for any restitution or other hearing set at the time of sentencing. The date that a case is assigned to Counsel is the sole factor in determining Counsel's continuing obligation to provide legal representation in a case under this Agreement. The obligation to provide legal representation in a case under this Agreement will continue until a case is closed regardless of the length of time necessary to complete the case after the Agreement is terminated.

5. RECORDS AND REPORTS: Counsel shall compile and maintain complete and accurate records of each and every case assigned, case files shall be surrendered to any succeeding counsel upon expiration or termination of this Agreement. Counsel agrees to provide the City with a detailed quarterly report, as defined by the City's Court Administrator, of services performed, including at a minimum, each client who has been appointed to Counsel, the charges, cause number and disposition, bench or jury trial, and whether an appeal was filed. All files will be turned over to City upon request.

6. TERMINATION:

6.1. This Agreement shall terminate upon the expiration of the term or upon the happening of any of the following events, whichever shall first occur:

A. Immediately upon the inability of Counsel to perform any of the professional services provided for hereunder due to physical or mental disability or death.

B. Immediately upon Counsel's disbarment or suspension from the practice of law, or failure of Counsel to maintain license to practice law in the State of Arizona;

C. Upon sixty (60) days' written notice to the other party, either party may terminate this Agreement at its sole convenience.

D. Upon thirty (30) days' written notice to the breaching party and without cure, either party may terminate this Agreement for failure to comply.

7. EMPLOYMENT STATUS: Counsel is, for all purposes arising out of this Agreement, an independent contractor, and neither Counsel or its employees shall be deemed employees of City. Counsel shall complete the requirements of this Agreement according to the Counsel's own means and methods of work, which shall be in the exclusive charge and control of the

Agency and which shall not be subject to control or supervision by the City, except as specified in this Agreement.

8. INDEMNIFICATION: To the fullest extent permitted by law, Counsel agrees to indemnify, defend, save, and hold harmless the City, its officers, agents, volunteers, and employees, for, from, and against any and all liabilities, claims, losses, expenses, costs, or damages arising out of or in any way connected with Counsel's performance of the services under this Agreement. The amount and type of insurance coverage requirements required by this Agreement will in no way be construed as limiting the scope of indemnity in this Section.

9. NOTICES: Notices to the Parties in connection with this Agreement shall be given personally or by regular mail addressed as follows:

City:

Lake Havasu City, Attn: City Magistrate
2001 College Drive, Suite 148
Lake Havasu City, Arizona 86403

with a copy to:

Lake Havasu City, Attn: City Attorney
2330 McCulloch Boulevard North
Lake Havasu City, Arizona 86403

Counsel:

Whitney & Whitney PLLC
111 N. 4th Street
Kingman, AZ 86401

10. MISCELLANEOUS.

10.1. Conflict of Interest. The Agreement may be cancelled in accordance with Arizona Revised Statutes (A.R.S.) § 38-511.

10.2. Appropriation. The City is obligated only to pay its obligations set forth in this Agreement as may lawfully be made from funds appropriated and budgeted for that purpose during the City's then current fiscal year. Should the City elect not to appropriate and budget funds to pay its Agreement obligation, this Agreement shall be deemed terminated at the end of then-current fiscal term for which such funds were appropriated and budgeted for such purpose and the City shall be relieved of any subsequent obligation under this Agreement. The Parties agree that the City has no obligation or duty of good faith to budget or appropriate the payment of the City's obligations set forth in this Agreement in any budget in any fiscal year other than the fiscal year in which this Agreement is executed and delivered. This City shall be the sole judge and authority in determining the availability of funds for its obligations under this Agreement. The City shall keep Counsel informed as to the availability of funds for this Agreement. The obligation of the City to make any payment under this Agreement is not a general obligation or

indebtedness of the City. Counsel hereby waives any and all rights to bring any claim against the City from or related in any way to the City's termination of this Agreement under this subsection. If the Agreement is terminated under this subsection, Counsel shall only accept appointment of cases up to the date that compensation stops.

10.3. Applicable Law; Venue. This Agreement shall be governed by the laws of the State of Arizona and suit pertaining to this Agreement may be brought only in courts in Mohave County, Arizona. In the event of litigation in a U.S. District Court, exclusive venue shall be in the U.S. District Court located in Phoenix, Arizona.

10.4. Amendments. This Agreement may be modified only by a written amendment signed by persons duly authorized to enter into contracts on behalf of the City and the Consultant.

10.5. Provisions Required by Law. Each and every provision of law and any clause required by law to be in this Agreement will be read and enforced as though it were included herein and, if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either Party, this Agreement will promptly be physically amended to make such insertion or correction.

10.6. Severability. The provisions of this Agreement are severable to the extent that any provision or application held to be invalid by a Court of competent jurisdiction shall not affect any other provision or application of this Agreement which may remain in effect without the invalid provision or application.

10.7. Assignment; Delegation. No right or interest in this Agreement shall be assigned or delegated by Counsel without prior, written permission of the City. Any attempted assignment or delegation by Counsel in violation of this provision shall be a breach of this Agreement by Counsel.

10.8. Rights and Remedies. No provision in this Agreement shall be construed, expressly or by implication, as waiver by the City of any existing or future right or remedy available by law in the event of any claim of default or breach of this Agreement. The failure of the City to insist upon the strict performance of any term or condition of this Agreement or to exercise or delay the exercise of any right or remedy provided in this Agreement, or by law, or the City's acceptance of and payment for services, shall not release the Consultant from any responsibilities or obligations imposed by this Agreement or by law, and shall not be deemed a waiver of any right of the City to insist upon the strict performance of this Agreement.

10.9. Attorneys' Fees. In the event either Party brings any action for any relief, declaratory or otherwise, arising out of this Agreement or on account of any breach or default hereof, the prevailing Party shall be entitled to receive from the other Party reasonable attorneys' fees and reasonable costs and expenses, determined by the court sitting without a jury, which shall be deemed to have accrued on the commencement of such action and shall be enforced whether or not such action is prosecuted through judgment.

10.10. Israel. Consultant certifies that it is not currently engaged in, and agrees for the duration of this Agreement that it will not engage in, a boycott of Israel, as that term is defined in A.R.S. § 35-393.

10.11. Non-Exclusive Contract. This Agreement is entered into with the understanding and agreement that it is for the sole convenience of the City. The City reserves the right to obtain like goods and services from another source when necessary.

10.12. Section Headings. The headings of sections contained in this Agreement are provided for convenience only. They form no part of this Agreement and shall not affect its construction or interpretation. All references to sections or subsections refer to the corresponding sections and subsections of this Agreement. All words used herein shall be construed to be of such gender or number as the circumstances require. This "Agreement" means the Agreement and the Exhibits hereto as a whole and as the same may, from time-to-time hereafter, be amended, supplemented or modified. The words "herein," "hereby," "hereto," and words of similar import, refer to this Agreement as whole and not to any particular section, subsection, paragraph, clause or other subdivision hereof, unless otherwise specifically noted.

11. ENTIRE AGREEMENT: This Agreement represents the entire agreement of the parties with respect to its subject matter, and all previous agreements, whether oral or written, entered into prior to this Agreement are hereby revoked and superseded by this Agreement. No representations, warranties, inducements or oral agreements have been made by any of the Parties except as expressly set forth herein, or in any other contemporaneous written agreement executed for the purposes of carrying out the provisions of this Agreement. This Agreement shall be construed and interpreted according to its plain meaning, and no presumption shall be deemed to apply in favor of, or against the Party drafting this Agreement. The parties acknowledge and agree that each has had the opportunity to seek and utilize legal counsel in the drafting of, review of, and entry into this Agreement.

LAKE HAVASU CITY

COUNSEL

By: Jess Knudson
Title: City Manager
Date: _____

By: _____
Title: _____
Date: _____

APPROVED AS TO FORM:
Lake Havasu City Attorney's Office

By: _____

Exhibit A
Fee Schedule

1. City agrees to pay Counsel \$145,833 for the remainder of the 2018-2019 fiscal year (through June 30, 2019) in quarterly payments. Thereafter, City agrees to pay Counsel \$175,000 annually for its services under this Agreement in quarterly installments of \$43,750.
2. Counsel shall submit an invoice to City thirty (30) days prior to the first Friday of each quarterly billing period. City will make payment to Counsel no later than the first Friday of each quarterly billing period, provided Counsel submits an invoice meeting the City's accounting level standards in accordance with City's requirements.
3. City shall make payment on submitted invoices for expert witnesses, interpreters, Rule 11 competency evaluations, and/or other defense associated fees that have been Court approved.

Exhibit B Insurance Requirements

Counsel shall at all times maintain in force at Counsel's expense, each insurance noted below:

Workers Compensation insurance in compliance with A.R.S. Title 23, Chapter 6, together with Employer's Liability insurance with coverage limits of not less than \$1,000,000 must be included, unless exempt. (See Exhibit B-1). **THIS COVERAGE IS REQUIRED.** Attach Certificate of Insurance. If Counsel does not have coverage and claims to be exempt, attach Exhibit B-1 in lieu of Certificate.

Professional Liability insurance with a combined single limit of not less than \$1,000,000, each claim, incident, or occurrence, with an annual aggregate limit of \$2,000,000. This is to cover damages caused by error, omission, or negligent acts related to professional services provided under this Agreement. The policy must provide extended reporting period coverage for claims made within two years after this Agreement is completed.

Coverage must be provided by an insurance company admitted to do business in Arizona and rated A-VII or better by AM Best's Insurance Rating. Counsel's coverage will be primary in the event of loss. Counsel shall pay all deductibles and retentions. A cross-liability clause or separation of insured's condition will be included in all commercial general liability policies required by this Agreement.

Counsel shall furnish a Certificate of Insurance to the City with the signed Agreement. The Certificate shall provide that there shall be no cancellation, termination, material change, or reduction of limits of the insurance coverage without **ten (10) working days'** written notice from the Counsel's insurer to the City. The Certificate shall also state the deductible or retention level. If requested, complete copies of insurance policies shall be provided to the City.

The amount and type of insurance coverage as required herein is not intended to, and shall not be interpreted to, limit the scope of the indemnity set forth in this section.

Additional Insureds. For commercial general liability and automobile liability insurance policies, the Insurance Certificate shall also provide that "**Lake Havasu City, its agents, directors, officers, officials, and employees are additional Insureds with respect to Counsel's services to be provided under this Agreement.**" If requested, complete copies of insurance policies shall be provided to the City.

Exhibit B-1

Workers' Compensation Exemption Certificate

(To be used only when Counsel claims to be exempt from Workers' Compensation coverage requirements)

Counsel is exempt from the requirement to obtain workers' compensation insurance under A.R.S. Title 23, Chapter 6, § 23- 902 for the following reason (*check the appropriate box*):

SOLE PROPRIETOR

- Counsel is a sole proprietor, and
- Counsel has no employees, and
- Counsel will not hire employees to perform this Agreement, or
- Counsel will hire independent counsel to perform work under this Agreement.

CORPORATION - FOR PROFIT

- Counsel's business is incorporated, and
- All employees of the corporation are officers and directors and have a substantial ownership interest* in the corporation, and
- All work will be performed by the officers and directors; Counsel will not hire other employees to perform this Agreement, or
- Counsel will hire independent counsel to perform work under this Agreement.

CORPORATION - NONPROFIT

- Counsel's business is incorporated as a nonprofit corporation, and
- Counsel has no employees; all work is performed by volunteers, and
- Counsel will not hire employees to perform this Agreement, or
- Counsel will hire independent counsel to perform work under this Agreement.

PARTNERSHIP

- Counsel is a partnership, and
- Counsel has no employees, and
- All work will be performed by the partners; Counsel will not hire employees to perform this Agreement, and
- Counsel is not engaged in work performed in direct connection with the construction, alteration, repair, improvement, moving or demolition of an improvement to real property or appurtenances thereto, or
- Counsel will hire independent counsel to perform work under this Agreement.

LIMITED LIABILITY COMPANY

- Counsel is a limited liability company, and
- Counsel has no employees, and
- All work will be performed by the members; Counsel will not hire employees to perform this Agreement, and
- If Counsel has more than one member, Counsel is not engaged in work performed in direct connection with the construction, alteration, repair, improvement, moving or demolition of an improvement to real property or appurtenances thereto, or
- Counsel will hire independent counsel to perform work under this Agreement.

*NOTE: Counsel that hires independent counsel to perform work under this Agreement shall comply with A.R.S. §23-902 and provide a written form to the City showing compliance with said A.R.S. requirement.

A shareholder has a "substantial ownership" interest if the shareholder owns 10% of the corporation, or if less than 10% is owned, the shareholder has ownership that is at least equal to or greater than the average percentage of ownership of all shareholders.

Counsel Printed Name

Counsel Signature

Counsel Title