

**CITY OF EL MIRAGE
PROFESSIONAL SERVICES CONTRACT FOR PROSECUTION SERVICES**

THIS CONTRACT FOR LEGAL SERVICES (this “Contract”) is made and entered into as of July 1, 2021, between the City of El Mirage, an Arizona municipal corporation (the “City”) and the law firm of Bustamante & Kuffner, P.C., an Arizona professional corporation (the “Law Firm”).

RECITALS

A. The City has determined it to be in its best interest to contract with attorneys not in its employ who, by experience and training, are qualified to assist the City in connection with prosecution of criminal and code enforcement cases in the City Court.

B. The City has satisfied itself as to the qualifications of the Law Firm to assist the City in connection with prosecution of criminal and code enforcement cases in the City Court.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and the covenants and promises set forth below, the parties hereby agree as follows:

1. Scope of Service and Representation. The Law Firm agrees to perform all necessary legal services of the City Prosecutor’s Office within the laws of the State of Arizona and the Rules of Professional Conduct including, but not limited to, the following:

- a. Prepare and appear for arraignments, arrange and conduct pre-trial conferences with defendants and/or attorneys, and try jury and non-jury trials; and
- b. Review the file on each case including police reports, previous convictions, and motions from defense attorneys; and
- c. Prepare any necessary correspondence related to each case; and
- d. Appear in the City Court to prosecute those who have violated state law or City ordinances; make recommendations for conditions of release and sentencing; and
- e. Advise the City Police Department on gathering and presentation of evidence, filing of charges and other legal matters related to criminal cases; interview police officers, inspectors or others presenting evidence for the City; and
- f. Perform legal research to support the City’s position(s) in hearings and trials as well as in response to defense motions; and
- g. Provide statistical data concerning disposition of cases.

2. Advice and Status Reporting. The Law Firm shall provide the City with timely advice of all significant developments arising during performance of services hereunder, orally or in writing, as Law Firm consider appropriate. Upon request of the City Manager the Law

Firm shall provide copies of all pleadings and other documents prepared by the Law Firm. The Law Firm shall provide the City Manager with monthly status reports.

3. Compensation. The City agrees to pay the Law Firm for services rendered hereunder in a flat amount of \$99,000, paid in 12 equal installments, due in advance on the first day of each month (with the exception of July 2021, which will be paid following approval of this Contract by the City Council). If a notice of termination has been given pursuant to Section 16 below, the monthly amount payable shall be prorated according to the actual number of days during which the Law Firm will be providing services.

4. Term. This Contract shall be effective as of July 1, 2021 and shall continue for a period of twelve months thereafter (through June 30, 2022), unless sooner terminated as set forth in Section 16 below. The Contract will automatically renew for successive fiscal years unless notification is provided by either party at least 90 days in advance of the next fiscal year.

5. Notices. Notice or correspondence shall be sent to:

City of El Mirage
Attn: City Manager
10000 N. El Mirage Rd.
El Mirage, Arizona 85335

Bustamante & Kuffner, P.C.
Attn: Alan Kuffner
910 West McDowell Road
Phoenix, AZ 85007

6. Conflict Issues. The Law Firm warrants and covenants that Law Firm presently has no interest in, nor shall any interest be hereinafter acquired in, any matter which will render the services required under the provisions of this Contract a violation of any applicable state, local, or federal law. In the event any conflict of interest should arise, the Law Firm shall promptly notify the City of the existence of such conflict of interest so the City may determine whether to terminate this Contract. Conflict issues arising are governed by the Arizona Rules of Professional Conduct. The Law Firm should also refer to the Arizona Legal Ethics Handbook published by the State Bar of Arizona. Otherwise, the Law Firm shall be free to dispose of such portion of its entire time, energy and skill as are not required to be devoted to City in such manner as it sees fit, and to such persons, firms or corporations as it deems advisable so long as no conflict of interest exists.

7. Maintenance of Records. In compliance with City procedure, all work performed in connection with this Contract shall be subject to audit. The Law Firm shall maintain all books, documents, papers, and accounting records pertaining to the Contract and not related to particular prosecution case files and shall make such materials available at their offices at all reasonable times during the Contract period and for at least three years from the date of final payment for inspection by City or any authorized representatives of City, and copies thereof shall be furnished, if requested, at City's expense. The City shall store and maintain all closed files. The destruction of such files shall be in accordance with applicable law and Arizona Attorney General Opinion 98-07.

8. Indemnification. To the fullest extent permitted by law, the Law Firm shall defend, indemnify and hold harmless City, its agents, representatives, officers, directors, officials, and employees from and against all claims, damages, losses and expenses relating to, arising out of, or resulting from the Law Firm's wrongful acts, errors, mistakes, or omissions relating to the Law Firm's services in the performance of this Contract. The Law Firm's duty to defend, hold harmless, and indemnify City, its agents, representatives, officers, directors, officials, and employees shall arise in connection with any claim, damage, loss, or expense (including, but not limited to,

attorneys' fees, court costs, and the cost of appellate proceedings) caused by the Law Firms wrongful acts, errors, mistakes or omissions, work, or services in the performance of this Contract. The amount and type of insurance coverage requirements set forth below will, in no way, be construed as limiting the scope of the indemnity of this paragraph.

9. Professional Liability Insurance. Without limiting any of their obligations, the Law Firm, at the Law Firm's own expense, shall purchase and maintain the hereinafter stipulated minimum insurance with companies duly licensed, possessing an AM Best, Inc. rating of B++, approved and licensed to do business in the State of Arizona, with policies and forms reasonably satisfactory to City. Prior to commencing work under this Contract, the Law Firm shall furnish City Certificates of Insurance, or formal endorsements issued by the Law Firm's insurer(s), as evidence that policies providing the required coverage, conditions, and limits required by this Contract are in full force and effect. Such Certificates shall identify this Contract number and shall provide for not less than 30 days advance Notice of Cancellation, Termination, or Material Alteration. The Law Firm will maintain Professional Liability insurance covering errors and omissions arising out of the work or services performed by the Law Firm or any person employed by the Law Firm, with a limit of not less than \$500,000 each occurrence and \$500,000 all claims.

10. Independent Contractor Status. The services the Law Firm provides under the terms of this Contract to City are that of an independent contractor, not an employee. City will report the value paid for these services each year to the Internal Revenue Service (IRS) using Form 1099. Withholding of income tax is not deducted from contractual payments.

11. Non-Assignment. Services covered by this Contract shall not be assigned in whole or in part without the prior written consent of the City.

12. Choice of Law. This Contract shall be governed and interpreted according to the laws of the State of Arizona.

13. Entire Agreement. This Contract constitutes the entire understanding of the parties, and no representations or agreements, oral or written, made prior to its execution shall vary or modify the terms herein.

14. Amendments. Any amendment, modification, or variation from the terms of this Contract shall be in writing and shall be effective only after approval of all parties signing the original Contract.

15. Severability. Should any part of this Contract be declared in a final decision by a court or tribunal of competent jurisdiction to be unconstitutional, invalid, or beyond the authority of either party to enter into a carry out, such decision shall not affect the validity of the remainder of this Contract, which shall continue in full force and effect, provided that the remainder of this Contract, absent the unexcised portion, can be reasonably interpreted to give effect to the intentions of the parties.

16. Termination. Either party may terminate this Contract without cause upon giving thirty (30) days' written notice to the other party.

17. Cancellation. Pursuant to ARIZ. REV. STAT. § 38-511, the City may cancel any contract or agreement, without penalty or obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating this contract on behalf of City's departments or agencies is, at any time while the contract or any extension of this Contract is in effect, an

employee of any other party of the contract in any capacity, or a consultant to any other party of this Contract with respect to the subject matter of this Contract.

LAW FIRM:

CITY OF EL MIRAGE

Bustamante & Kuffner, P.C.

By: Alan Kuffner
Its: Vice President / Secretary / Treasurer

By: Crystal Dyches
Its: City Manager

ATTEST:

Sharon Antes, City Clerk

APPROVED AS TO FORM:

Justin Pierce
City Attorney