

CITY OF FLAGSTAFF

**PROPOSAL FOR MODIFICATION TO CONTRACT
FOR PUBLIC DEFENDER SERVICES**

Submitted 04/14/2025

By
Harris & Winger, P.C.
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I. Summary of Request

Harris & Winger PC proposes an increase of **\$337,164.17**¹ for the final year of the City of Flagstaff Public Defender Service Contract in exchange for an agreement to extend the final year of the contract. Harris & Winger, PC needs this increase to assess if it can rectify current understaffing, insufficient salaries, inability to hire professionals to perform contract obligations, and the rapidly deteriorating competency of representation because of unexpected and extraordinary increase in demand for client services under the contract. Harris & Winger, PC requests this one-time, last year increase to determine if it can continue its 25-year tradition of representing indigent defendants as the public defenders for the City of Flagstaff under a future long-term contract at the conclusion of the current contract in March of 2026.

II. Introduction and Summary of the Firm

Harris & Winger, P.C. (the “firm”) was founded in 1991 by former Congresswoman Ann L. Kirkpatrick. Ann began the practice in the basement of the Federal Building in downtown Flagstaff. Ann Kirkpatrick’s decision to start a new firm was the result of her desire to practice law in a more balanced environment - an environment that focused on people and not just profits. Her dream was to build a firm where each attorney had the freedom to develop a high-quality legal practice that was both professionally and personally satisfying. Today, with the partners’ personalized approach to the practice of law and their philanthropic commitment to the community, the firm realizes Ann’s dream each day.

In 2009, with Ann’s election to U.S. Congress, the firm was proud to have a new partner take Ann’s place, and the firm became known as Harris & Winger, P.C. The City of Flagstaff continued to receive the same diligent representation of its indigent and mentally ill clientele that the firm has always provided.

Our telephone number is (928)774-0011. The fax number is (928)774-0115. The firm’s website is www.azharrislaw.com.

For the past 25 years, our attorneys and legal staff have built a solid and professional working relationship with the Citizens of Flagstaff, Flagstaff Municipal Court Administration and Judges, the Flagstaff City Attorney’s Office, and Flagstaff Police Department that has enabled us to serve the community by providing legal services for individuals who otherwise could not afford representation.

¹ From the current rate of \$445,962.00 annually to \$783,126.17.

III. Substantial and Continuing Change in Circumstances

This request is based on the following substantial and continuing changes in circumstance:

A. INFLATION

- The current annual contract pay is insufficient given extraordinary changes in economic circumstances nationwide, particularly economic changes in Flagstaff, Arizona.
 - Inflation in Flagstaff between 2021 and 2025 has increased 19%.
 - Harris & Winger, P.C.'s increase is first based on a 19% increase in contract amount based on unanticipated inflation since entry into the contract.
 - **TOTAL:** The inflation-based increase for the final year of the contract for non-personnel expenses (rent, commodities, insurance, taxes, IT, software, hardware, equipment leases, telephones, postage, accountants, etc.) is: **\$27,550.00.**²

B. INADEQUATE SALARIES FOR EMPLOYEES

- Low salaries that Harris & Winger, P.C. can pay under the contract have resulted in loss of quality employees, particularly attorneys, who cannot be replaced with the current salary amount. There is a risk of further loss of quality employees because of inequitable pay.
 - Since 2021, Kevin Harris has been paid an annual salary for full-time work on the contract in the amount of \$100,000.00. A 2025 comparable annual salary for a Chief criminal city attorney (70R) working for the city for 25 years is: \$132,664.00 equaling a necessary increase of \$32,664.00 to the annual contract amount.
 - Since 2021, Chad J. Winger has been paid an annual salary for 3/4 full-time work on the contract in the amount of \$70,000. Based on the below changes in circumstances, Chad J. Winger has begun having to work 1 ¼ full-time on the contract. A 2025 comparable salary for a criminal city attorney III (65R) working for the city for 20 years is: \$123,415.39 equaling a necessary increase of \$53,415.39 to the annual contract amount.

² \$145,000.00 x .19=\$27,550.00

- Since 2021, Sarah Snelling has been paid an annual salary for full-time work on the contract in the amount of \$70,000.00. Based on the below changes in circumstances, Sarah Snelling has begun having to work 1 ¼ full-time on the contract. A 2025 comparable salary for a criminal city attorney II (60R) working for the city for 8 years is: \$95,668.75 equaling a necessary increase of \$25,668.75 to the annual contract amount. Without this increase, retaining Ms. Snelling in the immediate future is unlikely.
- Jaselle Blacktaildeer is paid an annual salary for full-time work on the contract in the amount of \$36,000.00, which is the current minimum wage in Flagstaff. A comparable salary for a Legal Specialist (15R) is \$42,524.06 equaling an necessary increase of \$6,524.06.
- The necessary increase to the annual contract amount to make current employee salaries competitive for comparable work is: \$111,748.14.
- Payroll tax increase on salaries \$111,748.14 x .0765=\$8,548.73.
- **TOTAL:** Salary increase \$111,748.14 + payroll tax increase \$8,548.73=**\$120,296.87**

C. WORKLOAD AND OTHER SUBSTANTIAL CHANGES IN CIRCUMSTANCES IN THE PAST 20 MONTHS

- Under the current workload, substantial modification in prosecutorial plea policies, and the doubling of case assignments, employing fewer than 4.5 full-time attorneys and 2 legal secretaries/paralegals under the contract runs contrary to Constitutional requirements for misdemeanor indigent representation set forth in *State v. Smith*, 140 Ariz. 355, 362, 681 P.2d 1374, 1381 (1984). “The attorneys involved, however, are in a position to know when a contract will result in inadequate representation of counsel.” *Smith*, 140 Ariz. at 362, 681 P.2d at 1381. Harris & Winger, PC have reached the cautionary point of *State v. Smith*.
- It is essential that Harris & Winger, P.C. hire a full-time, part-time attorney, and another legal secretary/paralegal to continue efficient court operations, general good will with the citizens of Flagstaff, ethical and professional representation, and general competency for each case.
- The increase in numbers of attorneys is necessary to Constitutionally and ethically represent clients based on the extraordinary increase in court appointments, increased litigation, and trials, particularly based on stricter plea

and sentencing policies of the City and the doubling of case appointments on non-DUI misdemeanors. In the past, the City Attorney's Office handled significantly more cases with indigents *pro per*. Recently, the City Attorney's Prosecutor's Office has adopted policies whereby those case management responsibilities have shifted to Harris & Winger, PC. There has been a dramatic increase in appointments that in the past were handled as *pro per* cases by the City Attorney's office. This shift has created an imbalance in Harris & Winger's resources to defend each defendant while the City Attorney's Office has more resources to implement stricter plea and sentencing policies.

- Throughout the duration of this contract beginning in 2021, all misdemeanor filings in the Flagstaff Municipal Court have decreased every fiscal year while case appointments to Harris & Winger, PC have doubled over the contract period.
 - 2021, the first fiscal year of the contract 4633 misdemeanor non-DUI cases were filed in the Flagstaff Municipal Court. Harris & Winger were appointed to 305 of those non-DUI cases.
 - 2024, the last full fiscal year of the contract 4373 non-DUI misdemeanor cases were filed in the Flagstaff Municipal Court. Harris & Winger were appointed to 609 of those non-DUI cases.
 - The doubling of appointments when total case filings slightly dropped is extraordinarily significant to our practice and need for additional resources to handle an unanticipated doubling of workload.
 - Notably non-DUI cases are appointed almost exclusively based on whether the City Attorney's Prosecutor's Office represents to the court that it is seeking jailtime against each individual defendant. While Harris & Winger, PC respects the City Attorney's Prosecutor's Office discretion to make criminal justice policy. Policy changes come with costs.
- Recently, the manner of appointments has seriously disrupted office procedure. Many of our appointments are made for Defendants at the Defendant's first Pre-Trial Conference. In the past 25 years, all appointments, except for a few anomalies, were made before the Defendant's first Pre-Trial Conference and Harris & Winger, PC were prepared in advance to manage all cases at a Defendant's first Pre-Trial Conference. Because of the late appointment of a significant number of cases, because of the City Attorney's Prosecutor's Office's late determination to seek jail time, gathering documentation from the Court and the City Attorney's Office before a quickly reset Pre-Trial Conference has caused our office staff to double prepare each week's Pre-Trial Conferences, the most substantial task for the legal secretaries/paralegals. Preparing for Pre-trial

Conferences consumes more than half of office staff and attorney time. These late appointments require continuance of almost every first non-Jury Trial setting because the non-jury trial set at arraignment is scheduled within 10 days of the Defendant's second Pre-Trial conference (the first Pre-Trial Conference after appointment of Harris & Winger, PC. These late appointments are novel to Harris & Winger, PC and have substantially disrupted a long-standing effectively and efficiently managed case load.

- Because of stricter plea policies on DUI's, attorney time and resources required to defend clients in DUI cases have doubled over the last six months. Plea negotiations on DUI cases have ceased. Defendants are now offered to plead to the charge and the most likely sentence to be imposed by the judge following trial. Frequent Jury Trials are now inevitable. Under contracts with the City for the past 25 years, Harris & Winger, PC, has been required to conduct an average of 1-3 DUI Jury Trials per year. Based on the current circumstances, under new plea and prosecution policies, Harris & Winger, PC is currently preparing for 10-15 DUI Jury Trials and projecting 25-30 DUI Jury Trials in the final year of the contract.
- The stricter plea policies have eliminated all early disposition of DUI cases. Early disposition of DUI cases was a common occurrence for the past 25 years. The lack of early disposition of DUI cases requires substantially more attorney and paralegal time.
- Because of stricter policies regarding the prosecution of non-DUI jury eligible offenses, primarily shoplifting cases, attorney time and resources required to defend clients in non-DUI Jury Trials is a new consideration for Harris & Winger, PC under the contract. Non-DUI Jury Trials have never been part of the calculus of the cost of indigent defense. However, 7 non-DUI Jury Trials are currently set for Jury Trials. Under contracts with the City for the past 25 years, Harris & Winger, PC, has been required to conduct an average of 0 non-DUI jury trials per year. Based on the current circumstances, under new plea and prosecution policies, Harris & Winger, PC is projecting 20-25 non-DUI Jury Trials in the final year of the contract.
- Because of new policies related to Rule 11 cases, attorney time and resources on these serious matters have significantly increased for Harris & Winger, PC. In the past, the City has dismissed Rule 11 cases for defendants who have previously been declared by a court as not competent. Now, such cases are proceeding through the Coconino County Superior Court despite a prior determination of incompetency. Previously, unless a specific societal protection or Defendant's need could realistically be addressed in Rule 11 proceedings wherein the City would expend the extraordinary cost of restoration or post non-restorable care, Rule 11 misdemeanor cases were dismissed. Recently, Judge Steinlage, Coconino County Superior Court commented in open court, on the record stated that he has seen a dramatic increase in Rule 11 cases from the

Flagstaff Municipal Court. Rule 11 cases are the most serious cases that Harris & Winger, PC handles under the contract. Rule 11 cases are extraordinarily time consuming for attorneys.

- In the past 25 years, Defendants being placed on probation have been the exception rather than the rule. The City Attorney's Office has implemented a policy that placing Defendants on probation is now the rule. This new policy will result soon in a dramatic increase in Harris & Winger, PC's obligation to represent Defendants for an average of a year following a plea. There will be a substantial increase in the need for representation in probation revocation proceedings.
- The City has implemented prostitution stings resulting in the filing of many prostitution cases with mandatory jail time for the Defendants. Harris & Winger, PC has rarely, if ever, defended a prostitution case in the Flagstaff Municipal Court over the past 25 years, but now has approximately 20 prostitution cases forthcoming, all with Jury Trial implications and very serious consequences for Harris & Winger, PC's clients. The City Attorney's Office has determined that it expects the client to plead to the charge and agree to a sentence that will never be more substantial than the judge will sentence after trial. The Defendant's in these cases have no incentive to avoid trial except to avoid public embarrassment. Defense counsel cannot advise clients to give up their constitutional right to a trial in exchange for nothing.
- The court's automatic text notification system has created significant waste of resources and firm reputation damage. The automatic text notification system did not exist at the beginning of the contract. Our clients routinely receive direct communication from the court instructing them to appear for court hearings that have been postponed, or for cases that have been pled and sentenced, or that are simply incorrect. This causes significant time waste for attorneys and staff to cure the client's confusion. The system erodes our client's trust in our representation that has ripple effects throughout the client's case. A very important aspect of an Attorney-Client relationship is a client's trust to follow the attorney's advice. This system has compromised this important aspect of our relationship with our clients. It has damaged our firm's reputation.

D. MISCELLANEOUS CONSIDERATIONS

- Harris & Winger, PC respects the City's right to adopt and change its criminal justice policies and prosecutorial policy that increase indigent appointments and require more criminal litigation under the contract. Harris & Winger, PC also requests reciprocity from the City by accepting that these changes increase the cost, risk and liability, potential damage to reputation if unable to adequately represent Defendants, and increased need for support staff and professionals to meet the needs of the City's changes in its criminal justice policy.

- More financial resources are needed for staff to meet the demands under the contract and to address hiring difficulties and unexpected cost of living increases in Flagstaff and to address recent never before experienced employee retention issues. Hiring is impossible with current resources under the contract. Simply put, no attorney wants to relocate to Flagstaff to work on the salary that the contract provides.
- Currently, \$36,000 per year for a legal secretary/paralegal is the current minimum wage in Flagstaff. Support staff are entitled to more than minimum wage for the gravity of the work that they perform.
- In October of 2023, Harris & Winger, PC lost Alex Rubel, one of four attorneys working on the contract, due to a better financial opportunity for similar work. Since that time, Harris & Winger, PC has been unable to hire a new attorney because of Flagstaff's inflation, high cost of living, and the low offered pay.
- In January of 2024, Harris & Winger, PC lost Carly Winger, a paralegal with 12 years' experience working on the contract with the City of Flagstaff. Frustration with the aforementioned change in circumstances, low pay, and burnout caused the loss of this valuable employee.
- Contrary to good public policy, support staff and attorneys providing services under this contract do not receive benefits nor salary commiserate with comparable positions in the legal field in Flagstaff, Arizona because the current price of the contract is insufficient.
- Without the increase in funds, Harris & Winger, PC, cannot meet the needs of the Constitutionally required representation with which we are charged.

E. ADDITIONAL HIRES:

- Harris & Winger, PC, needs to hire 1.5 Attorneys I (55R) and 1 Legal Specialist (15R) immediately to meet the new demands of the contract set forth above.
- 1.5 Attorneys I (55R) \$120,058.77 plus payroll tax costs (\$120,058.77 x .0765) \$9,184.50. Total cost for additional 1.5 Attorneys: \$129,243.27
- 1 Legal Specialist III (20R) with substantial experience \$55,805.04 plus payroll tax costs (\$55,805.04 x .0765) \$4,269.08. Total cost for an additional 1 legal assistant: \$60,074.13.
- **TOTAL:** Additional hire increase totals: **\$189,317.39.**

The proposed price increase is indispensable for Harris & Winger, P.C., to continue to provide competent, constitutional, and ethical representation to assigned clients.

IV. Summary of Increased Annual Costs Outline Herein

Inflation Increase:	\$ 27,550.00	
Increase to Current Salaries for Equity:	\$120,296.87	\$111,377.62
Additional Hires:	\$189,317.30	\$ 50,000.00
TOTAL OF REQUESTED INCREASE:	\$337,164.17	\$161,377.62

V. Conclusion:

The requested amount fairly compensates the firm and will allow Harris & Winger to ethically and effectively represent all clients for cases assigned by the Flagstaff Municipal Court with adequate personnel.

The current contract cannot support the necessary professionals and staff to effectively meet obligations under the current contract and substantial change in circumstances in contract obligations. This firm has been operating with insufficient labor to meet the needs of assigned clients because of the changes in circumstances since 2023. This increase request is designed to cover the costs and expenses and to hire professional staff to provide quality indigent defense services for citizens and maintain efficient operations at Flagstaff Municipal Court. Lastly, the increase is necessary to ascertain if Harris & Winger, PC, can continue its 25-year tradition as contract public defenders for the City of Flagstaff under another long-term contract. If with the requested increase, Harris & Winger, PC continues to be unable to hire and retain employees, we may not be able to continue our services with the City of Flagstaff. Harris & Winger, PC believes that the requested increase will result in the necessary resources to continue our service to the city for the indefinite future.

HARRIS & WINGER, P.C.

/s/ Kevin B. Harris

Kevin B. Harris, Esq.