

PUBLIC DEFENDER SERVICES AGREEMENT

Contract No. 2026-71

This Contract is entered into this _____ day of _____, 2026 by and between the City of Flagstaff, a political subdivision of the State of Arizona ("City"), and Harris & Winger, P.C., a corporation with offices at 6 E. Aspen Avenue, Flagstaff, Arizona, 86001 ("Firm").

WHEREAS, the City desires to receive and Firm is able to provide relevant services;

NOW THEREFORE, in consideration for the mutual promises herein, the Parties agree as follows:

1. Scope of Work: Firm shall provide the consulting services generally described as:

PUBLIC DEFENDER SERVICES

and as more specifically described in the Scope of Work and Fee attached here to as Exhibit A (the "Services")

Term and Renewal:

- 2.1 Contract Term: The term is for a period of three (3) years unless terminated pursuant to the provisions of the Contract. The Contract will be effective as of the date signed by both parties. The City Council has the authority to amend the term of the Contract.
 - 2.2 Renewal: The Contract may be renewed for up to two (2), one (1)- year additional terms by mutual written consent of the parties. The City Manager or his/her designee (the Purchasing Director) shall have authority to approve renewal on behalf of the City.
 - 2.3 Unilateral Extension: The Contract may be unilaterally extended for one (1) 90-day period. The City Manager or his/her designee (the Purchasing Director) shall have the authority to approve the extension on behalf of the City. Firm will be provided written notice of the Unilateral Extension prior to expiration of the Contract.
3. Compensation: Firm shall be paid for satisfactory performance of the Contract in an amount not to exceed **six hundred fifty thousand dollars \$650,000.00** annually with an annual 3% increase each year after the first year. First four months of the first year is pursuant to the compensation in Exhibit A. Compensation includes fees and taxes, based on an hourly rate or other measurement made in accordance with the scope of work in Exhibit A. Any price adjustment must be approved by mutual written consent of the parties through a formal amendment. The City Manager or his/her designee may approve an amendment if the total amount of the Contract, as amended, is less than \$100,000; otherwise, City Council approval is required.
4. Termination & Cancellation Clauses.
 - 4.1 Non-Appropriation: The City may terminate the Contract due to budget constraints and non-appropriation of funds for the following fiscal year, without penalty or liability to Firm.
 - 4.2 For Convenience: Either Party may terminate the Contract for any reason by giving the other Party written notice of such termination no less than ninety (90) days prior to the date of termination. If the Contract is so terminated, the City's only payment obligation under the Contract shall be for those Services completed prior to the effective date of the termination.
 - 4.3 Conflict of Interest: Pursuant to A.R.S. § 38-511, if the City identifies a conflict of interest in the award or performance of the Contract, the City may cancel the Contract within three (3) years after its execution, without penalty or further liability to Firm.

5. Amendment: The Contract is intended to be the complete and final agreement of the Parties. The Contract may be amended through a formal written amendment Parties.
6. Compliance with Laws: Firm shall comply with all applicable federal, state, and local laws, regulations, standards, codes, and ordinances, including acquiring the requisite insurance, licenses, permits, and approvals, required to perform the Contract, and provide copies to City upon request.
7. Insurance:
 - 7.1 Coverage: Firm shall carry \$1,000,000 of Commercial General Liability insurance and the State of Arizona statutorily required amount of insurance for Workers' Compensation and Employer's Liability.
 - 7.2 Professional Liability: Firm is required maintain licensure by the State Bar of Arizona to provide the Services required in the Contract and Firm shall maintain \$2,000,000 of Professional Malpractice Insurance.
 - 7.3 Certificate of Insurance: Upon request of the City, Firm shall provide a Certificate of Insurance to the City documenting the requisite coverage.
8. Indemnity: Firm shall be fully liable for the actions of its agents, employees, partners, and assigns and shall fully indemnify, defend, and hold harmless the City, and their officers, agents, and employees from third party suits, actions, damages, and costs of every name and description, including attorneys' fees to the extent arising from or relating to personal injury and damage to real or personal property, caused in whole or in part by the negligence or willful misconduct of Firm, its agents, employees, partners, or assigns. This indemnification shall survive termination or expiration of the Contract.
9. Assignment/Subcontracting: Firm shall not assign, sell, transfer, or subcontract rights, or delegate responsibilities of this Contract, in whole or in part, without the City's prior written approval.
10. Independent Contractor: Firm shall be an independent contractor for purposes of all laws, including but not limited to the Fair Labor Standards Act, Federal Insurance Contribution Act, Social Security Act, Federal Unemployment Tax Act, Internal Revenue Code, Immigration and Naturalization Act; Arizona revenue and taxation, compulsory Workers' Compensation laws of the State of Arizona under A.R.S. § 23-901 (et. seq.) and/or unemployment insurance laws.
11. Nondiscrimination: Firm shall not discriminate against any employee or applicant for employment or person to whom it provides Services because of race, color, religion, sex, national origin, disability, genetic information, veteran's status, pregnancy, and/or familial status and represents and warrants that it complies with all applicable federal, state, and local laws, ordinances and executive orders regarding employment.
12. Payment:
 - 12.1 Invoices shall include the Contract and/or Purchase Order number and dates when the work has been performed. Invoices shall be sent within thirty (30) days following performance. Payment will only be made for satisfactory Services received and accepted by City.
 - 12.2 Firm shall be responsible for payment of all taxes including federal, state, and local taxes related to or arising out of performance of the Contract. Such taxes include but are not limited to federal and state income tax, social security tax, unemployment insurance taxes, transaction privilege taxes, use taxes, and any other taxes or business license fees as required.

Exception: The City will pay any taxes which are specifically identified as a line-item dollar amount in Firm's bid, proposal, or quote, and which were considered and approved by the City as part of the award process. Such taxes shall be identified as a separate line item in Firm's invoices.

13. Immigration Laws: Pursuant to A.R.S. § 41-4401, Firm hereby warrants that it and each of its subcontractors shall comply with all state and federal immigration laws and regulations that relate to its employees and A.R.S. § 23-214(A). A breach of state and/or federal immigration laws and regulations shall constitute a material breach of the Contract.
14. Forced Labor of Ethnic Uyghurs: Firm hereby certifies that it does not use the forced labor of ethnic Uyghurs in the People's Republic of China as defined in A.R.S. § 35-394, et seq.
15. No Boycott of Israel: Pursuant to A.R.S. §§ 35-393 and 35-393.01, if a Party has over ten (10) employees and the Contract is worth at least one-hundred thousand dollars and no cents (\$100,000), the Party shall certify that it is not currently engaged in, and agrees, for the duration of the Contract, will not engage in a boycott of Israel.
16. Governing Law and Forum: The Contract shall be construed in accordance with the laws of the State of Arizona and in the event of litigation relating to the Contract, any action in law or in equity shall be filed in Coconino County, Arizona.
17. Notice: Any formal notice under the Contract shall be in writing via certified mail and email as follows:

To the City:

Jessica Cortes
Courts Administrator
Flagstaff Municipal Court
101 W. Cherry Avenue
Flagstaff, AZ 86001
jcortes@courts.az.gov
928-213-3058

To Firm:

Kevin Harris, Senior Managing Partner
Harris & Winger, P.C.
6 Aspen Avenue, Suite 250
Flagstaff, Arizona 86001
kevin@azharrislaw.com
928-774-011

With a copy to:

Patrick Brown, Purchasing Director
City of Flagstaff
211 W. Aspen Ave.
Flagstaff, AZ 86001
pbrown@flagstaffAZ.gov

18. Authority: Each Party warrants that it has authority to enter into the Contract and perform its obligations hereunder, and that it has taken all actions necessary to enter into the Contract.

HARRIS & WINGER, P.C.

CITY OF FLAGSTAFF

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

ATTEST:

APPROVED AS TO FORM:

City Clerk

City Attorney's Office

Notice to Proceed issued: _____, 20__

Last Updated October 17, 2025

EXHIBIT A
Scope of Work and Fee

Weekly Approach

In Court Obligations

A brief outline follows:

Monday: In-custody Order to Show Cause Hearings, Non-Jury Trials, Evidentiary Hearings, Change of Plea Hearings, In-custody Arraignments.

- o There are multiple Divisions of the Flagstaff Municipal Court that will often have hearings scheduled simultaneously always requiring three attorneys to cover Monday's calendars.

Tuesday: Non-Jury Trials and Evidentiary Hearings

- o There are multiple Divisions of the Flagstaff Municipal Court that will often have hearings scheduled simultaneously, requiring at least two attorneys.

Wednesday: Change of Pleas, Order to Show Cause Hearings, Case Management Conferences, In-custody Arraignments

- o Three attorneys, occasionally four attorneys are required on Wednesdays.

Thursday: Jury trials, Mental Health Court and Veteran's Court every other week, Order to Show Cause Hearings in the morning. In-custody Pretrial Conferences and Evidentiary Hearings in the afternoon.

- o Three attorneys are always required on Thursdays. With recent significant increase in jury trials on Thursdays, four attorneys are frequently required for court.

Friday: Pretrial conferences from 8:30 a.m. - 12:00 p.m, In-custody Arraignments. ² Fridays require court appearances of three, sometimes four attorneys.

¹ The average number of hours per week is difficult to ascertain as each week presents its own challenges (clients with tuberculosis, clients with multiple cases, last minute appointments, interview cancellations, hearing postponements, etc.). However, the Contract at a minimum requires twenty-five to thirty in-court hours per week per attorney.

Non-court Obligations and Preparation

With the additional 1,300 arraignment appointments, attorneys responsible for the public defense now each spend approximately 3 hours per day each on the telephone perfunctorily conferencing with full and limited appointment clients. **50 estimated hours** total perfunctory telephone per week attorney time.

Attorneys review the case files for the 70-80 cases appointed per month requiring on average one hour per case. **20 estimated hours** total file review per week attorney time.

The firm now prepares approximately 25 substantive pretrial motions per year. Each substantive pretrial motion requires 3 days of legal research and writing. **12 estimated hours** preparing substantive pre-trial motions per week attorney time.

Attorneys now consult in person with clients in preparation for primarily non- jury trials, but also jury trials. With the dramatic increase in jury trials, **25 estimated hours** in person consultation per week attorney time.

Attorneys spend **15 estimated hours** per week preparing for arraignments per week attorney time.

Attorneys prepare for and perform follow-up tasks related to all in-court-non-in-custody-arraignment time each week as outlined *supra*. **40 estimated hours** in-court preparation and follow-up attorney time per week.

On Mondays, attorneys prepare the following week's calendar including, teleconferences with clients, verbal and written plea negotiations with the prosecutor, and contacting, conferencing, preparing trial defenses, and subpoenaing witnesses. Each attorney's weekly calendar preparation consumed 2-3 hours per week, per attorney. **15 averaged hours** calendar preparation attorney time per week.

² The hours provided in this synopsis count only in-court time. They do not include essential and time-consuming tasks including: legal research, officer and witness interviews, jail visits, file review, trial/hearing preparation, jury instruction preparation, client communications, and communications with counselors and court personnel. Neither does it include explanations to the family or updating the case, plea negotiations, and many more of the innumerable tasks that a Public Defender must perform. **Each in court hour for an attorney requires approximately four hours of staff preparation time, and two hours of attorney preparation time.**

I. Attorneys Needed

4 attorneys are required to handle the work load and ethically and effectively represent our community in the Flagstaff Municipal Court.

With 4 firm attorneys available, attorneys outside the firm occasionally are hired for coverage on the contract.

Weekly attorney time on this contract now totals: **160 hours per week**. Four attorneys are now required for the public defense work when considering required sick and vacation time for attorney employees.

It is critical to note that the assignments to the firm of 850 full case appointments and 1,300 limited case appointment raises issues of constitutional indigent representation. Long ago, the Arizona Supreme Court determined that the constitutional maximum number of misdemeanor cases that one contract attorney should handle is 300. *State of Arizona v. Joe U Smith*, 140 Ariz. 355, 681 P.2d 1374 (1984). Granted, all 2,000 of our appointments are not full case appointments. Nevertheless, the constitutional and public policy values of the City of Flagstaff are such that each defendant deserves more attention from the city's contract indigent defense attorneys than the ceiling after which the indigent defense of all becomes unconstitutional because right-to-counsel is thereafter violated.

II. Division of Labor within the Firm

Kevin Harris, who has diligently conducted public defense work for the City of Flagstaff, pursuant to the indigent defense contract since 1999, is the senior criminal litigator at the firm. At the time of bid, Mr. Harris performed the duties of counsel to indigent defendants under the contract ethically and diligently in excess 45 hours per week. Recently, his time commitment is extraordinary. Mr. Harris assists both associate attorney's taking responsibility for some indigent matters assigned to Division 1. He is lead counsel for assigned clients in the Veterans Courts. Lastly, Mr. Harris covers many of the perfunctory matters in Division 5 of the Flagstaff Municipal Court. He is lead jury trial counsel on the contract. He also attends in-custody arraignments at the jail.

Gavin O'Connor, contracted attorney, takes primary responsibility for pre-trial conferences, non-jury trials, probation proceedings, order to show cause settings, in- custody arraignments at the jail, and change of pleas in Division 5 of the Flagstaff Municipal Court. He also attends in-custody arraignments at the jail.

Sarah Snelling, associate attorney, takes primary responsibility for pre-trial conferences, non-jury trials, probation proceedings, order to show cause settings, in- custody arraignments at the jail, and change of pleas in Division 3 of the Flagstaff Municipal Court. She also attends in-custody arraignments at the jail.

Chad J. Winger, managing partner, he covers any and all of the attorney tasks set forth in the preceding two paragraphs when there are division conflicts or attorney's absent from the office due to illness or time off. He represents persons in serious cases with more significant collateral consequences (prostitution, indecent exposure cases, sexual motivation cases, Rule 11 matters, child neglect cases, and cases where significant jail time is at stake, etc.) that will likely proceed to non-jury trials. He also monitors changes in mental health, local health care policy, detention facility, public services, and city government laws, rules, policies, and procedures, staff and attorney training, interoffice case flow management, information technologies, and many other administrative tasks. He is the firm's appellate attorney on the contract. He is responsible for interoffice public defense policy, case flow management, budgeting, human resources, ethics policies, and firm management.

Sophia Fite is a full-time employee serving as both receptionist and legal assistant on the contract, being responsible for voluminous calls from contract clients, including clients in custody, who can call our office free of charge. She prepares voluminous filings with the court and manages each attorney's calendar and attorney client contact.

Carly Winger is a full-time employee serving as both receptionist and paralegal on the contract, being responsible for voluminous calls from contract clients, including clients in custody, who can call our office free of charge. She prepares voluminous filings, including substantive motions, conducts rudimentary legal research for cases, and backs up Ms. Fite managing each attorney's calendar and attorney client contact. Lastly, she supervises Ms. Fite.

III. 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. This bid price (though significantly lower than anticipated) is designed to cover the costs and expenses of providing quality indigent defense services for citizens, maintain smooth operations at Flagstaff Municipal Court.

Kevin B. Harris, Esq.

FEE SCHEDULE

"Compensation: annual compensation for the services contracted is \$650,000.00, with an annual increase of 3% for each year of the contract including all extensions beginning July 1, 2026. March 2026 through June 2026, the compensation will be at current amount. Total fee schedule will be pursuant to the payment schedule below:

March \$50,611.53/mo.

April \$50,611.53/mo.

May \$50,611.53/mo.

June \$50,611.53/mo.

July through March 2027 = \$54,166.67/mo. (fee goes to proposed of \$650,000 annually)

March 2027 through March 2028 = +3% or \$55,791.67/mo.

Each contractual year the fee will increase 3% each year.