

PROFESSIONAL SERVICES CONTRACT
for
Temporary Prosecutor Services

This contract ("Contract") made this ____ day of November 2023 is entered into by and between:

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| City of San Luis (an Arizona municipal corporation) City Hall 1090 East Union Street P.O. Box 1170 (mailing) San Luis, Arizona 85349 ("City") And | Law Office of Heather C. Vinci, PLLC (an Arizona professional limited liability company) 202 South First Avenue Suite 301B Yuma, Arizona ("Contractor") |
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The City and the Contractor may be referred to as the Party individually and Parties in the collective.

WHEREAS, the purpose of this Contract is for Temporary Prosecutor Services; and

WHEREAS, Heather C. Vinci has been providing services as the San Luis prosecutor since September 8, 2023;

NOW, THEREFORE, in consideration of the terms, conditions, covenants, and performance of the scope of work in this Contract, the City and The Contractor agree as follows:

I. TERM.

The term of this Contract shall be from month to month, commencing on December 7, 2023, and continuing until terminated as provided in Section IV below.

II. SCOPE OF WORK.

- A. Duty: The duty of prosecution is to do justice. The Contractor is to use her best legal judgment and discretion towards fulfilling this duty. The Contractor shall maintain her Arizona State Bar license in good standing. The City has relied upon the Contractor's qualifications in entering into this Contract. By execution of this Contract, the Contractor represents she possesses the ability, skill, and resources necessary to perform the work and is familiar with all current laws, rules, and regulations that reasonably

relate to the position. The Contractor shall be responsible for the technical accuracy of her services and documents resulting from the service. The City shall not be responsible for discovering deficiencies therein. The Contractor shall correct such deficiencies without additional compensation except to the extent such action is directly attributable to deficiencies in City-furnished information.

- B. Communication: The Contractor shall make reasonable efforts to communicate with the City Attorney monthly. The Contractor shall keep open communication with the San Luis Police top command and communicate any prosecution issues as appropriate or as needed.
- C. Core Work to be Performed: The Contractor shall review police reports referred to the Prosecutor's Office for whether there is jurisdiction and sufficient evidence to prosecute and other relevant information toward the goal of serving justice. The jurisdiction of the San Luis Municipal Court includes adult misdemeanors and certain contested civil offenses under Arizona Statutes and the San Luis City Code, where the conduct occurred within the San Luis city limits. The Contractor shall handle such cases from start to finish (charging decisions through post-sentencing to include monitoring deferred prosecutions and payment of restitution). The Office of the Prosecutor's staff will assist except for Spanish-English interpretation for The Contractor's meetings with Spanish-speaking victims, witnesses, and unrepresented defendants. The City Attorney shall decide any prosecution appeals. Any defense appeals shall be brought to the City Attorney's attention immediately.
- D. Court Appearances: The Contractor shall attend in-person San Luis Municipal Court Appearances as required and telephonic or video conferencing appearances as allowed by the San Luis Municipal Court. The Parties anticipate that the San Luis Municipal Court will consider the Contractor's private practice schedule. **If a scheduling conflict cannot be resolved, the Contractor is to notify the City Attorney immediately.**
- E. Conflicts of Interest: The Contractor's conflicts of interest and accused City employees or elected officials shall be referred to other jurisdictions for prosecution. The Contractor shall reciprocate by handling conflicts of interest of other municipalities in Yuma County to the extent her schedule allows.
- F. Limitations of Practice. The Contractor shall be entitled to engage in the private practice of law separate and apart from the duties under this Contract. The Contractor nor any member of her law firm shall engage in

any activity adverse to the interests of the City for the duration of the Contract, including, but not limited to, defense of cases in the San Luis Municipal Court.

III. COMPENSATION

The City shall pay the Contractor a flat monthly fee of \$8,000.00 except for December 2023, which the City shall pay \$4,000.00 because the Contractor will cover the Court for two weeks that month. There shall be no additional compensation if work is done after regular work hours, weekends, or holidays. The Contractor shall submit monthly invoices at least two weeks before the 8th of the month to the City Attorney with a copy to the City Attorney's Legal Secretary. The invoice shall be due and payable on the 8th of the month.

IV. TERMINATION

The City or the Contractor shall provide 30 calendar days written notice to terminate the Contract.

The City may terminate this Contract immediately if the Contractor is unable to discharge the prosecutor's duties for any reason. The Contractor agrees to advise the City Attorney and the City Manager immediately if The Contractor receives a bar complaint or becomes aware of any other matter that could possibly lead to disbarment.

V. RELATIONSHIP OF THE PARTIES

- A. The relationship of The Contractor to the City shall be as Independent Contractor. The Contractor shall be at all times an independent contractor and not an agent or representative of the City of San Luis regarding the performance of this Contract. The Contractor shall not represent that she is, or hold herself out as, an agent or representative of the City of San Luis. The Office of the Prosecutor is a division of the Office of City Attorney. So, the Contractor serves in an attorney-client relationship. Subject to compliance with the requirements of this Contract, the Contractor shall perform the Services in accordance with her own methods.
- B. The Contractor's rights include but are not limited to control of the work, manner, and methods of the work, and the right to contract with other clients.
- C. The City's rights include but are not limited to inspection and approval of the work and the right to contract with others to perform the work.

VI. RELEASES. INDEMNITY. HOLD HARMLESS.

The Contractor releases and shall defend, indemnify, and hold harmless the City of San Luis from and against all claims, cost liabilities, damages, and expenses (including, but not limited to, reasonable attorney's fees and expert fees) arising directly out of or in connection with:

- Any fault, negligence, strict liability, or product liability of The Contractor in connection with the Services of this Contract;
- Any lien asserted upon any property of the City of San Luis in connection with the Services or this Contract;
- Any failure of The Contractor to comply with any applicable law, ordinance, rule, regulation, order, license, permit, and other requirement, now or hereafter in effect, of any governmental authority; or
- Any breach of or default under this Contract by The Contractor. As permitted by applicable law, this shall apply. However, this shall not require the Contractor to indemnify the City of San Luis against any liability for damages arising out of bodily injury or property damages caused by or resulting from the negligence of the City of San Luis. Further, in the case of concurrent negligence of The Contractor on the one hand and the City on the other hand, The Contractor shall be required to indemnify the City only to the extent of the negligence of The Contractor. The Contractor releases and shall defend, indemnify, and hold harmless the City from and against all claims, costs, liabilities, damages, and expenses (including, but not limited to, reasonable attorneys' fees and experts' fees).

VII. INSURANCE

- A. Worker's Compensation and Employer's Liability Coverage: Coverage or insurance in accordance with the applicable laws related to worker's compensation and employer's liability insurance with limits no less than the statutory minimum for the Contractor's employee or employees, if any.
- B. Contractor's Liability & Property Damage Insurance:
 - 1. The Contractor shall procure and maintain during the life of this Contract (including any extensions) and during the performance of these services, Commercial General Liability, and Automobile Liability Insurance, to protect the City and the Contractor from and against all claims, damages, losses, and expenses arising out of or resulting from the performance of these services, as detailed herein-with insurance companies or through sources approved by the City.
 - 2. The commercial general liability insurance shall include the City as an

Additional Named Insured on a Primary Basis. All insurance policies shall be endorsed to provide that no policy shall be canceled, changed, or reduced in coverage for the duration of this Contract, including extension, until after thirty (30) days prior written notice has been delivered to the City through certified mail.

3. A Certificate of Insurance, Including the Additional Named Insured Endorsement for the primary commercial general liability insurance policy, shall be filed with the City Attorney by September 15, 2023. This Certificate shall be subject to approval by the City as to company, terms, and coverage. Failure of the Contractor to fully comply with the requirements set forth herein regarding insurance shall be considered a material breach of contract. It shall be cause for immediate termination of the Contract and any and all obligations regarding the same.
4. A Declaration of Professional Liability Insurance shall be filed with the City by September 15, 2023. meeting the requirements set forth herein. This Declaration shall be subject to approval by the City as to company, terms, and coverage. Failure of the Contractor to fully comply with the requirements set forth herein regarding insurance shall be considered a material breach of contract and shall be cause of immediate termination of the Contract and of any and all obligations regarding the same.
5. Approval of the insurance by the City shall not relieve or decrease the Contractor's liability for any damages arising from the Contractor's performance of the Work.
6. Insurance shall provide, at a minimum, the types of insurance coverage, liability limits, and endorsements as set forth below and shall be included in all applicable policies and on the Certificate of Insurance. The insurance coverage listed below shall protect the Contractor and the City from claims for damages of bodily injury, including death resulting therefrom, and claims for property damage, which may arise from operations under this Contract or by anyone directly employed by the Contractor. It is understood that it is the Contractor's obligation to enforce the requirements of this section in respect to any of the Contractor's employees assisting with the work of this Contract:
7. Liability Limits: General Liability (Commercial General Liability Insurance) shall be written with limits of liability of no less than \$1,000,000.00 combined single limits per occurrence and \$2,000,000.00 in aggregate. Professional Liability Insurance, including

Errors and Omissions, shall be written with limits in no case less than \$1,000,000.00; Automobile Insurance shall be at the level, at least the minimum required by law.

8. Nothing contained in these insurance requirements is to be construed as limiting the extent of the Contractor's responsibility for payment of damages resulting from operations under this Contract.
9. The coverage provided by the General Liability and the Automobile Liability are primary to any insurance the City maintains.
10. Endorsements for Additional Insured: The City shall be named as Primary Additional Insured for General Liability and Automobile Liability.
11. There shall be included in the general liability insurance contractual coverage sufficiently broad to insure the provisions of that section herein entitled "Hold Harmless Clause."
12. Failure to comply with provisions contained herein shall not waive the Contractor's responsibility to provide the required protection.

VIII. MISCELLANEOUS.

- A. Notices. All notices and other material related to the Contract shall be in writing. They shall be delivered or mailed to the addresses in the first paragraph. If notice is sent to the City, it shall be addressed to the attention of the City Attorney.
- B. Survival. The obligation of the Contractor under all provisions of this Contract, which may reasonably be interpreted or construed as surviving the completion, termination, or cancellation of this Contract, shall survive the completion, termination, or cancellation of this Contract.
- C. Entire Contract. This Contract sets forth the entire Contract of the Parties and supersedes any and all prior agreements. No amendment or modification of any provision of this Contract shall be valid unless set forth in a written amendment to this Contract signed by both Parties.
- D. Severability. The invalidity or unenforceability of any provision of this Contract shall not affect the other provisions hereof, and this Contract shall be construed in all respects as if such invalid or unenforceable provisions were omitted. The headings of sections of this Contract are for convenience or reference only and are not intended to restrict, affect, or be of any weight in the interpretation or construction of the provisions of such

sections.

- E. Prevailing Party. The prevailing Party, in any action, shall be entitled to reasonable attorneys' fees, experts' fees, and court costs. The venue shall be in any court of competent jurisdiction in Yuma County, Arizona.
- F. Construction. This Contract shall be interpreted, construed, and enforced in all respects in accordance with the laws of the State of Arizona.
- G. Headings. The descriptive headings of the paragraphs of this Contract are inserted for convenience only. They shall not control or affect the meaning or construction of the provisions of this Contract.
- H. All Laws. The Contractor shall comply with all applicable federal, state, and local laws, rules, and regulations affecting its performance and hold the Purchaser harmless against any claims arising from the violation thereof. No extension of time or additional payment will be made for loss of time or disruption of work caused by any actions against the Contractor for any of the above reasons.
 - 1. This Contract is subject to the cancelation provisions for conflict of interest of A.R.S. § 38-511.
 - 2. The Contractor shall comply with all rules, regulations, orders, standards, and interpretations promulgated under the Occupational Safety and Health A (OSHA).
 - 3. The Contractor shall renew her Luis Business License.
 - 4. Contractor warrants she is in compliance with all federal immigration laws and regulations that relate to her employee or employees and her compliance with A.R.S. § 23-214(A) that a breach of said warranty shall be deemed a material breach of this Contract that is subject to penalties up to and including termination of the Contract. The City retains the legal right to inspect the papers of any contractor who works on this Contract to ensure that the Contractor is complying with the warranty.
- I. Assignments. The Contractor may not (by contract, operation of law, or otherwise) delegate or subcontract or assign performance of the scope of work to any other person or entity without the prior written consent of the City. Any such delegation or subcontracting without the City's prior written consent shall be voidable at the City's option. No delegation or subcontracting of performance, with or without the City's prior written consent, shall relieve the Contractor of responsibility to perform the services in accordance with this Contract. The Contractor shall be fully

responsible for the performance, acts, and omissions of the Contractor's employees, the Contractor's subcontractors, and any other person who performs or furnishes any services.

- J. Subcontracts. Except as otherwise provided herein, the Attorney shall not enter into subcontracts for any of the work contemplated under this Contract without obtaining written approval of the City.
- K. Diligence. The Contractor shall perform the services in a diligent, timely manner and in accordance with the standards of the profession.
- L. Force Majeure: Neither Party shall be liable to the other or deemed in default under this Contract if and to the extent that such Party's performance of this Contract is prevented by reason or force majeure, as determined by the City. The term "force majeure" means an occurrence beyond the control of the affected Party and not avoidable by reasonable diligence. Force majeure includes acts of God, war, riots, strikes, fire, floods, epidemics, or other similar occurrences. If either Party is delayed by force majeure, said Party shall provide written notification to the other within 48 hours. When the delay ceases, the Party affected shall provide written notice to the other Party. The Contract completion time may be extended by modification for a period equal to that delay caused under this condition. The City reserves the right to cancel the Contract or procure services from the best available source during force majeure, and the Contractor shall have no recourse against the City.
- M. No Personal Liability. It is agreed by and between the Parties that in no event shall any elected official, officer, employee, or agent of the City be in any way personally liable or responsible for any covenant or Contract herein contained, whether express or implied nor for any statement or representation made herein or in any connection with this Contract.
- N. Waiver. No officer, employee, agent, or other individual acting on behalf of either Party has the power, right, or authority to waive any of the conditions or provisions of this Contract. No waiver in one instance shall be held to be a waiver of any other subsequent breach or nonperformance. All remedies afforded in this Contract or by law shall be taken and construed as cumulative and in addition to every other remedy provided herein or by law. Failure of either Party to enforce at any time any of the provisions of this Contract or to require at any time performance by the other Party of any provision hereof shall in no way be construed to be a waiver of such provisions, nor shall it affect the validity of this Contract or any part of it.

O. Counterparts. This Contract may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The signature pages from one or more counterparts may be removed from such counterparts, and such signature pages all attached to a single instrument so that the signature of all Parties may be physically attached to a single document.

The Parties have executed this Contract in Yuma County, Arizona, on the day and year set forth above, which is the date the last Party signed this Contract.

City of San Luis, Arizona

Nieves Riedel, Mayor

ATTEST:

APPROVED AS TO FORM:

Sonia Cornelio, City Clerk

Kay Marion Macuil, City Attorney

**Law Office of
Heather C. Vinci, PLLC**

Heather C. Vinci, Esq.