

FLAGLER LAW PLLC

Limited Scope Representation Agreement for Representation Before the City of Bisbee Board of Adjustment

This Representation Agreement is made between Flagler Law, PLLC, hereinafter, "Attorney" or "Flagler Law," and City of Bisbee, hereinafter "Client" or "You."

1. Limited Scope of Representation: The scope of the representation provided by Attorney shall be limited to the following, hereinafter referred to as the "Matter":

Representation of the City of Bisbee's Design & Review Board ("DRB") in connection with a Board of Adjustment appeal filed by "the Bisbee Trust" in connection with DRB application number 18-24.

**** Client and Attorney agree that a new separate representation agreement will be required in the event that the matter moves into litigation. ****

Client understands and agrees that should representation extend beyond the scope described herein, a new Representation Agreement, subject to the terms and conditions agreed upon with Attorney, will need to be executed before work on such other matters may commence.

2. Staffing: Jana Flagler will have primary responsibility for your Matter. She may, however, utilize other attorneys, paralegals or litigation/clerical assistants where appropriate to assist with the delivery and performance of legal services on your Matter. Staffing decisions will be made by Jana Flagler, with the objective of rendering services on an efficient and cost-effective basis.

3. Fees: Flagler Law bills for professional services in accordance with Rule 1.5 of the Rules of Professional Conduct promulgated by the Arizona Supreme Court, primarily based upon the schedule of hourly rates established by the firm for the lawyers and other members of the professional staff of the firm. In order for Flagler Law to determine the value of services rendered, all billing staff maintain written records of the actual time spent working for clients. The hourly rates are based upon years of experience, specialization in training and practice and level of professional attainment. Hourly rates are periodically reviewed for adjustments as necessary. Jana Flagler's current hourly rate is **\$250.00** per hour and paralegal time is billed at a rate of **\$100.00** per hour. Time is billed in six-minute (or 1/10th of an hour) increments.

4. Costs: In addition to fees for services, you are responsible for all out-of-pocket disbursements that we incur on your behalf. Typical of such costs are travel expenses, long-distance telephone calls, outgoing faxes billed at a rate of Fifty cents (\$0.50) per page, Federal Express, courier services and delivery charges, postage, photocopying

billed at a rate of Fifty cents (\$0.50) per page, and online database retrieval charges (Lexis, Westlaw, etc.). Flagler Law anticipates making advances to cover out-of-pocket costs incurred but reserves the right to forward to you any larger items with the request that you pay them directly to the service providers.

5. Advanced Fee: It is the policy of Flagler Law, PLLC to require an Advanced Fee prior to beginning work. **In this matter only, Flagler law has agreed to waive the advanced fee requirement.**

6. Billing: Flagler Law's statements for services rendered and costs incurred will be prepared and mailed (or e-mailed) to the address you have provided. Statements will be mailed during the month following the month in which services are rendered and costs advanced. Flagler Law will make every effort to include our out-of-pocket disbursements in the next monthly statement. However, some disbursements are not immediately available and, as a result, may not appear on a statement until sometime after the charges were actually incurred. All statements are due and payable upon receipt and considered past due thirty (30) days after the statement date. Any balance due not paid within thirty (30) days from the date of invoice shall incur interest thereon at the rate of eighteen percent (18%) per annum or one and one-half percent (1½%) per month until paid. Flagler Law, PLLC reserves the right to decline to perform further services if any account is sixty (60) days or more past due. Subject, of course, to our ethical and professional obligations, Client agrees that Attorney may terminate legal services and withdraw from this engagement in such event.

7. Fee Shifting: The matter for which you have retained us is **NOT** one in which attorneys' fees may typically be recovered by the prevailing party from the losing party. If you prevail, and if appropriate, we will press a claim asking the Court to award you your fees incurred in this matter. You understand and agree, however, that, if you lose, the other party may attempt to shift their fees to you. Moreover, the provisions under which a Court may shift fees generally leave that decision to the discretion of the Court to decide whether, and in what amount, to award fees. Accordingly, no representation is made as to the likelihood of recovery of fees in your case, and you agree that you will remain responsible for fees incurred hereunder, regardless of whether you are awarded part or all of your fees by the Court.

8. Outcome Not Warranted: Attorney will use her best judgment and skill in representing you. You understand and agree, however, that Flagler Law makes no guarantee regarding the outcome of this matter.

9. Client's Responsibilities: Recognizing that an attorney cannot effectively represent Client without his/her cooperation and assistance, you agree to cooperate fully with Attorney and to provide promptly all information known or available to you relevant to Attorney's representation, including providing information and documents requested in a timely fashion; assisting in discovery, disclosure and trial preparation; cooperating in scheduling and related matters; responding to telephone calls and correspondence in a

timely manner; and informing Attorney of changes in the contact person or changes in your address, e-mail and/or telephone numbers.

10. General Document Retention: During the course of our representation, you may have occasion to provide Flagler Law with documents and other materials from your files. At the end of our engagement, Flagler Law will return original documents and materials to you. Documents and materials not returned to Client will be destroyed at such time as the file itself is destroyed in accordance with Flagler Law's document retention policy. Currently, it is Flagler Law's policy to scan and destroy a Client's paper file after the matter file has been closed for sixty (60) days. Flagler Law will thereafter retain an electronic copy of the paper file for seven (7) years.

11. Termination of Representation: Either Attorney or Client may terminate representation at any time for any reason by written notice, subject to applicable rules of professional conduct. In the event that Attorney terminates the engagement, Flagler Law will take such steps as are reasonably practicable to protect your interests in this matter and, if you so request, may suggest to you possible successor counsel and provide successor counsel of your choosing with whatever papers you have provided to Flagler Law. Unless previously terminated, Attorney's representation of Client will terminate upon delivery of a final statement for services rendered. You agree and acknowledge that you have engaged Attorney to provide legal services in connection with the specific Matter identified above, and that after completion of the Matter or other termination of representation, changes may occur in laws or regulations that are applicable to you that could have an impact upon your future rights and liabilities. Unless you enter into a new Representation Agreement with Attorney to provide additional advice and service, you agree that Attorney has no continuing obligation to advise you with respect to future legal developments.

12. Arbitration of Disputes: If a dispute arises between the Attorney and Client regarding the services provided in this Representation Agreement, the parties agree to resolve that dispute through mediation followed by arbitration, rather than litigation. The parties also agree that should any dispute arise between the parties as to the amount or payment of fees incurred or due, that they will submit the dispute for fee mediation with the State Bar of Arizona.

13. No Advice Regarding This Fee Agreement: Attorney is not acting as your counsel in advising you with respect to this Representation Agreement, as there would be a conflict of interest in doing so. By signature below, you acknowledge and agree that you have had an opportunity to seek the advice of independent counsel concerning the terms and scope of representation as well as this Representation Agreement and are entering into the agreement herein of your own volition and desire.

14. Privacy Policy: Your privacy is important to Flagler Law. Attorney/Client confidentiality governs your relationship with Flagler Law. Accordingly, Flagler Law will not disclose the fact of its representation of you, nor the nature of your matter unless

authorized in advance by you to do so, or if such disclosure is necessary in Attorney's opinion to effectively conduct the representation of you in this matter.

Dated this 7th day of November, 2018.

FLAGLER LAW PLLC



Jana Flagler

**Client
City of Bisbee**



By: *David M. Smith*
Its: *Mayor*