

**RESOLUTION NO. R-2024-31**

**A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF BURNET,  
TEXAS, APPROVING A CONTRACT FOR MUNICIPAL COURT  
PROSECUTOR SERVICE.**

**Whereas**, the City of Burnet Municipal Court is established pursuant to City Charter Section 4.03 and the laws and constitution of the State of Texas; and

**Whereas**, Texas Code of Criminal Procedures Section 45.201 (a) provides that all prosecutions in municipal court shall be conducted by the city attorney of the municipality or by a deputy city attorney; and

**Whereas**, pursuant to Resolution 2020-25, on Jun 23, 2020, and with the approval of the City Attorney, City Council designated Assistant City Manager Habib Erkan as a deputy city attorney to serve in the role of municipal court prosecutor.

**Whereas**, Mr. Erkan is retiring as Assistant City Manager effective April 26, 2024, but both the City and he wish him to be retained as municipal court prosecutor on a contractual basis.

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BURNET, TEXAS, THAT:**

**Section one. Approval.** The contract attached hereto for prosecutor service is hereby approved.

**Section two. Authorization.** The City manager is hereby authorized to execute a contract for prosecutor services substantially similar to the attachment hereto and to execute such other documents and take such other action reasonably necessary to facilitate the purpose of this resolution.


**Section three. Cumulative.** This resolution shall be cumulative with Resolution 2020-25, except where the provisions of this resolution is in direct conflict with the provisions of Resolution 2020-25, in which event Section.

**Section four. TOMA.** It is hereby officially found and determined that the meeting at which this resolution was passed was open to the public and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, as modified by the governor's orders in response to the COVID-19 pandemic.

**Section five. Effective Date.** This resolution shall take effect upon approval and adoption by City Council.

**APPROVED AND ADOPTED on this the 23<sup>rd</sup> day of April 2024.**

**CITY OF BURNET**

  
\_\_\_\_\_  
Gary Wideman, Mayor

**ATTEST:**

  
\_\_\_\_\_  
Kelly Dix, City Secretary



**CONTRACT MUNICIPAL PROSECUTOR LEGAL SERVICES**

The Parties to this Contract for Municipal Prosecutor Legal Services are Habib H. Erkan Jr., 115 Vandeventer Drive, Burnet, Texas 78611, (“Prosecutor”) and the City of Burnet, Texas P.O. Box 1369, Burnet, Texas 78611 (the “City”). Prosecutor and the City are referred to collectively herein as the “Parties.”

**WHEREAS**, on April 1, 2020, Prosecutor was hired by City as the Assistant City Manager; and

**WHEREAS**, pursuant to Resolution 2020-25, on Jun 23, 2020, and with the approval of the City Attorney, City Council designated Prosecutor as a deputy city attorney to serve in the role of municipal court prosecutor; and

**WHEREAS**, on April 26, 2024, Prosecutor shall retire from his role as Assistant City Attorney; and

**WHEREAS**, the Parties wish to continue with Prosecutor serving as the municipal court prosecutor.

**NOW THEREFORE**, for the mutual covenants and considerations described herein, the parties agree as follows:

- (1) **ROLE AND SCOPE OF WORK:** Prosecutor agrees to provide legal services to the City as the Deputy City Attorney serving as the primary Municipal Prosecutor, representing the City as Municipal Prosecutor in cases before the Municipal Court and any appeals. Prosecutor shall provide no other legal services to the City. Said scope of work shall include all matters within the jurisdiction of the Municipal Court including:
  - (a) *Pretrial:* Prosecutor shall handle all prosecutorial preliminary matters, including and not limited to discovery request, attorney correspondences, appearance dockets, and preliminary motions related to such docket.
  - (b) *Trial:* Prosecutor shall appear on behalf of the City for all bench and jury trials.
  - (c) *Post Judgement:* Prosecutor shall handle all prosecutorial post judgement matters, including and not limited to appeals, expungements, and probation revocation hearings.
- (2) **QUALIFICATIONS AND PERFORMANCE:** Prosecutor shall provide competent, zealous legal services in a professional, skilled manner consistent with an attorney’s responsibilities under the Texas Disciplinary Rules of Professional Conduct and the Texas Code of Criminal Procedure. Prosecutor must maintain the minimum qualifications to practice law in the state of Texas and must immediately inform the City Manager and City Attorney of any change in the status of the Attorney’s licensure.
- (3) **FEES AND EXPENSES FOR MATTERS WITHIN THE SCOPE OF WORK:**
  - (a) *Fee.*
    - *Regular session.* Currently, Municipal Court pretrial and trial docket is held one day every other month, which equals six court appearances annually (hereinafter “regular session”). The City agrees to pay Prosecutor a flat rate of \$2,000.00 per month for each month the services described in Section (1) are provided (6 x \$2,000 = \$12,000 annually).
    - *Special session.* A Municipal Court pretrial and trial special session docket is one which is called in addition to a regular session docket.

## Municipal Prosecutor Contract

In the event a special session docket is called the City agrees to pay Prosecutor for his services at the rate of \$200.00 per hour for performance of legal services described in Section (1). Prosecutor shall not charge City for travel time or telephone calls less than 10 minutes in length.

- (b) *Expenses.* Any out-of-pocket expenses incurred by Prosecutor shall require the approval of the City Manager prior to submission to City for reimbursement. Prosecutor shall be responsible for all costs incurred to maintain his bar license, including license renewal fee, and continuing legal education.
- (4) **DESIGNATED DEPUTY CITY ATTORNEY:** Prosecutor shall retain his designation as “Deputy City Attorney” for the City for the purposes of only representing the City in Municipal Court and appeals and shall have no other responsibility to the City under this Contract.
- (5) **BILLING AND COMPENSATION:** Prosecutor shall submit monthly invoices to the City for matters included in this Contract. Monthly invoices shall include a brief description of the work performed, and if the work performed related to a special session docket, the length of time it took to perform the work to the nearest tenth of an hour, and the date the work was performed. All invoices (s) shall be submitted by Prosecutor as soon as possible after the end of each calendar month and are due and payable by the City within thirty (30) day of receipt by the City.
- (6) **TERM.** Subject to the terms of Paragraph 7, below, this contract shall be effective as of the date signed by the City Manager and shall terminate on September 30, 2024, provided however, that it may be renewed annually in subsequent City Budget years by appropriation of funds by City Council and approval of the Parties.
- (7) **TERMINATION:** Either of the Parties may terminate this contract for any reason or for no reason by giving thirty (30) days written notice to the other party. Upon termination by either party, the City agrees to pay to Prosecutor all fees and expenses for services performed prior to the date of termination.
- (8) **CONFLICTS:** Prosecutor understands and agrees that he shall be bound by the City’s Ethics Ordinance. Moreover, Prosecutor agrees not to undertake representation of any person or entity in a manner adverse to the City’s legal interests during the term of the contract. Further, Prosecutor agrees that, to the best of his actual knowledge, Prosecutor has no personal, business, or financial interests or relationships which would cause a reasonable individual with knowledge of the relevant facts to question the integrity or impartiality of his acting as legal advisors and representatives of the City under this contract.
- (9) **INDEPENDENT CONTRACTOR:** Prosecutor shall be an independent contractor to the City and shall not be an employee. This Contract does not create any partnership, joint venture, or relationship other than an independent contractor relationship. Prosecutor shall not be deemed to be an employee of the City for any purpose whatsoever, and Prosecutor shall not be eligible to participate in any benefit program provided by the City for its employees. Prosecutor shall be exclusively responsible for the payment of his own respective taxes, professional fees, or dues and continuing legal education expenses.
- (10) **SPECIAL TERMS:** The City Attorney also has the authority to provide such backup or lead support for the provision of prosecutorial legal services to the City if it is in

**Municipal Prosecutor Contract**

the best interests of the City to do so and with the approval of the City Manager.

- (11) **ASSIGNMENT:** Prosecutor shall not assign or transfer his interest in this Contract.
- (12) **DISPUTE RESOLUTION:** Any controversy, dispute, or disagreement arising out of or relating to this Contract, or any breach thereof, shall first be mediated. Each party shall bear its own attorneys' fees and costs for such dispute resolution.
- (13) **NOTICE:** All notices required to be sent under this Contract shall be in writing and given by First Class U.S. Mail or Personal Delivery addressed:

To Prosecutor at:  
Habib H. Erkan Jr.  
115 Vandeventer Drive  
Burnet, Texas 78611

To City at:  
City of Burnet  
PO Box 1369  
1001 Buchanan Drive, Suite 4  
Burnet, Texas 78611

Each Party shall have the continuing obligation to advise the other parties of any change of address.

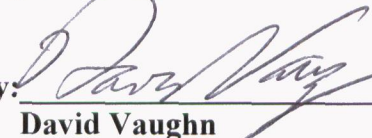
- (14) **AGREEMENT:** This written authorization embodies the entire agreement between the Parties, and there are no other agreements, oral or written, with reference to this Contract. In case any one or more of the provisions contained in the Contract shall be held unenforceable, the remaining provisions contained herein shall not be impaired thereby.
- (15) **AMENDMENTS:** No change or modification to this Contract shall be valid unless made in writing and signed by both Parties.


**Municipal Prosecutor Contract**

**Executed by authorized representatives of the Parties to be Effective the First Day of May 2024.**

**City of Burnet**

**Prosecutor**

By:   
\_\_\_\_\_  
**David Vaughn**

By:   
\_\_\_\_\_  
**Habib H. Erkan Jr.**