

**AGREEMENT FOR PROFESSIONAL SERVICES AND EMPLOYMENT
AS CITY ATTORNEY**

THIS AGREEMENT ("Agreement") is made and entered into effective _____ by and between the City of Roswell, New Mexico, a New Mexico municipality and political subdivision of the State of New Mexico (the "City") and Christopher J. Nairn-Mahan (the "Attorney").

WITNESSETH

WHEREAS, the Mayor and City Council (the "Governing Body") are required by law to provide for an appointed office of City Attorney;

WHEREAS, the Mayor and City Council (the "Governing Body") and the Attorney believe that a professional services agreement negotiated between the Governing Body, on behalf of the City, and the Attorney is mutually beneficial to the City, the Attorney, the Governing Body, and the community as a whole; and

WHEREAS, when appropriately structured, the Governing Body and the Attorney believe a professional services agreement can strengthen the Governing Body-Attorney relationship by enhancing the excellence and continuity of the legal representation of the City for the benefit of its citizens; and

WHEREAS, the Governing Body and Attorney believe it is important to thoughtfully consider guidelines that will be consistent with both the letter and the spirit of the State law, and to the extent applicable, the City's ordinances, resolutions, and policies, that will uphold the principal of "serving at the will and pleasure of the Governing Body," that will clearly define and incorporate the benefits to the community and organization, and that will address the protection of the Attorney and his family through provisions that are reasonable in nature and scope when compared to professional practices and regional market conditions and appropriately funded within the city's budget; and

WHEREAS, in order to provide inducements for the Attorney to accept appointment as the City Attorney of the City and to remain in such Office, to encourage full work productivity, and to provide means for termination, resignation, or retirement of the Attorney; and

WHEREAS, except as otherwise provided herein, the Attorney shall have and be eligible for the same benefits as provided to employees of the City; and

WHEREAS, the Attorney has agreed to accept appointment as the City Attorney, subject to the terms, conditions and provisions of this Agreement.

NOW, THEREFORE, in consideration of the Attorney accepting employment with the City, and other good and valuable consideration, including the mutual covenants herein contained, the City and the Attorney hereby contract, covenant, and agree as follows:

I. TERM

1.1 Term. This Agreement shall commence on the Effective Date set forth herein above, and Attorney shall perform the duties of the office as Acting City Attorney until August 13, 2026 after which date and without objection of the parties shall transition to City Attorney subject to all terms and conditions of the office which shall renew at each organizational meeting of the Governing Body following the City's municipal officer election, provided that this agreement shall terminate in the event that the Governing Body fails to reappoint Attorney in any subsequent term, as provided for in NMSA 1978 Sec. 3-11-5. The term of this Agreement is subject to review, termination and settlement as defined and set forth in Sections 5, 6 and 7. Attorney's first day of work shall be on February 13, 2026.

II. EMPLOYMENT

2.1 City Attorney. The Attorney is the chief legal officer of the City and shall faithfully perform the duties of the City Attorney as set forth in the applicable state statutes, custom, City ordinances, resolutions, and as may be lawfully assigned by the Governing Body (collectively the "City Attorney's duties"). Further, the Attorney shall comply with all applicable state and federal laws; the City Code and all City policies, rules, regulations and ordinances as they exist or may hereinafter be amended; and all lawful Governing Body directives. All duties assigned to the Attorney by the Governing Body shall be appropriate to and consistent with the professional role and responsibility of the City Attorney position and the goals and mission of the City.

2.2 Duties. Attorney shall perform such duties as are required and authorized under state statutes for municipalities under applicable state law, as well as the City Code, ordinances and resolutions. The Attorney shall perform the City Attorney's duties with reasonable care, diligence, skill and expertise.

2.3 Governing Body Meetings. Except to the extent prohibited by or in material conflict with Applicable Laws and Authorities, the Attorney or the Attorney's designee shall attend, and shall be permitted to attend, all meetings of the Governing Body, both public and closed, with the exception of those closed meetings devoted to the consideration of any action or lack of action on this Agreement to the extent allowed by law, or any amendment thereto, the Attorney's evaluation, or for purposes of resolving conflicts between individual Governing Body members.

2.4 Criticisms, Complaints, and Suggestions. The Governing Body, individually and collectively, shall refer in a timely manner all substantive criticisms, complaints, and suggestions called to the Governing Body's attention regarding the Attorney for study and appropriate actions, and the Attorney shall refer the matter(s) to the appropriate City appointee or employee or shall investigate such matter(s) and inform the Governing Body of the results of such efforts.

2.5 Indemnification. Attorney shall be entitled to all rights of coverage and defense as the City's employee under New Mexico law and by liability insurance or self-insurance maintained by the City for the benefit of its employees. The provisions of this Section 2.5 shall survive the termination, expiration or other end of this Agreement and/or the Attorney's employment with the City.

2.6 Hours of Work. The Attorney acknowledges the proper performance of the City Attorney's Duties require the Attorney to generally observe normal business hours and will also often require the performance of necessary services outside of normal business hours. The Attorney agrees to devote such additional time as is necessary for the full and proper performance of the City Attorney's Duties and that the compensation provided herein includes compensation for the performance of all such services. However, the City intends that reasonable time off be permitted the Attorney, such as customary for exempt employees so long as the time off does not interfere with the normal conduct of the office of the City Attorney. The Attorney will devote full time and effort to the performance of the City Attorney's Duties, and shall remain in the exclusive employ of the City during the term of this Agreement; provided that, with the prior consent of the Governing Body, the Attorney may accept outside professional employment, with consent of the governing body, which does not interfere or conflict with the Attorney performing the City Attorney's Duties hereunder. The term "outside professional employment" means professional services provided to third parties for which the Attorney is compensated and which are performed on the Attorney's time off.

III. COMPENSATION

3.1 Salary. The City shall provide the Attorney an annual salary in the sum of \$151,271.55 (the "Annual Salary"), payable in the same manner as other employees of the City are paid. The salary payments shall be subject to federal and state income tax withholding, and all withholding authorized by the Attorney or required by law. For salary and benefits purposes, the Attorney shall be treated an employee of the City and be entitled to all benefits, at his option, as are available to other employees of the City, as well as benefits specified herein, provided however, that the Attorney shall not be entitled to duplication of any benefit.

3.2 Employment Status. The Attorney's position is a professional position, and as such, may require time commitments beyond a regular forty-hour work week. The Attorney acknowledges that his position is exempt under the Fair Labor Standards Act and state labor law. To fulfill the needs of the position, the Attorney acknowledges and agrees that he may work more than eight hours in a day and more than five days in a week. The Attorney acknowledges and agrees that the annual base salary set forth herein is full and fair compensation for any and all time committed by the Attorney, including any time committed outside of an eight-hour work day and/or a forty-hour work week. The Attorney shall not accrue compensatory time and shall not be entitled to compensation or benefits by reason thereof.

3.3 Salary Adjustments. The Attorney shall receive any step increases in accordance with the City's *Personnel Rules and Regulations*, provided that he has had a favorable evaluation pursuant to Section 5 within the preceding six months. The Attorney shall receive any Cost-of-Living Adjustments as may be made available to other management employees of the City. The Attorney shall receive longevity pay in accordance with the City's *Personnel Rules and Regulations*.

3.4 Paid Leaves- Vacation, Sick, Personal and Holiday. The Attorney shall accrue annual leave at 10 hours per month. One period of forty (40) hours of vacation shall be assigned to Attorney immediately. The vacation leave taken by the Attorney will be taken at such a time or times as will

least interfere with the performance of the Attorney's duties. The Attorney shall be entitled to the same sick leave and personal leave benefits as authorized by Governing Body policies for administrative employees. The Attorney shall be allowed to observe the same legal holidays as provided by the City for its administrative employees. Sick leave, personal leave and holidays shall be in accordance with the City's *Personnel Rules and Regulations*.

3.5 Benefits - General. The Attorney shall continue to be eligible for all other benefits not specifically stated in this Agreement but which are afforded to other employees in accordance with the *Personnel Rules and Regulations*.

3.6 Insurance - Health - Attorney and Family. The City shall provide medical, vision and dental insurance and other benefits for Attorney and his dependents equal to and to the extent that such benefits are provided to all other employees of the City. The City and the Attorney shall share payment of all premiums for the Attorney and the Attorney's dependents in the same proportion that premiums are shared between the City and other employees.

3.7 Retirement Benefit - PERA. Except as provided in Section 3.8, the Attorney shall participate in the City's retirement plan through Municipal Plan 2 of the Public Employees Retirement Association (PERA) plan. The City and the Attorney shall pay contributions to the plan as are paid for other employees of the City.

The Attorney shall participate in the City's retiree health care plan through the New Mexico Retiree Health Care Authority (NMRHCA) plan. The City and the Attorney shall pay contributions to NMRHCA as are paid for other employees of the City.

The provisions of this section are subject to the rules governing PERA and NMRHCA and are subject to change to assure conformance with PERA and NMRHCA rules or in the event the contributions required by PERA and NMRHCA change or terminate.

3.8 Retirement Benefit - Other. Attorney may opt not to enroll in PERA and the City agrees to make contributions to a retirement plan as directed by the Attorney at a rate or according to the standard formula equivalent to that paid for other employees of the City. The Attorney acknowledges that he will need to file the requisite forms seeking exclusion from the New Mexico Public Employees Retirement Association within 30 days of employment. The Attorney acknowledges that he will not therefore be a member of the PERA or the New Mexico Retiree Health Care Authority plan, and should he choose to enroll at a later date, will not receive credit towards years of service for time he is not enrolled.

3.9 Expenses. The City shall pay or reimburse the Attorney for reasonable expenses incurred by the Attorney in the continuing performance of the Attorney's duties under this Agreement. The City agrees to pay the actual costs incurred by the Attorney for travel to destinations outside of the City incurred in furtherance of City business. Such actual or incidental costs may include, but are not limited to, mileage, hotels and accommodations, meals, rental car, and other expenses incurred in the performance of the business of the City. The Attorney shall comply will all procedures and documentation requirements in accordance with Applicable Laws and Authorities, including the City's internal policies and procedures.

3.10 Bonds. The City shall bear the full cost of any fidelity or other bonds required of the Attorney under any law or ordinance.

3.11 Mobile Telephone. The City shall provide the Attorney a monthly mobile telephone allowance in accordance with the City's *Mobile Communications Device Allowance Policy*.

3.12 Automobile Allowance. The City shall provide the Attorney a monthly automobile allowance in the amount of \$300.00 for the use of a personal vehicle for City business. Attorney agrees to comply with the City's policies involving use of a personal vehicle and agrees to properly insure the vehicle pursuant to Applicable Laws and Authorities and City policy.

IV. PROFESSIONAL GROWTH

4.1 Professional Dues and Subscriptions. The City agrees to pay for professional dues and subscriptions for the Attorney necessary for continuation and full participation in national, state, regional and local associations, to the extent permitted and approved in the budget. The Attorney agrees to provide sufficient notice regarding dues and subscriptions under this Section to allow the City to adequately provide for payment under its budget.

4.2 Professional Development Travel. The City agrees to pay for travel and subsistence expenses of the Attorney for professional and official travel and meetings to adequately continue the professional development of the Attorney and to pursue necessary official functions for the City to the extent permitted and approved in the budget.

4.3 Professional Continuing Education. The City also agrees to pay for travel and subsistence expenses of the Attorney for short courses, institutes, and seminars that are necessary and/or desirable for the good of the City through the Attorney's professional development to the extent permitted and approved in the budget.

V. PERFORMANCE EVALUATION

5.1 Evaluation Process. The Governing Body shall meet in a public meeting with the Attorney annually, but no later than June of each year, for the purpose of evaluating the Attorney's job performance.

5.2 Standards for Evaluation. The annual performance review will be reasonably related to the Attorney's written job description and such evaluation may include, but is not limited to: interactions with the Governing Body, interactions with staff, interactions with the public, effective communication, job efficiency, progress towards the Governing Body's goals, and effectiveness as a leader. The Governing Body shall provide the Attorney a reasonable and adequate opportunity to discuss with the Governing Body and/or respond to the evaluation.

5.3 Confidentiality. Unless the Attorney expressly requests otherwise in writing, except to the extent prohibited by or in material conflict with applicable state or federal law, the evaluation of the Attorney shall at all times be conducted in closed session of the Governing Body and shall be considered confidential to the maximum and full extent permitted by law. Nothing herein shall prohibit the Governing Body or Attorney from sharing the content of the Attorney's evaluation with their respective legal counsel.

5.4 Compensation. Any increases in compensation are subject to approval by the Governing Body in the annual budget, separate and apart from any increases for the city employees at large. The parties agree that increases may be withheld following a review finding the Attorney's performance unsatisfactory.

VI. TERMINATION

6.1 Termination Events. This Agreement shall terminate upon any of the following:

- a) The majority of the Governing Body votes to terminate the Attorney at a duly authorized public meeting; or
- b) Breach of contract declared by either party with a 30-day cure period for either Attorney or Governing Body. Written notice of breach of contract shall be provided in accordance with Section 8 of this Agreement.
- c) The Attorney provides 90 days written notification to the Governing Body of his intent to vacate the position of City Attorney.

6.2 Death of Employee. This Agreement shall terminate in the event of the Attorney's death upon the date of his death. Upon the death of the Attorney, his estate and/or beneficiaries shall be entitled to all benefits accrued and payments due to an employee of the City as well as Attorney's base salary, plus applicable longevity (subject to all federal and state income tax withholding and all withholding required by law or authorized by Attorney), earned by Attorney through his date of death, but this Agreement shall not require the City to pay any additional sums and the City shall have no other obligation to Attorney, his heirs, representative or assigns. This paragraph is not intended, and shall not be construed, to limit the City's liability, if any, under the New Mexico Worker's Compensation Act.

VII. SEVERANCE

7.1 Guaranteed Compensation. Should the Governing Body terminate this Agreement pursuant to Section 6.1(a), the Attorney will be guaranteed compensation pursuant to the following schedule:

- a) The Attorney shall be placed in a civil service position at the City as comparable as possible to the position he had prior to appointment as Attorney. He shall be compensation at said position at the grade and step that he would have occupied had she remained in the position at the date of execution.

7.2 Resignation or Breach of Contract. Should this contract be terminated as set forth in section 6.1(b) or 6.1(c), the Attorney will not be entitled to any severance compensation or other benefits as set forth in this contract.

7.3 Acceptance. Acceptance of compensation and benefits under this Sections 7.1 and 7.2 by the Attorney shall be deemed acceptance of liquidated damages and a release, indemnification and a promise to hold harmless the City and its employees from any claim by the Attorney arising under this Agreement or arising from or during his employment with the City.

VIII. GENERAL PROVISIONS

8.1 Complete Agreement. This Agreement sets forth and establishes the entire understanding between the City and the Attorney relating to the employment of the Attorney by the City. Any prior discussions or representations by or between the parties are merged into and rendered null and void by this Agreement. The parties by mutual written signed agreement may amend any provision of this Agreement during the term of this Agreement; such amendments shall be incorporated and made a part of this Agreement.

8.2 Binding Effect. This Agreement shall be binding on the City and Attorney as well as their heirs, assigns, executors, personal representatives and successors in interest.

8.3 Savings Clause. If any term or provision of this Agreement, as applied to any party or to any circumstance, is declared by a court of competent jurisdiction hereof to be illegal, unenforceable or void in any situation and in any jurisdiction, such determination shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending provision in any other situation or in any other jurisdiction. The parties agree that the court making such determination shall have the power to reduce the scope, duration, area or applicability of the term or provision, to delete specific words or phrases or to replace any illegal, unenforceable or void term or provision with a term or provision that is valid and enforceable and that comes closest to expressing the intention of the invalid or unenforceable term or provision.

8.4 Conflicts. In the event of any conflict between the terms, conditions and provisions of the Agreement and applicable state, federal or local law, then, unless otherwise prohibited by law, the terms of this Agreement shall take precedence over the contrary provisions of the applicable state, federal or local law during the term of this Agreement.

8.5 Controlling Law. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of New Mexico and shall be performable in Chaves County, New Mexico, unless otherwise prohibited by law. Any action or proceeding under the terms of this Agreement shall be brought exclusively in the Fifth Judicial District Court of the State of New Mexico in Chaves County.

8.6 Notice. Notice pursuant to this Agreement shall be given in writing and delivered by personal service or deposit in the custody of the United States Postal Service, postage prepaid, and addressed as follows:

Notice to the CITY:

Notice to the Attorney:

Office of the Mayor
City of Roswell
P.O. Box 1838
Roswell, New Mexico 88201

Christopher J. Nairn-Mahan

Roswell, NM 88201

8.7 Notice shall be deemed delivered and received as of the date of personal service or if mailed, three business days after the date of deposit of such written notice in the course of transmission in

the United States Postal Service. Either party may, from time to time by written notice to the other party, designate a different address for notice purposes.

8.8 Assignment. Neither party may assign its rights, duties or obligations under this Agreement to any person or entity, in whole or in part, and any attempt to do so shall be void and deemed a material breach of this Agreement.

8.9 Heading and Captions. Headings and captions used in this Agreement are provided for convenience only and shall not be used to construe or interpret meaning or intent.

8.10 Person. For purposes of this Agreement, "person" means any natural person, corporation, limited liability company, association, partnership, joint venture, proprietorship, governmental agency, trust, estate or other entity, whether acting in an individual, fiduciary, or other capacity.

8.11 Waiver. No waiver of any provision hereof or of any right or remedy hereunder shall be effective unless in writing and signed by the party against whom such waiver is sought to be enforced. No delay in exercising, no course in dealing with respect to, or no partial exercise of any right or remedy hereunder shall constitute a waiver of any other right or remedy, or further exercise thereof.

[SIGNATURES ON THE FOLLOWING PAGE]

Executed February _____, 2026.

CITY OF ROSWELL, NEW MEXICO

By: _____
Timothy Z. Jennings, Mayor

By: _____
Christopher Josh Nairn-Mahan, City Attorney

ATTEST:

By: _____
Amalia Martinez, City Clerk

Approved as to Form:

By: _____