

PROFESSIONAL LEGAL SERVICES AGREEMENT

City Attorney Services

This Professional Legal Services Agreement (the "Agreement") is entered into by and between the City of Bayard, New Mexico, a New Mexico municipal corporation (the "City"), and Matthew Bradburn, Attorney at Law, a licensed attorney in good standing with the State Bar of New Mexico ("Attorney"). The City and Attorney are referred to individually as a "Party" and collectively as the "Parties."

RECITALS

WHEREAS, the City requires the services of a duly licensed attorney to serve as City Attorney and to provide civil legal services to the City and criminal prosecution services to the City of Bayard Police Department; and

WHEREAS, Attorney is duly licensed to practice law in the State of New Mexico and is willing and qualified to provide such services on the terms set forth herein; and

WHEREAS, the City desires to engage Attorney, and Attorney desires to be engaged, as an independent contractor to provide the legal services described in this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the Parties agree as follows:

1. APPOINTMENT AND SCOPE OF SERVICES

(a) Appointment. The City hereby appoints Attorney to serve as City Attorney for the City of Bayard, New Mexico, and Attorney accepts such appointment, subject to the terms and conditions of this Agreement.

(b) Civil Legal Services. Attorney shall provide general civil legal services to the City, including but not limited to legal advice and counsel to the City Council, Mayor, and City staff; review and preparation of ordinances, resolutions, contracts, and other legal documents; attendance at City Council meetings and other meetings as requested; representation of the City in civil administrative and judicial proceedings; and such other civil legal services as are customarily performed by a municipal attorney and as reasonably requested by the City.

(c) Criminal Prosecution Services. Attorney shall provide criminal prosecution legal services on behalf of the City of Bayard Police Department, including the prosecution of municipal ordinance violations and applicable state criminal matters referred by the Police Department, in both municipal court and state court, as needed.

(d) Standard of Care. Attorney shall perform all services under this Agreement in a professional and competent manner consistent with the standards of the legal profession in the State of New Mexico and in compliance with the Rules of Professional Conduct governing attorneys licensed in New Mexico.

2. COMPENSATION

(a) Civil Legal Services Rate. For civil legal services rendered under Section 1(b), the City shall compensate Attorney at the rate of \$135.00 per hour, plus applicable New Mexico Gross Receipts Tax.

(b) Criminal Prosecution Rate. For criminal prosecution services rendered under Section 1(c), the City shall compensate Attorney at the flat rate of \$475.00 per case, plus applicable New Mexico Gross Receipts Tax.

(c) Appeals. If any criminal case prosecuted by Attorney under this Agreement is appealed to the next higher court, Attorney shall be compensated an additional flat fee of \$475.00 per case for services related to the appeal, plus applicable New Mexico Gross Receipts Tax.

(d) Gross Receipts Tax. In addition to all fees described in this Section 2, the City shall pay Attorney the applicable New Mexico Gross Receipts Tax rate in effect at the time services are billed, as required by the Gross Receipts and Compensating Tax Act, NMSA 1978, § 7-9-1 et seq., as amended.

(e) Invoicing and Payment. Attorney shall submit itemized invoices to the City on a quarterly basis, or at such other interval as the Parties may agree, setting forth the services performed, the hours expended (for civil matters), the case(s) billed (for criminal matters), and the amount due, including Gross Receipts Tax.

The City shall pay approved invoices in accordance with its standard payment practices and applicable law, including the Prompt Payment Act, NMSA 1978, § 13-1-158.

(f) Reimbursable Expenses. The City shall reimburse Attorney for reasonable and necessary out-of-pocket expenses actually incurred in connection with the performance of services under this Agreement, provided such expenses are approved in advance by the City and are supported by appropriate documentation.

3. TERM AND TERMINATION

(a) Term. This Agreement shall commence on the Effective Date set forth below and shall continue in effect until terminated by either Party as provided herein. This Agreement does not have a fixed term or expiration date.

(b) Termination Without Cause. Either Party may terminate this Agreement, with or without cause, by providing at least fourteen (14) calendar days' written notice to the other Party.

(c) Effect of Termination. Upon termination of this Agreement, Attorney shall be entitled to payment for all services properly rendered and expenses properly incurred through the effective date of termination, calculated in accordance with Section 2. Attorney shall, upon request and consistent with Attorney's ethical obligations, cooperate in the orderly transition of open matters to the City or its designated successor counsel, including the return of the City's files and property in Attorney's possession.

(d) Client Right to Discharge. Nothing in this Agreement shall be construed to limit the City's right, as client, to discharge Attorney at any time, with or without cause, consistent with the Rules of Professional Conduct and applicable law.

4. INDEPENDENT CONTRACTOR STATUS

Attorney is and shall remain an independent contractor in the performance of this Agreement and not an employee, agent, or partner of the City. Attorney shall be solely responsible for the payment of all federal, state, and local taxes, including income tax and self-employment tax, arising from compensation received under this Agreement. Nothing in this Agreement shall be construed to create an employer-employee relationship, and Attorney shall not be entitled to participate in any City employee benefit plan, including but not limited to health insurance, retirement, or the Public Employees Retirement Association (PERA), by virtue of this Agreement.

5. PROFESSIONAL RESPONSIBILITY; CONFLICTS OF INTEREST

(a) Licensure. Attorney represents that Attorney is duly licensed to practice law in the State of New Mexico and shall maintain such license, and any bar dues, continuing legal education requirements, and professional liability insurance, in good standing throughout the term of this Agreement.

(b) Conflicts of Interest. Attorney shall not undertake representation of any client, or engage in any outside activity, that would create a conflict of interest with Attorney's representation of the City, without full disclosure to and written consent of the City, to the extent permitted under the New Mexico Rules of Professional Conduct.

(c) Attorney-Client Relationship. The attorney-client relationship established by this Agreement is between Attorney and the City of Bayard as a governmental entity. All communications between Attorney and the City made in connection with this Agreement shall be subject to the attorney-client privilege and Attorney's duties of confidentiality to the extent provided by law and the Rules of Professional Conduct.

6. INSURANCE

Attorney shall, at Attorney's own expense, maintain professional liability (legal malpractice) insurance in an amount and with coverage terms reasonably acceptable to the City throughout the term of this Agreement.

7. INDEMNIFICATION

To the extent permitted by law, Attorney shall indemnify and hold harmless the City, its elected officials, officers, and employees from and against any claims, damages, losses, and expenses, including reasonable attorney fees, arising out of or resulting from Attorney's negligent acts, errors, or omissions in the

performance of services under this Agreement. Nothing in this Agreement shall be construed as a waiver of any immunity or limitation of liability available to the City under the New Mexico Tort Claims Act, NMSA 1978, § 41-4-1 et seq.

8. RECORDS AND PUBLIC RECORDS ACT

Attorney shall maintain accurate records of time expended and cases handled under this Agreement and shall make such records available to the City upon reasonable request, subject to the attorney-client privilege and attorney work-product doctrine. The Parties acknowledge that certain records related to this Agreement, such as invoices and the Agreement itself, may be subject to disclosure under the New Mexico Inspection of Public Records Act, NMSA 1978, § 14-2-1 et seq., except to the extent such records are privileged or otherwise exempt from disclosure.

9. APPROPRIATIONS

The Parties acknowledge that the City's obligations under this Agreement are subject to the availability of funds appropriated or budgeted by the City for such purposes in accordance with the New Mexico Bateman Act, NMSA 1978, § 6-6-11, and other applicable law. Nothing in this Agreement shall be construed as creating a general obligation of indebtedness of the City in violation of the New Mexico Constitution.

10. NOTICES

Any notice required or permitted under this Agreement, including notice of termination, shall be in writing and shall be delivered by personal delivery, certified mail (return receipt requested), or reputable overnight courier to the addresses set forth on the signature page of this Agreement, or to such other address as either Party may designate in writing. Notice shall be deemed given upon actual receipt or, if mailed, three (3) business days after deposit in the U.S. Mail.

11. GENERAL PROVISIONS

(a) Governing Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of New Mexico. Venue for any dispute arising under this Agreement shall lie in Grant County, New Mexico.

(b) Entire Agreement; Amendment. This Agreement constitutes the entire agreement between the Parties with respect to its subject matter and supersedes all prior negotiations, representations, or agreements, whether written or oral. This Agreement may be amended only by a written instrument signed by both Parties.

(c) Assignment. Attorney shall not assign or subcontract Attorney's obligations under this Agreement without the prior written consent of the City, it being understood that the services to be provided are personal in nature.

(d) Severability. If any provision of this Agreement is held invalid or unenforceable, the remaining provisions shall continue in full force and effect.

(e) Waiver. The failure of either Party to enforce any provision of this Agreement shall not be construed as a waiver of that provision or of any other provision.

(f) Counterparts. This Agreement may be executed in counterparts, including by electronic signature, each of which shall be deemed an original and all of which together shall constitute one instrument.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date set forth below.

Effective Date: _____

CITY OF BAYARD, NEW MEXICO

By: _____
John L. Ojinaga, Mayor, City of Bayard

Date: _____
Address: 800 Central Avenue, Bayard, NM 88023

ATTEST:

By: _____
Martha Salas, City Clerk, City of Bayard

APPROVED AS TO FORM:

ATTORNEY

By: _____
Matthew Bradburn, Attorney at Law

Date: _____
Address: 214 W. Broadway St., Silver City, NM 88061