

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

This Agreement, made and entered into this 16th day of October, 2012, by and between the City of Hot Springs, Arkansas, a municipal corporation, (hereinafter referred to as the "City" or the "Employer") and Brian Albright (hereinafter referred to as the "Employee").

WITNESSETH:

WHEREAS, the Board of Directors of the City (the "Board") and the Employee believe that employment agreements negotiated between municipal governing bodies and city attorney can be mutually beneficial to the city organization, the city attorney, and the community they serve; and,

WHEREAS, the City desires to employ the services of the Employee as the City Attorney of Hot Springs, Arkansas, pursuant to the terms, conditions, and provisions of this agreement; and,

WHEREAS, it is the desire of the Board to provide compensation and benefits, establish conditions of employment for, and to set certain working conditions of employment for said Employee as provided in this agreement; and,

WHEREAS, the Board desires to secure and retain the services of the Employee, to provide inducements for the Employee to accept employment as the City Attorney of the City of Hot Springs, Arkansas, and to remain in such employment, to encourage full work productivity by assuring the Employee's morale and peace of mind with respect to future security, and to provide a proper means for termination, resignation, or retirement of the Employee; and,

WHEREAS, except as otherwise specifically provided herein, the Employee shall have and be eligible for the same benefits as are provided to all non-civil service employees of the City; and,

WHEREAS, the Employee has agreed to accept employment as the City Attorney of the City of Hot Springs, Arkansas, subject to and on the terms, conditions, and provisions agreed to and set forth in this agreement.

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

SECTION 1: TERM

The term of this agreement shall be indefinite and shall remain in full force in effect until terminated by the City or the Employee as herein provided.

The Employee shall serve at the pleasure of the Board and nothing in this agreement shall prevent, limit, or otherwise interfere with the right of the Board, or the Employee, to terminate the services of the Employee at any time, subject only to applicable provisions of the City charter, City personnel and administrative policies and procedures, and the provisions set forth hereinafter in the section entitled "Termination."

SECTION 2: DUTIES AND AUTHORITY

The City hereby employs the Employee as the City Attorney of the City to perform the duties and functions specified in state law, local ordinance, this agreement, and as the Board shall, from time to time, assign to the Employee consistent with the intent of this agreement.

SECTION 3: HOURS OF WORK

It is recognized that the Employee must devote a great deal of time outside the normal office hours on business for the City, and to that end, the Employee shall be allowed to establish an appropriate work schedule. The Employee must be reasonably available to elected officials, employees, and citizens.

SECTION 4: COMPENSATION

- A. Base Salary: The City agrees to pay the Employee an annual base salary of One Hundred Twenty-One Thousand Dollars (\$121,000) payable in installments at the same time that the other employees of the City are paid.
- B. Any increase in the annual base salary shall depend on the results of annual performance evaluations.

SECTION 5: MONTHLY VEHICLE ALLOWANCE

Beginning with the 2013 Budget Year, the City agrees to pay to the Employee, during the term of this agreement and in addition to other salary and benefits herein provided, the sum of Seven Thousand Eight Hundred Dollars (\$7,800) per year, payable monthly, as a vehicle allowance. The Employee shall maintain a valid driver's license during the term of this agreement and shall acquire and maintain a vehicle. The Employee shall be responsible for paying for liability, property damage, and comprehensive insurance coverage upon such vehicle and shall further be responsible for all

expenses attendant to the purchase, operation, maintenance, repair, and regular replacement of said vehicle.

SECTION 6: PERSONAL TIME OFF (PTO)

- A. The Employee shall retain currently accrued leave.
- B. The Employee shall accrue additional PTO pursuant to the adopted policies of the City, or as thereafter amended.

SECTION 7: HEALTH, DISABILITY, AND LIFE INSURANCE BENEFITS

- A. The Employer agrees to provide and to pay the premiums for health and dental insurance for the Employee and the Employee's dependents equal to that which is provided to all other employees of the City or, in the event no such plan exists, to provide coverage for the Employee and the Employee's dependents. The City shall pay all premiums for the Employee and the Employee's dependents.
- B. The Employee shall be entitled to all other benefits provided to all other employees of the City, on the same basis established by the City for such other employees.

SECTION 8: RETIREMENT

- A. The City shall continue to enroll the Employee into the applicable state municipal retirement system, APERS, as required by state law.

SECTION 9: GENERAL BUSINESS EXPENSES

- A. Within the budgetary constraints of any given year, the City agrees to budget for and to pay for professional dues and subscriptions of the Employee necessary for continuation and full participation in national, regional, state, and local associations and organizations necessary and desirable for the Employee's continued professional participation, growth, and advancement, and for the good of the City.
- B. Within the budgetary constraints of any given year, the City agrees to budget for and to pay for travel and subsistence expenses of the Employee for professional and official travel, meetings, and occasions to adequately continue the professional development of the

Employee and to pursue necessary official functions for the City, including but not limited to the IMLA Annual Conference, and such other national, regional, state, and local governmental groups and committees in which the Employee serves as a member.

- C. Within the budgetary constraints of any given year, the City also agrees to budget for and to pay for travel and subsistence expenses of the Employee for short courses, institutes, and seminars that are necessary for the Employee's professional development and for the good of the City.
- D. The City recognizes that certain expenses of a non-personal but job related nature are incurred by the Employee, and agrees to reimburse or to pay said general expenses within the budgetary constraints of any given year.
- E. The City shall provide the Employee with a laptop computer, software, fax/modem, cell phone, and other reasonable tools required for the Employee to perform the job and to maintain communication.

SECTION 10: PERFORMANCE EVALUATION

- A. The City Board shall provide an annual performance evaluation of the Employee, subject to a process, form, criteria, and format for the evaluation which shall be mutually agreed upon by the City and the Employee. The process at a minimum shall include the opportunity for both parties to (1) prepare a written evaluation, (2) meet and discuss the evaluation, and (3) present a written summary of the evaluation results. The final written evaluation should be completed and delivered to the Employee within thirty (30) days of the evaluation meeting.
- B. Annually, the City Board and the Employee shall define such goals and performance objectives that they determine necessary as part of the planning for the fiscal year. Said goals shall be reduced in writing with a copy provided to the Employee. Said goals shall generally be measurable and attainable within the time limitations as specified and the annual operating and capital budgets and appropriations provided. The City Board may also specify in writing, in a separate document to the Employee, other performance improvements that it expects from the Employee, if any.
- C. The City Board shall evaluate the Employee's performance based upon the measurable goals established, as well as the Employee's effectiveness in handling the duties and responsibilities of the position as City Attorney, generally, in the opinion of the City Board.

SECTION 11: RESIGNATION

In the event that the Employee voluntarily resigns his position with the City, the Employee shall provide a minimum of ninety (90) days notice unless the parties agree otherwise.

SECTION 12: TERMINATION AND SEVERANCE

For the purpose of this agreement, termination shall occur when:

- A. The majority of the governing body votes to terminate the Employee at a duly authorized public meeting.
- B. If the City, citizens, and legislature acts to amend any provisions of the City charter pertaining to the role, powers, duties, authority, or responsibilities of the Employee's position that substantially changes the form of government, the Employee shall have the right to declare that such amendments constitute termination.
- C. If the City reduces the base salary, compensation, or any other financial benefit of the Employee, unless it is applied in no greater percentage than the average reduction of all department heads, such action shall constitute a breach of this agreement and will be regarded as a termination.
- D. If the Employee resigns following an offer to accept resignation, whether formal or informal, by the City as representative of the majority of the governing body that the Employee resign, then the Employee may declare a termination as of the date of the suggestion.
- E. In the event the City notifies the Employee that it intends to terminate his services, one of the following options may be selected by the City Board:
 - 1. If the City Board is willing to allow the Employee to continue to perform the duties of the City Attorney and the Employee is willing and able to perform his duties under this agreement, the City will pay the Employee for his services up to one (1) year. If the Employee works less than one (1) year of the notice period and is willing and able to perform his duties under this agreement, the City will pay the Employee for the remainder of the time up to one (1) year from the date of notice of termination. Payment for the remaining months of additional pay and benefits shall be paid by the City.
 - 2. If the City Board is not willing to allow the Employee to continue to perform the duties of City Attorney, and the Employee is willing and able to perform the duties

under this agreement, the City agrees to pay the Employee severance pay consisting of a lump sum cash payment equal to one (1) year of base salary, car allowance, all PTO, paid holidays, and COBRA insurance premiums for the one (1) year period.

- F. The Employee shall be given written notice of the Board's intent to terminate the Employee and the date of a hearing to be conducted in an executive session of the Board at least ten (10) calendar days prior to such hearing and termination. The Employee shall be given the opportunity to present evidence at the hearing in response to such proposed termination. The Employee's failure to appear at such hearing does not prohibit the Board from taking action to terminate the Employee. The Employee shall have the option to request a public hearing.
- G. The severance payment shall be paid in a lump sum unless otherwise agreed to by the City and the Employee.
- H. In the event the Employee is terminated because he has been criminally charged with performing any illegal act involving dishonesty or moral turpitude or any illegal act involving personal gain to the Employee, then the City shall have no obligation to pay the severance pay designated in this agreement.
- I. In the event that the Employee desires to seek employment elsewhere, he shall notify the City Board prior to making application for same. Failure to do so will, at the option of the City Board, constitute grounds for termination under which the City shall have no obligation to pay the severance pay designated in this agreement.

SECTION 13: OTHER TERMS AND CONDITIONS OF EMPLOYMENT

The City, only upon agreement with the Employee, shall fix any such other terms and conditions of employment as it may determine from time to time relating to the performance of the Employee, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this agreement, the City charter, or any other law.

SECTION 14: NOTICES

Notice required pursuant to this agreement may be personally served in the same manner as is applicable to civil judicial practice. Notice shall be deemed given as of the date of personal service or as the date of deposit of such written notice in the course of transmission in the United States Postal Service.

SECTION 15: INDEMNIFICATION

To the fullest extent permitted by law, the City shall defend, save harmless, and indemnify the Employee against any tort, professional liability claim, or demand or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of the Employee's duties as City Attorney or resulting from the exercise of judgment or discretion in connection with the performance of program duties or responsibilities, unless the act or omission involved willful or wanton conduct. Legal representation, provided by the City for the Employee, shall extend until a final determination of the legal action, including any appeals brought by either party, and shall continue beyond the Employee's service to the City as long as any applicable limitations period and/or any litigation is pending. Further, the City agrees to pay the Employee reasonable consulting fees and travel expenses when the Employee serves as a witness, advisor, or consultant to the City regarding pending litigation or any other process or proceeding in which the Employee's attendance, appearance, or response is required or compelled, and to provide legal representation to the Employee with respect to any such appearance, attendance, or response. Any settlement of any claim must be made with the prior approval of the City in order for indemnification, as provided in this Section, to be available.

SECTION 16: GENERAL PROVISIONS

- A. **Integration.** This agreement sets forth and establishes the entire understanding between the City and the Employee relating to the employment of the Employee 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 agreement, may amend any provision of this agreement during the life of the agreement. Such amendments shall be incorporated and made a part of this agreement.
- B. **Section Headings.** All section headings contained herein are for the convenience of reference only and are not intended to define or limit the scope of any provision of this agreement.
- C. **Governing Law.** This agreement shall be construed in accordance with, and governed by, the laws of the State of Arkansas. Venue shall lie exclusively in Garland County, Arkansas.
- D. **Binding Effect.** This agreement shall be binding on the City and the Employee as well as their heirs, assigns, executors, personal representatives, and successors in interest.
- E. **Effective Date.** This agreement shall become effective on the date of execution.
- F. **Severability.** The invalidity or partial invalidity of any portion of this agreement will not

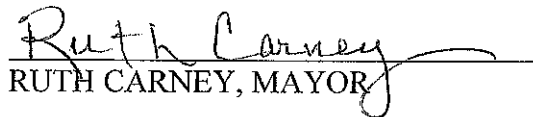
effect the validity of any other provision. In the event that any provision of this agreement is held to be invalid, the remaining provisions shall be deemed to be in full force and effect as if they have been executed by both parties without the invalid provision.

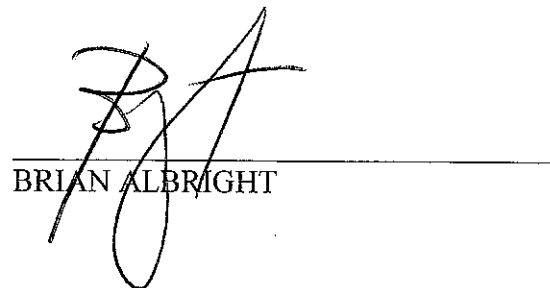
- G. ~~Amendment~~. This agreement shall not be modified or amended except by a written instrument executed by the Employee and the duly authorized representative of the City Board.
- H. Counterparts. This agreement may be executed in duplicate original counterparts, each of which when so executed shall be deemed to be an original, and such counterparts shall together constitute but one in the same instrument.

IN WITNESS WHEREOF, the City and the Employee have executed this agreement effective as of the date first written above.

CITY OF HOT SPRINGS, ARKANSAS

EMPLOYEE (CITY ATTORNEY)


RUTH CARNEY, MAYOR


BRIAN ALBRIGHT