

EMPLOYMENT AGREEMENT

This Agreement is entered into this ____ day of February, 2023, by and between The City of Gallup, a New Mexico municipal corporation acting by and through its Mayor and City Council, hereafter referred to as “City,” and David R. Eason, hereafter referred to as “City Attorney.”

WHEREAS, City Attorney desires employment with the City as its full-time City Attorney; and

WHEREAS, City desires to hire City Attorney as its full-time City Attorney under the terms and conditions set forth in this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants and promises set forth below, the parties agree as follows:

1. City employs City Attorney to serve as its full-time City Attorney for a term of three (3) years, starting in accordance with Paragraph 2 below, and unless terminated earlier as provided in this Agreement. Notwithstanding any provision of this Agreement to the contrary, the parties agree that this Agreement does not overrule those portions of the Gallup City Charter that provide that the City Attorney serves at the pleasure of the City Council as an “at will” employee.

2. This Agreement is conditioned upon City Attorney being licensed to practice law in the State of New Mexico pursuant to the Rules Governing Admission to the Bar (Chapter 15, NMRA) and shall become effective on the date City Attorney is so licensed. City Attorney shall not be entitled to any compensation or other benefits prior to the date of issuance of the license.

3. City Attorney shall perform all duties and shall have all power and authority granted to the position by the City Charter, Ordinances, Resolutions, Regulations, and other official documents. City Attorney shall devote the time necessary to accomplish the duties required of him. Given the need for the City Attorney to be available to meet with the Mayor, Council, and Department heads, City Attorney shall generally work from 8:00 a.m. to 5:00 p.m., Monday through Friday.

4. City Attorney will be considered as an exempt employee pursuant to the terms of the Fair Labor Standards Act.

5. City will compensate City Attorney at the rate of One Hundred Fifteen Thousand and No/100s (\$115,000.00) annually, from which deductions as required by federal and state law will be withheld. In addition to the foregoing, City Attorney shall be entitled to:

a. 160 hours of annual vacation leave, which shall accrue at the rate of 6.15 hours per pay period in accordance with the City’s Personnel Policies;

b. A mobile phone allowance in the amount of \$35.00 per pay period (City Attorney shall be responsible for the purchase, maintenance, insurance, and repair of the mobile phone);

c. All retirement, insurance, and other benefits made available to other City employees, subject to the same rate or percentage of contribution between the City and such employees.

6. City agrees to pay for all licensing fees incurred by City Attorney to maintain his license to practice law in New Mexico, and for all professional dues and fees for City Attorney's memberships in the New Mexico Municipal League and the International Municipal Lawyers Association.

7. City agrees to budget and pay for City Attorney's travel and per diem expenses (in accordance with City policy) for all professional, official, and educational travel and meetings necessary to City Attorney's professional development, including the expenses to be incurred in attending the Annual Conference of the New Mexico Municipal League and the International Municipal Lawyers Association, together with such other national, regional, state, and local governmental groups in which City Attorney is a member and which the City Council approves.

8. City recognizes that certain expenses of a non-personal and generally job-affiliated nature may be incurred by City Attorney, and agrees to reimburse or pay such general expenses upon receipt of duly-executed expense or petty cash vouchers, receipts, statements, or personal affidavits, subject to such business- and job-related expenses having been properly budgeted prior to their being incurred by City Attorney, and further subject to City Attorney's compliance with all audit procedures of the City.

9. City agrees to bear the full cost of any fidelity or other bonds required of City Attorney under any law or ordinance.

10. An evaluation of City Attorney's performance will be conducted by the City Council and Mayor six months after the effective date of this Agreement, and annually thereafter beginning twelve (12) months after the initial evaluation. If, after conducting any evaluation, the City Council and Mayor determine that City Attorney's job performance is satisfactory, City Attorney's salary may be adjusted.

11. City agrees to insure City Attorney through the City's public liability insurance policy against any tort or professional liability claim or demand or action arising out of any alleged act or omission occurring in the course and scope of the performance of City Attorney's duties for City. City shall pay for any attorneys' fees, court costs, or other litigation-related expenses in connection with the defense of any claims, demands, or lawsuits brought against City Attorney.

12. This Agreement may be terminated by City:

a. By a vote of the majority of the City Council and Mayor at a duly authorized meeting of the City Council.

b. If City Attorney is permanently disabled or is otherwise unable to perform his duties because of sickness, accident, injury, mental incapacity, or other health reasons for a period of eight (8) weeks beyond any accrued leave or vacation time (unless a longer period is required by law).

13. City Attorney may terminate this Agreement:

a. If the City, citizens, or Legislature act to amend any provisions of the City Charter relating to the role, powers, duties, authority, or responsibilities of the City Attorney's position.

b. If the City reduces City Attorney's base salary, compensation, or any other financial benefit, unless such reduction is applied in no greater percentage than the average reduction of all City Department Heads.

14. In the event City terminates this Agreement in accordance with the provisions of Paragraph 12 on or before March 1, 2024, City Attorney shall be entitled to a severance payment equal to six (6) months' salary at City Attorney's then-current rate of pay. In the event City terminates this agreement in accordance with the provisions of Paragraph 12 after March 1, 2024, City attorney shall be entitled to a severance payment equal to three (3) months' salary at City Attorney's then-current rate of pay. Any such severance shall be paid in a lump sum unless otherwise agree to by City and City Attorney. City Attorney shall also be compensated for all accrued sick leave and vacation time. Notwithstanding the foregoing, no severance will be payable by City if the termination is based on "just cause," which may include, but is not limited to, City Attorney's failure to maintain his law license, the commission of any criminal offense, the verified misappropriation of any City funds or property (whether or not City Attorney is prosecuted criminally), any violation of the City's code of ethical conduct, or any incident constituting moral turpitude, regardless of whether such action constitutes a criminal offense.

15. City Attorney may resign his position by giving City ninety (90) days' written notice of his intent to resign, unless a lesser period is agreed to by the parties.

16. The employment provided for in this Agreement shall be City Attorney's sole employment. Notwithstanding the foregoing, the City acknowledges that City Attorney is required to undertake and complete two appeals, one currently pending in the Colorado Court of Appeals, the second to be filed in the Colorado Court of Appeals upon the entry of a final order by the Colorado trial court (collectively, the "Colorado appeals"). City Attorney will not perform legal services on the Colorado appeals during regular business hours, nor in a manner that interferes with his duties to the City, and agrees that he will be required to take leave if travel or hearing attendance is required for the Colorado appeals.

17. The City Council, in consultation with City Attorney, may adopt such other reasonable terms and conditions of employment as it may deem necessary or appropriate from time to time, provided such terms and conditions are not inconsistent with, or in conflict with, the provisions of this Agreement, the City Charter, the Gallup Municipal Code,

or any other law. Any such amendment shall be effective only when reduced to writing and executed by both parties and approved at a public meeting of the City Council.

18. All provisions, rules, and regulations of the City regarding vacation, sick leave, personal leave, retirement or retirement contributions, holidays, insurance, and other benefits and working conditions as they now exist or may hereafter be amended shall apply to City Attorney, in addition to the benefits specifically enumerated above for the benefit of City Attorney.

19. This Agreement represent the final and entire agreement and understanding of the parties.

IN WITNESS WHEREOF, the City has caused this Agreement to be signed on its behalf by its Mayor, and attested to by its City Clerk, and City Attorney has signed this Agreement on the day and year first written above.

CITY OF GALLUP

By, _____
Louie Bonaguidi, Mayor

Attest:

Alfred Abeita, City Clerk

CITY ATTORNEY

By, _____
David R. Eason