

AMENDMENT ONE TO AT-WILL EMPLOYMENT CONTRACT BETWEEN CITY OF LARAMIE AND ROBERT SOUTHARD AS CITY ATTORNEY

1. **Parties.** This Contract is made effective January 1, 2023, between the City of Laramie, Wyoming, a Wyoming municipal corporation ("City"), whose address is City Hall, 406 Iverson Street, Laramie, Wyoming 82070 and Robert Southard ("City Attorney"), who has been City Attorney of Laramie since 2016 under various contracts. In consideration of the below mutual obligations, City and City Attorney agree to the following:

2. **Purpose of Contract.** The purpose of this Contract is to continue an at-will employer- employee relationship for Robert Southard to perform the services of City Attorney. The parties agree that City Attorney is an at-will employee of the City and Council and nothing in this Contract creates an expectation of continued employment. The at-will nature of City Attorney's employment can only be altered by a written document approved by the City Council which specifically states it is altering the at-will nature of this Contract.

3. **Term of Contract.** The obligations of this Contract begin on January 1, 2023 and shall continue unless this Contract is terminated pursuant to the provisions of Paragraph 5 of this Contract.

4. **Payment and Benefits.**

4.01. Base Salary. City shall pay City Attorney a total annual salary \$132,031, payable in installments at the same time that the other employees of City are paid, along with additional benefits as set forth in this Contract. City shall make normal withholdings as required by law from City Attorney's salary. City Attorney shall also be eligible for and receive the raises that may from time to time be granted all City employees.

4.02. Travel Expenses. Any required travel for City Attorney in the performance of this Contract shall be reimbursed at the standard employee rate.

4.03. Other Benefits. Except as otherwise provided in this Contract, City Attorney shall be entitled to the same level of benefits that are enjoyed by City Department Directors as provided in the Employee Handbook or practice. City Attorney is currently not enrolled in the City's health benefit plan. City Attorney may in the future seek to enroll in that health benefit plan, under the same terms and conditions as all other City employees.

4.04. Professional Licensing Costs and Development. City agrees to budget and pay for the civic and professional membership dues of the Wyoming State Bar Association necessary for Employee's continued professional licensing and for the required number of hours of continuing legal education. Further, City agrees to budget and pay the fee and any expenses of Employee to maintain an active membership in the Wyoming Association of Municipalities and to attend professional association meetings and conferences subject to scheduling and approval by Mayor or City Council. City agrees to budget and pay for membership to the International Municipal Lawyer's Association (IMLA).

4.05. Contribution to 457 Plan. The City shall contribute up to \$5,000 each year, payable in a monthly installment, as a match of the City Attorney's contribution into the City Attorney's IRS §457 personal retirement account. This payment is only required as a match; City's obligation therefore depends on City Attorney making matching contributions. The account must be established by the City Attorney and retained during his employment for receipt of this benefit.

4.06. Continuation Pay.

City shall pay City Attorney continuation pay of \$5,000 each year, payable in equal monthly installments. City will make normal withholdings from that payment as required by law.

4.07. Vacation and Sick Leave. City Attorney shall continue to accrue vacation leave at the rate provided to employees who have eleven (11) years of service and above, which is 13.33 hours per month or 160 hours annually. City Attorney shall accrue sick leave at the rate provided to other employees. City Attorney is entitled to accrue all unused vacation or sick leave, with the same limits as apply to other City employees. Vacation leave accrued beyond the maximum allowed for any other City employees, of two hundred forty hours (240), will be forfeited on the same basis as other City employees forfeit unused vacation leave. If City Attorney's employment is terminated, either voluntarily or involuntarily, City Attorney shall be compensated for all accrued annual vacation leave time only.

4.08. Exempt Leave. Employee shall be considered exempt, thus qualifying Employee for Exempt Leave. Employee shall receive forty (40) hours of exempt leave annually. Unused exempt leave shall not roll over from year to year and any unused exempt leave for any fiscal year shall be forfeited.

5. Termination of Contract.

5.01. Termination by City Attorney

City Attorney may terminate this Contract for any reason or for no reason by giving the City 60 days' written notice of termination. The parties' obligations under this Contract will terminate 60 days after that written notice, and the City Attorney shall during that 60-day notice period continue to fulfill all obligations of the City Attorney under this Contract. If City Attorney terminates this Contract, the City will owe City Attorney nothing beyond his salary and benefits and continuation pay through his last day of work, and such accrued vacation and leave time as would be payable to any other employee upon termination of employment.

5.02 Termination by City

5.02.01 Method of Termination by City

The City may only terminate this Contract through a majority vote of the full membership of City Council, whether such termination is with or without cause.

5.02.02 Termination For Cause by City

The City may terminate this Contract for cause if the City Attorney is convicted of a felony or any crime involving dishonesty, or if City Attorney commits a material breach of this Contract. City agrees to give City Attorney written notice and opportunity to cure a material breach, if the breach is capable of cure. If the City terminates this Contract for cause, the City will owe City Attorney nothing beyond his salary and benefits and continuation pay through his last day of work, and such accrued vacation and leave time as would be payable to any other employee upon termination of employment. Particularly, without limiting the foregoing, City Attorney will not be entitled to any severance pay or benefit.

5.02.03 Termination Without Cause by City

The City may terminate this Contract without cause by giving the City Attorney written notice of that termination. If the City terminates this Contract without cause, the City shall pay City Attorney his salary and benefits and continuation pay owing through his last day of work, and such accrued vacation and leave time as would be payable to any other employee up on termination of employment, and City Attorney shall receive the following severance pay and benefits:

5.02.03.01 As severance pay, one month of base salary plus one month of continuation pay for every year or partial year City Attorney has worked. For purposes of this calculation, City Attorney's first day of work shall be October 1, 2016. By way of illustration, if City Attorney is terminated without cause on November 1, 2020, City attorney will receive 5 months of Base Salary and 5 months of continuation pay. Notwithstanding the foregoing, this severance pay is capped at 12 months of base salary and 12 months of continuation pay, no matter how long City Attorney has been employed by the City.

6. Responsibilities of City Attorney.

6.01. General Duties

City Attorney shall represent the City Council as a whole, with the City Council being the direct employer and client, and City Attorney shall also represent the City and provide legal advice and counsel on City business to City Manager and all others employed by the City, as

well as the City's boards and commissions. City Attorney shall plan, organize, control, and direct the operation of the City Attorney's Office, including the handling of all prosecution or criminal matters, and shall supervise and direct all attorneys and staff in the City Attorney's office. City Attorney shall also have the following specific duties:

6.01.01. Represent or oversee the representation of City in all civil and criminal matters.

6.01.02. Assist legal counsel retained by the City's self-funded insurance pool, Wyoming Association of Risk Management ("WARM"), in the defense of claims against the City.

6.01.03. Handle and appear, or supervise, as lead counsel in any appeals of municipal court cases to the District Court, Wyoming Supreme Court and the federal courts.

6.01.04. Provide professional legal advice to City Council and the City Manager and other City in employees in rendering advice on legal issues.

6.01.05. Review Council agenda items for legal issues and attend City meetings setting Council agenda.

6.01.06. Perform legal services relating to boards and commissions of the City.

6.01.07. Attend all regular and special meetings of the City Council, public hearings, and Council work sessions and recommend necessary and expedient measures to carry out the directives of City Council.

6.01.08. Attend City department meetings and other meetings at the request of the City Manager where legal advice of the City Attorney is needed.

6.01.09. Advise City negotiating team in arbitration or collective bargaining issues with the firefighter's union.

6.01.10. Issue written and oral opinions and memoranda interpreting Federal, State and local law.

6.01.11. Prepare and review legal documents including but not limited to contracts, grants, agreements for subdivisions, City permits and licenses, deeds, easements and rights of way.

6.01.12. Review policy, procedures and rules and assist in the promulgation of rules and regulations.

6.01.13. Research, analyze and disseminate legal decisions to the City on civil and criminal court decisions, new or pending legislation, code enforcement, administrative rules and regulations, employment law and police and fire issues.

6.01.14. Negotiate contracts and other agreements as directed by Council.

6.01.15. Practice preventative law by interpreting legal trends and providing advice thereon to the Council and City Manager and recommend changes in City ordinances, rules and regulations, and policy and procedures when appropriate.

6.01.16. Review and approve affidavits, bonds and certificates of insurance submitted to City for licensing and contracts with City. Approve affidavits and transfers or assignments of lots or burial spaces.

6.01.17. Respond to citizen inquiries or media about legal issues involving City and make referrals to City Manager when appropriate.

6.01.18. Prepare annual budget recommendation for Attorney's office for consideration by the City Manager and the City Council.

6.01.19. Review final plats, vacations of alleys and streets and conditional use requests for legal issues.

6.01.20. Perform other routine legal services requested by City Council or the City Manager.

6.03. Hours of Work

The parties agree the City Attorney must devote a great deal of time outside normal office hours on business for the City, and City Attorney shall therefore be allowed to establish an appropriate work schedule. City Attorney agrees to devote his working hours to the performance of this Agreement. City Attorney agrees to devote sufficient time, both during normal working hours and otherwise, to perform his duties. City Attorney agrees that he is an executive employee, exempt from overtime compensation provisions of the Fair Labor Standards Act.

6.04. Outside Activities and Practice of Law.

City Attorney may perform temporary, outside remunerative activities, including but not limited to, teaching, writing or consulting, if it will not in any way impair his performance of this Contract or his performance as City Attorney. City Attorney may engage in the outside practice of law to the extent that he is representing himself or his family without compensation and to the extent that such practice does not interfere with

Employee's obligations under this Contact. Additionally, City Attorney may continue to act as the judge of the drug court so long it does not interfere with his obligations in this contract.

6.05. Evaluation of Performance and Compensation.

City Council may review and evaluate the performance of City Attorney annually. The review and evaluation shall be in accordance with specific criteria developed jointly by City Council and Employee. The criteria may be added to or deleted from as the Council may from time to time determine. The Mayor shall provide City Attorney with a summary written statement of the findings of Council and provide an adequate opportunity for Employee to discuss his evaluation with Council. City Attorney shall be eligible for an annual performance and compensation review and shall receive a cost of living salary increase as approved by the City Council for all other employees of the City.

6.06. Goals and Objectives. City Council and Employee may mutually define goals and performance objectives that they determine necessary. Goals and objectives may be reduced to writing from time to time.

6.07. Other Terms and Conditions of Employment. City may fix any such other terms and conditions of employment, as it may determine from time to time, relating to the performance of City Attorney provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Contract.

6.08. Personal Legal Advice to City Councilors or City Employees. City Attorney is not responsible for providing, and shall not provide, personal legal advice to City Council or City employees or the public, except to the extent necessary or advisable in furtherance of the City's business.

6.09. Law License. City Attorney shall maintain his license to practice law in the state of Wyoming.

7. Responsibilities of City. City shall:

7.01. Employ one full time attorney to serve as City prosecutor under the supervision and control of City Attorney, and to employ one full time legal assistant or legal secretary to provide support to the City Attorney's Office.

7.02. Provide the City Attorney's office computerized legal research.

7.03. Provide the City Attorney necessary technology, including but not limited to a tablet or laptop or similar device, along with necessary software and technical support.

8. General Provisions.

8.01. Amendments. This Contract cannot be amended excepted by written document approved and signed by City Council and City Attorney, which document states it is specifically amending this Contract.

8.02. Applicable Law/Venue. The construction, interpretation and enforcement of this Contract shall be governed by the laws of the State of Wyoming. The Courts of the State of Wyoming shall have jurisdiction over this Contract and the parties, and the venue shall be in the Second Judicial District, Albany County, Wyoming.

8.03. Assignment/Contract Not Used as Collateral. Neither party shall assign or otherwise transfer any of the rights or delegate any of the duties set forth in this Contract without the prior written consent of the other party. The City Attorney shall not use this Contract, nor any portion thereof, for collateral for any financial obligation.

8.04. Compliance with Laws. The City Attorney shall keep informed of and comply with all applicable Federal, State and local laws and regulations in the performance of this Contract, including all ethical standards governing City Attorney's employment.

8.05. Entirety of Contract. This Contract represents the entire and integrated Contract between the parties and supersedes all prior negotiations, representations, and agreements, whether written or oral.

8.06. Kickbacks. The City Attorney certifies and warrants that no gratuities, kickbacks or contingency fees were paid in connection with this Contract, nor were any fees, commissions, gifts, or other considerations made contingent upon the award of this Contract.

8.07. Notices. All notices arising out of, or from, the provisions of this Contract shall be in writing and given to the parties at the address provided under this Contract, either by regular mail, facsimile, e-mail or delivery in person.

8.08. Ownership of Documents/Work Product. All documents, reports, records, field notes, materials, and data of any kind resulting from performance of this Contract are at all times the property of City.

8.09. Sovereign Immunity. City does not waive sovereign immunity by entering into this Contract, and specifically retain immunity and all defenses available to them as sovereigns under Wyoming or federal law.

8.10. Third Party Beneficiary Rights. The parties do not intend to create in any other individual or entity the status of third party beneficiary, and this Contract shall not be construed so as to create such status. The rights, duties and obligations contained in this Contract shall operate only between the parties to this Contract and shall inure solely to the benefit of the parties to this Contract.

8.11. Nondiscrimination. The City Attorney shall comply with all federal, state and local laws, regulations and ordinances prohibiting discrimination against all protected persons, and shall assure no person is discriminated against because of that person's status as a member of a protected class.

8.12. Titles Not Controlling. Titles of paragraphs are for reference only, and shall not be used to construe the language in this contract.

8.13. Waiver. The waiver of any breach of any term or condition in this Contract shall not be deemed a waiver of any prior or subsequent breach.

8.14. Time is of the Essence. Time is of the essence in all provisions of this Contract.

CITY OF LARAMIE:

Brian Harrington,
Mayor and President of Laramie City Council

ATTEST:

Nancy Bartholomew,
City Clerk

ROBERT SOUTHARD

Date