

**First Amended and Restated City Attorney  
Employment Agreement**

This First Amended and Restated City Attorney Employment Agreement (the "Agreement") is made and entered into to be effective as of the 23rd day of August, 2022 (the "Effective Date") by and between the City of El Paso, Texas, A Texas municipal corporation (the "City") and Karla M. Nieman (the "Attorney").

This Agreement, was originally entered into the 11<sup>th</sup> day of December 2018, by and between the City of El Paso of Texas, a municipal corporation, (hereinafter called "City") and Karla M. Nieman, (hereinafter called "Attorney"), both of whom understand and agree as follows:

**WHEREAS**, it is the desire of the City Council to provide certain benefits, establish certain conditions of employment, and to set certain working conditions for the Attorney; and

**WHEREAS**, both parties agree that it is important to establish a working and contractual relationship which preserves the ethical and legal responsibilities of the City Attorney; and

**WHEREAS**, the City Council believes that the City Attorney should be free from improper or inappropriate pressures to ensure that the City Attorney can act within the ethical and legal boundaries of her profession to represent the City of El Paso as her client.

**WHEREAS**, the Agreement memorializes the basic terms of employment including, but not limited to job duties and responsibilities, compensation and benefits, termination, severance pay, and performance evaluations, among other things; and

**WHEREAS**, the City and the Attorney desire to amend the Agreement as hereinafter provided in this First Amended and Restated City Attorney Employment Agreement;

**NOW, THEREFORE**, for and in consideration of good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and the performance of the covenants contained in this Agreement, the City and the Attorney agree as follows:

**Section 1. Licensure**

Attorney warrants and agrees that Attorney is licensed to practice law in this state without limitation. Attorney must maintain Attorney's license to practice law in good standing throughout the term of this Agreement as a condition of employment. Should the Attorney no longer be authorized to practice law in this state, this contract will terminate immediately

for good cause.

## **Section 2. Term**

The Initial Term of this Agreement commenced on December 11, 2018 and was for a five-year period. The Term of this Agreement is amended to provide for a Second Term commencing on August 23, 2022 which shall conclude on December 10, 2029, unless otherwise terminated pursuant to Section 14. This Agreement shall automatically extend for one (1) year periods on the anniversary date of December 11 of each year following expiration of the Second Term (each a "Renewal Term"), such that the Agreement shall be perpetual unless either party shall have provided notice one hundred twenty (120) days prior to the anniversary date of its objections to the annual extension, or the Agreement is otherwise terminated pursuant to Section 14.

## **Section 3. Duties**

A. City employs the Attorney as the City Attorney to perform the duties commensurate with the position and as specified herein, and to perform all legally permissible and proper duties and functions of the position.

B. It shall be the duty of the Attorney to appoint the Assistant City Attorneys as provided in the Charter, and to supervise the Office of the City Attorney and make all necessary and appropriate employment actions regarding the employees of the Office, consistent with the City Charter and the policies and ordinances of the City, the Civil Service Rules applicable to those employees within the civil service, and state and federal law.

C. It shall also be the duty of the Attorney to direct, assign, reassign, evaluate, and terminate, as appropriate, the assistant city attorneys and other employees of the Office of City Attorney consistent with the City Charter and the policies and ordinances of the City, the Civil Service Rules applicable to those employees within the civil service, and state and federal law.

D. The Attorney will perform the duties specified in City Ordinances and the job description and perform other legally permissible and proper duties and functions of the position consistent with the professional role and responsibility of the Attorney, to include such other duties and functions assigned by the City Council where appropriate to and consistent with the professional role and responsibility of the Attorney.

## **Section 4. Hours of Work**

A. The Attorney acknowledges the proper performance of the duties of the Attorney will 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 Attorney's duties and that the compensation herein provided includes compensation for the performance of all such services. However, the City intends that reasonable time off be permitted the Attorney, such as is customary for exempt employees so long as the time off does not interfere with the normal conduct of the office of the Attorney.

B. The Attorney will devote full time and effort to the performance of the Attorney's duties and shall remain in the exclusive employ of the City during the term of this Agreement. The City encourages the Attorney to accept invitations to speaking engagements, writing or other opportunities to communicate with the community, subject to the rules regarding confidentiality and attorney client privilege to make use of and share data and information with relevant persons and groups, and encourages the Attorney to participate in pertinent seminars, groups, associations and organizations, as well as in informational meetings with those individuals whose particular skills, expertise, or backgrounds would serve to improve the capacity of the Attorney to perform the Attorney's Duties. The Attorney may accept stipends or reimbursement for her costs in conjunction with any continuing legal education speaking engagements.

C. Unless prohibited by law or ethical requirements, the Attorney may offer *pro bona* services in conjunction with the requirements of the State Bar of Texas without violating this Agreement.

#### **Section 5. Ethical Commitments**

A. Political Activity. Attorney shall comply with the prohibitions against political activity as set forth in Rule 8 of the Civil Service Rules. City shall support Attorney in keeping these commitments by refraining from and urging its elected officials to refrain from making any order, direction or request that would require Attorney to undertake any of the prohibited activities.

B. Investments. Attorney shall not individually, as a partner, joint venturer, officer or shareholder invest or participate in any business venture conducting business in the corporate limits of the City of El Paso, except as to stock ownership in any company whose capital stock is publicly held and regularly traded on the New York Stock Exchange, the American Stock Exchange or the NASDAQ without the prior written consent of Council. Attorney further agrees, except for the Attorney's personal residence or residential property acquired or held for future use as a personal residence, not to invest in any other real estate or property improvements with the corporate limits of the City of El Paso without the prior written consent of Council. Such consent shall not be unreasonably withheld. In the event of any conflict of interest or potential conflict of interest under this subsection, Attorney will disclose such issue and notify the City Council in an expeditious manner.

## **Section 6. Compensation**

A. **Base Salary:** Employee receives an annual base salary as listed on Exhibit A that is payable in installments at the same time that the other City employees are paid (“Base Salary.”).

B. Subject to the limitations on salary increases provided in paragraph 6. C. and D, the Attorney shall be eligible to receive across the board pay increases or other similar pay increases that the City Council provides to other administrative, non-collective bargaining employees of the City, and shall also be eligible to receive service time pay increases in the same manner that other administrative non-collective bargaining of the City are eligible to receive based on designated amounts of service time. Additionally, in the event the City Council provides any other new type of benefit applied across the board to its other administrative, non-collective bargaining employees of the City, the Attorney shall also be eligible to receive such benefit in the same manner, subject to the limitations on salary increases provided in paragraph 6. C. and D.

C. Subject to the limitations on salary increases provided in paragraph 6. D, beginning with the 2023 annual evaluation, the Attorney shall be eligible for an annual merit increase equal to three percent (3%) of the Attorney's annual Base Salary if the Attorney receives a rating above a "meets standards" rating on the annual performance evaluation performed as set forth in Section 13 unless such increase shall cause the Employee's Base Salary to exceed \$350,000.00 (Salary Cap”), in which case the provisions in paragraph 6. D shall control. Merit increases shall be effective at the start of the next pay period following the approval of the performance evaluation by the City Council.

D. During the term of this Agreement, the City shall annually, no later than Jan 31 of each year of the Agreement, conduct a market-based review of the base salary of the city attorneys in Arlington, TX, Austin, TX, Dallas, TX, Fort Worth, TX, San Antonio, TX, Oklahoma City, OK, Phoenix, AZ and Tucson, AZ (“Comparison Cities”) and in the event that after adding a merit increase, if any is earned, the Attorney's Base Salary is lower than the average base salary of the city attorneys in the eight comparison cities, the Attorney's Base Salary shall be increased to the average of the city attorneys of the Comparison Cities, further if after adding a merit increase, if any is earned, or any other salary increase, to the Attorney's Base Salary, the average base salary of the city attorneys in the Comparison Cities, is above \$350,000.00, the Attorney's Base Salary shall be increased to \$350,000.00, unless the average base salary of the three highest base salaries of the city attorneys in the Comparison Cities, is greater than \$350,000.00, in which case the Attorney's Base Salary will be increased to the lesser of (i) the Base Salary with the merit increase or other increase, or (ii) the base salary of the average of the three highest city attorney base salaries of the

Comparison Cities. If the Attorney's Base Salary is eligible for adjustment based on the market-based review, such adjustment will take effect at the start of the pay period following the market-based review, or the start of the fiscal year immediately following the market-based review, whichever occurs first. In the event of any such salary adjustment pursuant to the terms of this provision, the adjusted Base Salary shall become the new Salary Cap for purposes of calculating salary as provided in Section 6. C.

E. In no event shall the Attorney's salary be reduced during the term of this Agreement except by mutual agreement of the two parties; or in the event of an across the board reduction of wages for all non-collective bargaining City employees, in which event the Attorney's salary will be reduced by the same percentage.

### **Section 7. Health, Disability, Life Insurance and Miscellaneous Benefits**

The Attorney is entitled to continue participation in the City's vision plan, life insurance plan, and short-term disability plan in the same manner as all other full-time non-collective bargaining employees of City. The Attorney has previously waived participation in the City's healthcare plan and dental plan. The Attorney will only become eligible for future participation in those plans as may be provided by and in accordance with the terms and conditions of those plans. In addition, the City agrees to reimburse the Attorney annually for the costs of obtaining a \$1 million term life insurance policy. The term life insurance policy provided hereunder shall be owned by the Employee or such Third Party as Employee may designate, with the Employee having the sole right to determine the beneficiaries under the term life insurance policy. If the Employee chooses to obtain any additional life insurance or to continue paying the annual premiums after her employment with the City has ended, she is solely responsible for payment of the premiums on such a plan. It is understood and agreed to by the parties that the City bears no responsibility for continuing or reimbursing any payments or coverage under this paragraph as part of any severance payment that may be owed to Employee. The City also agrees to reimburse the Attorney for non-personal but job-related expenses such as the costs of meals where City business is being discussed or conducted, and costs relating to participation in social and civic events and activities in El Paso which can serve to benefit the City and the public perception of City Attorney and her office. Such reimbursement shall be in accordance with the City's existing policies and procedures and structured to comply with Section 409A of the Internal Revenue Code.

### **Section 8. Paid Leave - Vacation and Sick Leave and Holidays**

A. The Attorney will continue to accrue vacation and sick leave in accordance with the City of El Paso Civil Service Rules and Procedures. The Attorney may use such vacation and sick leave, including the use of sick leave as personal time, in accordance with such Rules and Procedures. The Attorney will be entitled to retain all leave balances in place at the time this Agreement is approved. Paid holidays shall be as provided by the City for its

non-collective bargaining Attorneys.

B. The Attorney may accrue up to the hourly equivalent of six months of vacation at any time during the term of this Agreement. Any vacation leave credit in excess of the maximum accruals shall be permanently withdrawn from the Attorney's leave balances in the pay period in which her anniversary date of the start of her initial employment with the City falls or upon the termination of this Agreement. In the event of the termination of this Agreement and the City is obligated under a provision in Section 15 to make a lump sum payment for up to six months of the Attorney's accrued vacation, the maximum amount of such payment shall not exceed the hourly equivalent of six months of vacation.

C. The Attorney may accrue unlimited amounts of sick leave for which the Attorney will be entitled to use or receive such unused and accrued sick leave as follows: In the event of the termination of this Agreement and the City is obligated under a provision in Section 15 to make a lump sum payment for up to six months of the Attorney's accrued sick leave, the maximum amount of such payment shall not exceed the hourly equivalent of six months of sick leave. In the event that upon termination of this Agreement, the City is not obligated to make a lump sum payment for up to six months of the Attorney's sick leave; or after making a required lump sum payment for up to six months of the Attorney's sick leave, the Attorney has remaining accrued sick leave, the Attorney will be entitled to use any or all amounts of such sick leave for the purpose of adding to her credited service as may be allowed under the City's Pension Ordinance and Pension Plan.

D. The Attorney will continue to accrue vacation and sick leave in accordance with the City of El Paso Civil Service Rules and Procedures. In addition, beginning with the 2023 evaluation, if the Employee receives a rating at or above "meets standards" on the annual performance evaluation, twenty (20) hours of vacation and twenty (20) hours of sick leave will be added to the Employee's leave banks. The parties acknowledge that the twenty (20) hours of vacation and twenty (20) hours of sick leave is set, static amount for which the Employee will be eligible if she receives the specified rating.

#### **Section 9. Automobile**

The Attorney's duties require that she have the exclusive and unrestricted use of an appropriate motor vehicle. City agrees to pay Attorney, a vehicle allowance in the amount of \$300.00 per pay period, beginning with the Effective Date of this Agreement and continuing bi-weekly throughout the term of this Agreement.

#### **Section 10. Retirement and Deferred Compensation**

A. The Attorney has been enrolled in the City of El Paso's Pension Plan and will continue to be enrolled during the term of this Agreement. The Attorney shall be entitled to retain

whatever rights and benefits accrued prior to the execution of this Agreement. Both parties shall continue to make all required contributions to the Plan as established in the Pension Ordinance and the Plan Policies, Procedures, and Rules.

B. The City shall amend the provisions in the City's 457(b) Deferred Compensation Plan ("457(b) Plan") to permit the City to make contributions to the 457(b) Plan for the benefit of the Attorney. The City shall make an annual, lump sum contribution in the maximum amount allowable by law to the 457(b) Plan beginning upon the immediate next pay period following the amendment of the City's 457(b) Plan and thereafter in January of each successive year that this Agreement is in effect.

### **Section 11. General Business Expenses**

A. City agrees to budget and pay for licensing fees or charges that are required of lawyers to practice law in the State of Texas and professional dues, including but not limited to joining the International Municipal Lawyers Association, and subscriptions of the Attorney necessary for continuation and full participation in national, regional, state, and local associations, and organizations necessary and desirable for the Attorney's continued professional participation, growth, and advancement, and for the good of the City. These include but are not limited to: Texas City Attorney's Association and the American Planning Association.

B. City agrees to budget and pay for travel and subsistence expenses of Attorney for professional and official travel, meetings, and occasions to adequately continue the professional development of Attorney and to pursue necessary official functions for City, including but not limited to the IMLA Annual Conference, IMLA Chief Legal Officers Forum or IMLA Top 50, the Texas Municipal League (or Texas City Attorneys Association, if held at a different time), and such other national, regional, state, and local governmental groups and committees in which Attorney serves as a member. All travel expenses will be paid in accordance with the City's Travel Policies.

C. Professional Continuing Education. The City also agrees to budget for and to pay for travel and subsistence expenses of Attorney for short courses, institutes, and seminars that are necessary and/or desirable for the Attorney's professional development and maintenance of the Attorney's required CLE obligations and for the good of the City. All travel expenses will be paid in accordance with the City's Travel Policies.

D. Recognizing the importance of constant communication and maximum productivity, City shall provide Attorney, for business and personal use, a laptop computer, a tablet, software, mobile phone, required for the Attorney to perform Attorney's duties and to maintain communication with City's staff and officials as well as other individuals who are doing business with City. The equipment shall be updated or replaced as reasonably necessary in order to ensure constant communication and maximum productivity. At

termination of employment, all City-owned equipment will be immediately returned to the City.

**Section 12. Total Benefit and Compensation package.**

The Attorney will not be entitled to receive any other compensation or benefits from the City except as set forth in this Agreement, or in accordance with Texas law.

**Section 13. Performance Evaluation**

A. Evaluation Process. The Mayor and Council shall review the Attorney's job performance annually during the month of June in order to complete the evaluation prior to the adoption of the City's annual operating budget. The Mayor shall be responsible for preparing a draft of the performance evaluation recommendation and submitting it to City Council for discussion, potential revision and approval. The Council shall provide the Attorney a reasonable and adequate opportunity to discuss with the Council and/or respond to the Attorney's evaluation. The annual performance reviews and evaluations shall be reasonably related to the Attorney's written job description and shall be based on goals for the Attorney's performance that are jointly developed and established by the City Council and the Attorney. At the time of the evaluation, the Council will annually develop the Attorney's goals and objectives for the next evaluation period and discuss and finalize them with her. The Mayor may put such goals and objectives in writing and provide them to the Attorney.

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

C. Modification of Evaluation Process. In the event the Council determines that the evaluation instrument, format and/or procedure are to be modified by the Council, and such modifications would require new or different performance expectations, then the Attorney shall be provided a reasonable period of time to demonstrate such expected performance before being evaluated. The Council will use the evaluation form contained in Exhibit B for the annual evaluation unless the Mayor on the City's behalf and the Attorney mutually agree to use a different or revised form. Nothing herein prevents the City, or the Mayor on the City's behalf, and the Attorney from mutually agreeing to additional changes in the evaluation form or establishing a more specific evaluation format for the purpose of providing a more beneficial and useful evaluation process and agreeing upon the effective



date for such changes.

D. Unscheduled Evaluations. The Mayor and Council reserve the right to conduct unscheduled performance evaluations in addition to annual evaluations when they determine in their sole discretion such evaluations are necessary. The Mayor and Council reserve the right to place the Attorney on a formal performance improvement plan (PIP) requiring the Attorney's immediate and sustained corrective action of any performance discrepancies in addition to or in lieu of an unscheduled evaluation.

#### **Section 14. Termination and Compensation upon Termination**

A. Termination Events. The Attorney's employment under this Agreement shall terminate upon any of the following.

1. Mutual Agreement of the Council and Attorney in writing and signed by the City and the Attorney.
2. Retirement, Resignation (per Section I6) or Death of the Attorney.
3. Disability of the Attorney. The inability of the Attorney to perform Attorney's duties due to permanent disability, sickness, accident, injury, mental capacity.
4. If any provisions of the Charter pertaining to the role, powers, duties, authority, responsibilities of the Attorney's position that substantially changes the form of government or the duties of the Attorney, the Attorney shall have the right to declare that such amendments constitute termination.
5. If the Attorney resigns at the request of the City, whether formal or informal, then the Attorney may declare a termination as of the date of the submission of the resignation.
6. Termination of the Attorney with good cause, at any time. For purposes of this Agreement the term "good cause" is defined as follows:
  - a. Insubordination or failure to comply with lawful written City directives, unless compliance with such directive would violate the law or ethical rules applicable to the Attorney;
  - b. Conviction of a felony involving moral turpitude or other conviction that affects the Attorney's ability to perform as City Attorney;
  - c. Disability, not otherwise protected by law, that impairs performance of the required duties of the City;
  - d. Knowingly falsifying records or documents related to the City's activities;
  - e. Knowing misrepresentation of material facts to the City or other City officials in the conduct of the City's business;
  - f. Any willful, knowing, grossly negligent, or negligent misapplication or misuse, direct or indirect, by Attorney of public or other funds or other property of the, City, real, personal, or mixed, owned by or entrusted to the City, any agency or corporation thereof, or the Attorney in the Attorney's official capacity;

- g. Being under the influence of intoxicants, or the illegal use of drugs, hallucinogens or other substances regulated by state law or the use thereof while on duty; or
  - h. Loss of license to practice law.
7. Non-renewal of Agreement. If the City elects not to renew this Agreement at the expiration of the Initial Term or any Renewal Term, the City shall pay the Attorney all accrued obligations in the manner required by law, including the severance set forth in Section 15 below.
8. If the City terminates the Agreement with cause, the parties agree that such termination is subject to review by an Arbitrator using the American Arbitration Association's service, and that the Arbitration request shall be made within forty-five (45) days of separation of employment and final decision within ninety (90) days thereafter. The parties agree that arbitration shall be the exclusive means of seeking review of termination for cause or breach of the Employment Agreement and agree that the Attorney will not be continued in her employment during the above Arbitration time periods.

#### **Section 15. Compensation upon Termination**

A. Employer must pay the severance as described below to the Attorney when employment is involuntarily terminated without good cause or for a non-renewal of Agreement pursuant to Section 14 A 7 above.

1. City shall provide a severance payment equal to twelve (12) month's Base Salary at the then current rate of pay, less required payroll deductions. This severance shall be paid in a lump sum or in a continuation of salary on the existing biweekly basis, at the Attorney's option.

2. The Attorney shall also be compensated for all accrued but unused vacation and sick leave, up to the maximum accruals as set forth in Section 8, and her automobile allowance to the date of the termination of the agreement.

B. If the Attorney is terminated for good cause, then the City is not obligated to pay severance under this section but shall be required pay to the Attorney all accrued obligations in the manner required by law and City policies.

C. If any provisions of the City Charter are amended to substantially change the form of government, including but not limited to moving away from the Council/Manager form of government, or any other Charter amendments that materially changes the role, powers, duties, authority, responsibilities of the City Attorney's position, the Employee shall have the right to declare that such amendments constitute termination without cause for which

Employee would be entitled to the severance described in Paragraph A. 1 and 2 above.

D. Separation and Release Agreement. In the event the severance provisions of Sections 15 of the Agreement, as amended, are triggered, the parties agree that they shall execute a Mutual Release of All Claims (“Mutual Release”) substantially in the form attached hereto as Exhibit “C” and incorporated herein for all purposes.

#### **Section 16. Resignation**

Nothing in this Agreement shall prevent, limit or interfere with the right of the Attorney to resign at any time. In the event the Attorney desires to resign employment, the Attorney shall give written notice to the City a minimum of sixty (60) days prior to separation. The City shall have no obligation to pay Attorney any further compensation after the expiration of the notice period. Upon the effective date of resignation, the City shall pay to the Attorney all accrued but unused vacation and sick leave, up to the maximum accruals as set forth in Section 8. Failure to give the required sixty (60) day notice constitutes a waiver and forfeiture of pay for all accrued vacation and sick leave. By accepting this Agreement, Attorney expressly authorizes the City to withhold any amounts due and owing to the City due to City's resignation from any sums due and owing to Attorney upon separation.

#### **Section 17. Indemnification**

To the extent it may be permitted to do so by applicable law, and to the fullest extent allowed by law, including, but not limited to Texas Civil Practice & Remedies Code Chapter 102, the City does hereby agree to defend, hold harmless, and indemnify Attorney from any and all demands, claims, suits, actions, judgments, expenses and attorneys' fees incurred in any legal proceedings brought against Attorney in the Attorney's individual or official capacity as an Attorney and as City Attorney, providing the incident(s), which is (are) the basis of any such demand, claim, suits, actions, judgments, expenses and attorneys' fees, arose or does arise in the future from an act or omission of Attorney, as an Attorney of the City, acting within the course and scope of the Attorney's employment with the City; excluding, however, any such demand, claim, suits, actions, judgments, expenses and attorneys' fees for those claims or any causes of action where it is determined by a court of competent jurisdiction that the Attorney committed official misconduct, or committed a willful or wrongful act or omission, or an act or omission constituting gross negligence, or acted in bad faith; and excluding any costs, fees, expenses or damages that would be recoverable or payable under an insurance contract, held either by the City or by the Attorney. The selection of the Attorney's legal counsel shall be with the mutual agreement of the Attorney and the City. A legal defense may be provided through insurance coverage, in which case the Attorney's right to agree to legal counsel provided for Attorney will depend on the terms of the applicable insurance contract. Only to the extent this Section exceeds the authority provided and limitations imposed by Texas Civil Practice & Remedies Code, Chapter 102, it shall be construed and

modified accordingly. The provisions of this Section shall survive the termination, expiration or other end of this Agreement and/or the Attorney's employment with the City.

Nothing in this Section affects or serves to limit the coverage that may apply to the benefit or protection of the Attorney by any insurance policy held by and in effect for any purpose or reason, to include purposes and reasons including coverage for acts and omissions actionable under the Texas Tort Claims Act. The Attorney may seek coverage and protection as may be available to her, to include but not be limited to the provision of a legal defense, directly from the City's insurance carrier and the Attorney is not required to obtain any permission from the City Council or any officer or Attorney of the City to seek such coverage and protection. Nothing in this Section requires the City to continue to procure any insurance held by the City on the effective date of this Agreement. The City will give sixty (60) days' notice to Attorney before any such insurance is canceled or not renewed or replaced with substantially similar coverage from a different carrier.

#### **Section 18. Bonding**

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

#### **Section 19. Notices**

Notice pursuant to this Agreement may be given by personal service, by email, by nationally recognized courier, or by depositing in the custody of the United States Postal Service, postage prepaid, and addressed as follows:

- (a) CITY: City of El Paso, Texas  
ATTN: Mayor  
P.O. Box 1890  
El Paso, TX 79950-1890
- (b) ATTORNEY: Karla Nieman  
[karlanieman@sbcglobal.net](mailto:karlanieman@sbcglobal.net)  
El Paso, TX
- With a copy to:  
Michael James King  
2448 East 81<sup>st</sup> Street, Ste. 5900  
Tulsa, OK 74137

Notice shall be deemed given as of the date of personal service or email, as of the date the

email is sent, of delivery by courier, or as the date five days after the date of deposit in the custody of the United States Postal Service.

## **Section 20. General Provisions**

- A. **Merger.** This written Agreement contains all the terms and conditions agreed upon by the parties, and no other agreement, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind either of the parties, or to vary any of the terms contained in this Agreement.
- B. **Amendments.** The City and Attorney by mutual written agreement may amend this agreement Such amendments shall be incorporated into and made a part of this Agreement.
- C. **Assignment.** This Agreement may not be assigned by either party without the written consent of the other party.
- D. **Severability.** If this Agreement contains any unlawful provision not an essential part of the Agreement and which shall not appear to have been a controlling or material inducement to the making of this Agreement, the unlawful provision shall be deemed of no effect and shall, upon agreement by the parties, be deemed stricken from the Agreement without affecting the binding force of the remainder.
- E. **Headings 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.
- F. **Waiver.** The waiver by any party hereto of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach of any party.
- G. **Successors in Interest.** Each and every one of the terms, conditions and covenants contained herein shall be binding upon and inure to the benefit of the respective heirs, executors, administrators, assigns and successors of the parties hereto.
- H. **Attorney's Fees.** In the event of any dispute or controversy between City and Attorney relating to the interpretation or enforcement of this Agreement, the prevailing party shall be entitled to recover from the other party reasonable attorneys' fees and expenses incurred by the prevailing party.
- I. **Counterpart Execution.** This Agreement may be executed in two or more identical counterparts, each of which shall be deemed an original, but all of which together shall constitute but one and the same instrument.

J. Consultation with an Attorney. The City advises Employee to consult with an attorney of her choice prior to executing this agreement. City acknowledges that she has consulted with and has been advised her attorney prior to signing (executing) this agreement.

K. Representations. City Attorney hereby represents and certifies that she (i) has been provided a reasonable period of time to consider this Agreement, (ii) has carefully read all of this Agreement and has been given a fair opportunity to discuss and negotiate the terms of this Agreement, (iii) understands the provisions of this Agreement, (iv) has been advised that she is entitled to consult with an attorney regarding this Agreement, (v) has determined that it is in her best interest to enter into this Agreement, (vi) has not been influenced to sign this Agreement by any statement, representation or coercive act of the City, the City Council or its counsel not contained in this agreement, and (vii) is entering into this Agreement knowingly and voluntarily.

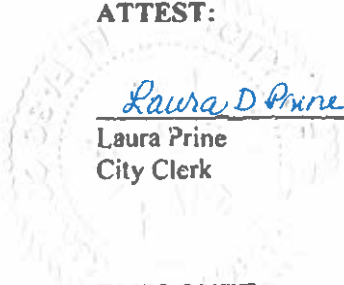

{signatures appear on the following  
page)

CITY CLERK DEPT  
2022 NOV 15 PM1:36

CITY OF EL PASO

  
\_\_\_\_\_  
Oscar Leeser  
Mayor

ATTEST:

  
  
\_\_\_\_\_  
Laura Prine  
City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Lea A. Ream  
Outside Counsel for the City

EMPLOYEE:


  
\_\_\_\_\_  
11/14/22  
Karla Nieman  
City Attorney

EXHIBIT A - TERM SHEET

Salary	\$285,798.97/year
Vehicle Allowance	\$300.00/bi-weekly (pay period)



**EXHIBIT B - PERFORMANCE EVALUATION**

Karla M. Nieman, City Attorney 20\_\_  
Performance Evaluation

\_\_\_\_\_ to  
\_\_\_\_\_

Please select the answer from the drop-down box that best fits how you feel the City Attorney has functioned.

1 – Improvement Needed	2 – Achieves Expectations	3 – Exceeds Expectations	4 - Outstanding
Does not meet the requirements of the job, task or project. Improvement is needed	Successfully meets the requirements of the job, task or project. Improvement is needed	Exceeds the requirements of the job, task or project. Performance is characterized by consistent high achievement	Far exceeds the requirements of the job, task or project. Performance consistently shows outstanding achievement far above expectations.

**I. RELATIONSHIP WITH THE COUNCIL**

1. - Select one - Keeps City Council informed of organization activities, progress and problems
2. - Select one - Is receptive to City Council member ideas and suggestions
3. - Select one - Represents the City's interest as determined by City Council
4. - Select one - Provides competent legal advice in a usable, understandable manner
5. - Select one - Is proactive and innovative in recommending legal solutions that helps guide City Council
6. - Select one - Follows up on all problems and issues as identified by City Council in a timely efficient manner

**II. MANAGEMENT SKILLS AND ABILITIES**

1. Select one - Selects, hires and retains competent staff members
2. Select one - Leads and develops the professional and support staff within the office of the City Attorney

**III. PERSONAL AND PROFESSIONAL ATTRIBUTES**

1. - Select one - Displays strong analytical skills
2. - Select one - Maintains a professional disposition or demeanor commensurate with the position
3. - Select one - Participates in professional activities, such as, association activities
4. - Select one - Has the respect of the legal community and municipal law professionals

**IV. FISCAL MANAGEMENT**

1. - Select one - Achieves regular legal activities within budgetary goals and limits
2. - Select one - Utilizes in house legal staff to limit cost
3. - Select one - Performs legal tasks/settlements with appropriate authorization from City Council
4. - Select one - Appropriately seeks outside counsel and adequately supervises production of work

**V. COMMUNICATION**

1. - Select one - Communicates effectively with the City Council, City Manager, staff, and the community when directed by Council
2. - Select one - Maintains confidentiality with regard to all matters discussed with the City Council
3. - Select one - Accepts public criticism and responds appropriately
4. Select one - Communicates Council policy to various constituencies, (i.e., the media, public, City Council, City Manager, employees and employee representatives).

Karla M. Nieman, City Attorney 20\_\_  
Performance Evaluation

\_\_\_\_\_ to  
\_\_\_\_\_

**VI. LEGAL CONSULTATION**

1. **Select one** – Demonstrates awareness of changes in laws and communicates the change effect to City Council
2. **Select one** - Provides sound legal advice, which has proven to be accurate and technically correct
3. **Select one** –Demonstrates an efficient and effective knowledge of government regulations and case law regarding municipal government and issues facing the City
4. **Select one** - Provides advice that takes into account and balances the overall goals and objectives of the City
5. **Select one** - Proactively identifies potential issues when aware of them to avoid problems from occurring
6. **Select one** - Provides alternatives and innovative solutions rather than just raising problems
7. **Select one** - Is decisive in reaching timely decisions and initiating action

**VII. PROVISION OF LEGAL SERVICES**

1. **Select one** - Effectively represents the City's interests in litigation, administrative hearings, negotiations and similar proceedings, in accordance with Council direction, given the strengths and weakness of the City's position in each situation
2. **Select one** - Provides timely advice to permit City Council and staff to meet established deadlines
3. **Select one** - Provides legal advice competently and in a constructive results-oriented and usable manner
4. **Select one** - Keeps City Council and staff apprised of court rulings and administrative decisions affecting the legal interest of the City
5. **Select one** - Coordinates work with staff from other departments in order to accomplish goals
6. **Select one** - Provides interdepartmental work in a collaborative manner

Karla M. Nieman, City Attorney 20\_\_  
Performance Evaluation  
\_\_\_\_\_ to \_\_\_\_\_

**Council Observations of Job Description Activities Current and Future**

List two things that the City Attorney is currently doing effectively that the Council would most like to continue:

- 1.
- 2.

List two things that the City Attorney is currently doing that the Council would most like him/her to discontinue:

- 1.
- 2.

List two things that the City Attorney does not currently do that the Council would like him/her to do:

- 1.
- 2.

**EXHIBIT C**  
**MUTUAL RELEASE OF ALL CLAIMS**

The intent of this Mutual Release of All Claims ("Agreement") is to mutually, amicably, and finally settle all matters relating to the employment and separation from employment by Karla Nieman (hereinafter referred to as "Nieman") from the City of El Paso (hereinafter referred to as the "City").

1. **Separation & Last Day Worked.** the City and the City Attorney entered into the City Attorney Employment Agreement dated effective December 11, 2018 for employment as the City Attorney of the City, which was subsequently amended (the "Employment Agreement"). In connection with the Employment Agreement the parties agreed to execute a mutual release of all claims in the event that the severance provisions of the Employment Agreement are triggered. On \_\_\_\_\_, 20\_\_ Nieman [separated or will be separating] from employment as the City Attorney as the City of El Paso ("City Attorney") and the parties agree that the severance provisions of the Employment Agreement have been triggered.
2. **Severance Consideration.** As consideration for the mutual promises and obligations in this Agreement, Nieman and the City agree to release any and all claims that either may have against the other concerning Nieman's employment and separation from employment and following such release, the City shall pay the severance described in the Employment Agreement. This severance shall be paid in a lump sum or in a continuation of salary on the existing biweekly basis, at Nieman's option. The Severance will be subject to normal withholdings for taxes and other applicable deductions and if paid in lump sum, will be paid to Nieman no later than fourteen days after the Effective Date of this Agreement, otherwise payments will be made on the City's regular payroll dates.
3. **Release of Claims by Nieman.** Effective upon payment of the severance described in Paragraph 2 above and in consideration for the mutual promises and undertakings contained in this Agreement, Nieman hereby waives, releases and discharges, and agrees that Nieman will not institute, prosecute or pursue any complaint, claim, charge, claim for relief, demand, suit, action and cause of action, whether in law or in equity, which Nieman has, had or may have, if any, or could assert against the City, its council members, officers, employees, and all other agents, directors, representatives, attorneys, successors and assigns, at common law or under any statute, rule, regulation, order or law, whether federal, state or local, on any ground whatsoever, known or unknown, based upon actions of the City that occurred prior to the execution and approval of this Agreement, including but not limited to: any and all actions for breach of his Employment Agreement, or any other contract or agreement, oral or written, express or implied; breach of the covenant of good faith and fair dealing, express or implied; wrongful termination in violation of public policy, and all other claims for wrongful termination and constructive discharge; discrimination of any type, including retaliation; all other tort claims including, but not limited to, intentional or negligent infliction of emotional distress, invasion of privacy, negligence, negligent investigation, negligent hiring, negligent retention, negligent supervision, assault and battery, defamation, intentional or negligent misrepresentation and fraud; any and all claims arising under any statute, including but not limited to Title VII of the Civil Rights Act of 1964, the Civil Rights Act of 1991, the Age Discrimination in Employment Act of 1967, the Older Workers' Benefit Protection Act, the

Employee Retirement and Income Security Act, the Americans with Disabilities Act, the Federal Rehabilitation Act of 1973, 42 U.S.C. Section 1981, the Family and Medical Leave Act, the Unruh Act, as amended, the Texas Commission on Human Rights Act; any and all other laws and regulations relating to employment termination, employment discrimination or retaliation, wages, hours, benefits, compensation; and any and all claims for attorneys' fees and costs. Nieman also affirms that Nieman has not filed, caused to be filed, and is not presently a party to any claim, complaint, or action against the City in any forum or venue. It is understood and agreed that Nieman is unaware of any claim, right, demand, debt, action, obligation, liability or cause of action that Nieman may have against the City, which has not been released by this Agreement. Employee does not waive her rights under any claim for vested benefits under any retirement or savings plan applicable to her. This general release and waiver of claims shall not apply to any rights or claims arising after the Effective Date of the Agreement. This Agreement does not cover, affect, or alter any rights that cannot, by law, be released by agreement. This Section 3 also does not cover, affect, alter or release, the provisions set forth herein entitling Employee to the benefits set forth herein.

4. **Release by City.** Effective upon Nieman's release of claims in paragraph 3 and in consideration for the mutual promises and undertakings contained in this Agreement, the City, on behalf of itself and its council members, officers, employees and all other agents, directors, representatives, attorneys, successors and assigns, hereby waives, releases and discharges, and agrees that the City will not institute, prosecute or pursue any complaint, claim, charge, claim for relief, demand, suit, action and cause of action, whether in law or in equity, which the City has, had or may have, if any, or could assert against Nieman or her representatives, attorneys, successors and assigns, at common law or under any statute, rule, regulation, order or law, whether federal, state or local, on any ground whatsoever, known or unknown, which arises out of or relates in any way to his employment at the City.
5. **Employee's Rights.** Employee is entitled to receive the following payments or benefits whether or not she signs this Agreement: all vested retirement/pension benefits (if applicable), COBRA rights (if applicable), and all disability or other insurance or plan benefits to which she may be entitled.
6. **No Admission of Liability.** This Agreement is negotiated the liability for which, and the amount of damages for which, if any, are uncertain and unknown. Nothing contained in this Agreement shall be construed as an admission of liability by or on behalf of any party, all such liability being expressly denied.
7. **Severability and Jurisdiction.** If any of the provisions herein are determined to be invalid by a tribunal of competent jurisdiction, it is agreed that such determination will not affect the enforceability of the other provisions herein. Texas law shall govern the validity and interpretation of this Agreement.
8. **Preparation of Agreement.** This Agreement shall be interpreted in accordance with the plain meaning of its terms and not strictly for or against any of the parties hereto. Regardless of which party initially drafted this Agreement, it shall be construed and enforced as a mutually prepared Agreement.
9. **Attorney Consultation; Time to Consider.** The City hereby advises Nieman that he should consult with an attorney before executing this Agreement. Nieman shall have a period of up

to twenty-one (21) days after Nieman receives this Agreement within which to review and consider the provisions of this Agreement.

10. **Voluntary Agreement, Advice of Counsel and Return of Payments.** In signing this Agreement, Nieman expressly warrants that Nieman has read and fully understands this Agreement and acknowledges that this Agreement is voluntary and that no one is making or forcing Nieman to enter into it. Nieman understands and acknowledges that Nieman has seven (7) calendar days following the execution of this Agreement to revoke his acceptance of the Agreement. If Nieman chooses to revoke the Agreement during the 7-day revocation period, Nieman must inform the City in writing of his decision to revoke the Agreement. If Nieman signs this Agreement prior to the expiration on the 21-day period, the 7-day period commences on the date Nieman signs this Agreement. This Agreement will not become enforceable until the Effective Date of this Agreement and after the expiration of this 7-day period.
11. **Non-Assignment of Claims.** Nieman and the City represent that they have not assigned, transferred, or attempted to assign or transfer, to any person or entity, any of the claims released in this Agreement.
12. **Breach.** In the event one Party breaches any part or parts of this Agreement, legal proceedings may be instituted against that Party to enforce the Agreement. The Party found to be in breach of this Agreement shall reimburse the non-breaching Party for its reasonable costs and expenses, including attorneys' fees and costs, incurred in enforcing this Agreement.
13. **Binding Effect.** The City and Nieman agree that this Agreement will be binding on his and its heirs, administrators, representatives, executors, successors and assigns, and shall inure to the benefit of his or its heirs, administrators, affiliates, parent companies, representatives, executors, successors and assigns.
14. **Entire Understanding.** This Agreement constitutes the entire understanding of the parties and supersedes all prior agreements and understandings between the parties on the subjects covered.
15. **Effective Date.** As used in this Agreement, "the Effective Date of this Agreement" means the date on which all of the following events have been completed: this Agreement has been fully executed by Nieman and the City's Mayor and the revocation period has expired without Nieman revoking the Agreement.
16. **Amendment.** Except as otherwise provided in this Agreement, neither party may amend this Agreement without the prior written consent of the other party.

Agreed to:

The City of El Paso

By: \_\_\_\_\_  
Karla Nieman

By: \_\_\_\_\_  
\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date