

RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the Mayor be authorized to sign the attached City Manager Employment Agreement by and between the City of El Paso and Tomás González; and

That Tomás González is named City Manager for the City of El Paso effective June 23, 2014.

Dated this ____ day of May 2014.

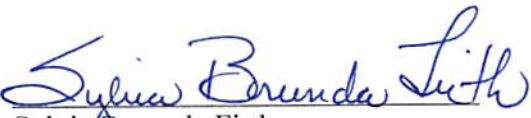
CITY OF EL PASO

Oscar Leaser
Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:



Sylvia Borunda Firth
City Attorney

CITY MANAGER EMPLOYMENT AGREEMENT

THE STATE OF TEXAS §
 § **KNOW ALL MEN BY THESE PRESENTS:**
COUNTY OF EL PASO §

THIS CITY MANAGER EMPLOYMENT AGREEMENT (“Agreement”) is made and entered into effective the ____ day of May 2014, by and between the City of El Paso, Texas, a Texas municipal corporation (the “City”) and Tomás González (the “Manager”).

WITNESSETH:

WHEREAS, the City Council of the City (the “Council”) and the Manager believe that an employment agreement negotiated between the Council, on behalf of the City, and the Manager can be mutually beneficial to the City, the Manager, and the community they serve;

WHEREAS, when appropriately structured, the Council and the Manager believe an employment agreement can strengthen the Council-Manager relationship by enhancing the excellence and continuity of the management of the City for the benefit of its citizens;

WHEREAS, the Council, on behalf of the City, desires to employ the services of the Manager, as the City Manager of the City, pursuant to the terms, conditions and provisions of this Agreement;

WHEREAS, the Manager has agreed to accept employment as the City Manager, subject to the terms, conditions and provisions of this Agreement.

NOW, THEREFORE, the City and the Manager, for and in consideration of the terms, conditions and provisions hereinafter established have agreed, and do hereby agree as follows:

I. TERM

1.1 **Term.** The term of this Agreement shall be for a term of five (5) years beginning on June 23, 2014 (the "Commencement Date") and ending on June 22, 2019, provided, however, that the term of this Agreement shall be subject to earlier termination by a Unilateral Severance (as defined and set forth in Section 6.4 below) at the pleasure of the Council.

1.2 **Extension.** The City may, by action of the Council, and with the consent and approval of the Manager, extend the term of this Agreement.

II. EMPLOYMENT

2.1 Chief Executive Officer. The Manager is the chief executive officer of the City and shall faithfully perform the duties of the City Manager as prescribed in City Charter, and City ordinances and, as may be lawfully assigned by the Council (collectively the "City Manager's Duties"). Further, the Manager shall comply with (collectively "Applicable Laws and Authorities"): state and federal law; the City's Charter; The City's Ethics Ordinance, all City resolutions, policies, rules, regulations and ordinances as they exist or may hereinafter be amended; and, all lawful Council directives. All duties assigned to the Manager by the Council shall be appropriate to and consistent with the professional role and responsibility of the City Manager position.

2.2 Duties. The Council does hereby employ Manager as City Manager to perform the City Manager's Duties in accordance with and pursuant to all Applicable Laws and Authorities and each of the following duties to the full extent not prohibited by or in material conflict with any existing provisions of the City's Charter or Applicable Laws and Authorities:

- a. Take all personnel actions regarding employees, except as provided by law or in this Charter. The City Manager may authorize the Deputy City Managers and department directors to exercise these powers with respect to their subordinates;
- b. Direct and supervise the administration of all departments, offices and agencies of the City, except as otherwise provided by this Charter or by law;
- c. Attend all City Council meetings. The City Manager shall have the right to take part in discussion but shall not vote;
- d. See that all laws, provisions of this Charter and acts of the City Council, subject to enforcement by the City Manager or by employees subject to the Manager's direction and supervision, are faithfully executed;
- e. Prepare and submit the annual budget and capital program to the City Council;
- f. Submit to the City Council and make available to the public a complete report on the finances and administrative activities of the City as of the end of each fiscal year;
- g. Make such other reports as the City Council may require concerning the operations of City departments, offices and agencies subject to the City Manager's direction and supervision;
- h. Keep the City Council fully advised as to the financial condition and future needs of the City;
- i. Make recommendations to the City Council concerning the affairs of the City;
- j. Provide support to the offices of the Mayor and the Representatives; and

- k. Perform such other duties as are specified in the Charter or may be required by the City Council.

The Manager shall perform the City Manager's Duties with reasonable care, diligence, skill and expertise.

2.3 Council Meetings. Except to the extent prohibited by or in material conflict with Applicable Laws and Authorities, the Manager or the Manager's designee shall attend, and shall be permitted to attend, all meetings of the Council, both public and closed, with the exception of those closed meetings devoted to the consideration of any action or lack of action on this Agreement, or any amendment thereto, the Manager's evaluation, or for purposes of resolving conflicts between individual Council members.

2.4 Criticisms, Complaints, and Suggestions. The Council, individually and collectively, shall refer in a timely manner all substantive criticisms, complaints, and suggestions called to the Council's attention to the Manager for study and/or appropriate action, and the Manager shall refer the matter(s) to the appropriate City employee or shall investigate such matter(s) and inform the Council of the results of such efforts.

2.5 Indemnification. To the extent it may be permitted to do so by applicable law, including, but not limited to Texas Civil Practice & Remedies Code Chapter 102, the City does hereby agree to defend, hold harmless, and indemnify Manager from any and all demands, claims, suits, actions, judgments, expenses and attorneys' fees incurred in any legal proceedings brought against Manager in the Manager's individual or official capacity as an employee and as City Manager, 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 Manager, as an employee of the City, acting within the course and scope of the Manager'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 that the Manager 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 Manager. The selection of the Manager's legal counsel shall be with the mutual agreement of the Manager and the City if such legal counsel is not also City's legal counsel. A legal defense may be provided through insurance coverage, in which case the Manager's right to agree to legal counsel provided for Manager will depend on the terms of the applicable insurance contract. To the extent this Paragraph 2.6 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 Paragraph 2.6 shall survive the termination, expiration or other end of this Agreement and/or the Manager's employment with the City.

2.6 Hours of Work. The Manager acknowledges the proper performance of the City Manager's Duties require the Manager to generally observe normal business hours and will also often require the performance of necessary services outside of normal business hours. The

Manager agrees to devote such additional time as is necessary for the full and proper performance of the City Manager'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 Manager, 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 City Manager. The Manager will devote full time and effort to the performance of the City Manager's Duties, and shall remain in the exclusive employ of the City during the term of this Agreement.

2.7 Outside Consultant Activities. Notwithstanding anything to the contrary in this Agreement, upon receipt of the prior written approval of the Mayor, the Manager may serve as a consultant and/or undertake speaking engagements, writing, teaching or other professional duties and obligations for other than the City and be paid for such activities (referred to collectively herein as "Consulting Services"); provided that these Consulting Services do not conflict or interfere with the Manager's professional responsibilities to the City, there is no expense to the City and will not result in a violation of the City's Ethic's Ordinance. Consulting Services provided by the Manager under the terms and conditions of this paragraph must be consistent with state and federal law.

2.8 Investments. Manager 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. City Manager further agrees, except for the Manager'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.

2.9 Residence. Manager shall maintain Manager's permanent residence within the City of El Paso during the term of this Agreement.

III. COMPENSATION

3.1 Salary. The City shall provide the Manager with an annual salary in the sum of **TWO HUNDRED THIRTY EIGHT THOUSAND NINE HUNDRED FIFTY NINE AND 82/100 DOLLARS (\$238,959.82)**. This annual salary rate shall be paid to the Manager in equal installments on the same schedule as other City employees and shall be paid net of any applicable withholding or deductions required by the Applicable Laws and Authorities.

3.2 Salary Adjustments. In no event shall the Manager'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 City employees, in which event the Manager's salary will be reduced by the same percentage.

The Manager shall be eligible for an annual merit increase equal to five percent (5%) of Manager's annual salary if Manager receives an "exceeds standards" rating on the annual

performance evaluation performed as set forth in paragraph 5 below. Merit increases shall be effective at the start of the fiscal year immediately following the annual performance evaluation.

3.3 Paid Leave – Vacation, Sick/Personal and Holiday. The Manager is credited with a beginning balance of eighty (80) hours of vacation and forty (40) hours of sick leave on the Commencement Date. Thereafter, the Manager will accrue and is hereby granted the same sick/personal leave benefits as authorized by El Paso Civil Service Rules. The Manager shall observe the same legal holidays as provided by the City for its administrative employees. The vacation leave taken by the Manager will be taken at such time or times as will least interfere with the performance of the City Manager's Duties and after receipt of written approval from the Mayor.

3.4 Insurance – Health. The City agrees to pay the premiums for health, hospitalization, vision, dental and comprehensive medical insurance for the Manager pursuant to the group health care plan provided by the City for its administrative employees, as they may be amended from time to time during the term of this Agreement

3.5 Retirement Benefit. The Manager is entitled to participate in the City's Pension Plan according to the terms of the Plan. Election to participate must be made upon signing this Agreement.

3.6 Deferred Compensation. The Manager shall receive an annual contribution to a 457 Deferred Compensation Plan in the maximum amount allowable by law, not to exceed FIFTEEN THOUSAND DOLLARS (\$15,000.00) per year and paid on the same schedule as salary payments. Upon resignation, termination prior to the expiration of this Agreement or Unilateral Severance, the annual deferred compensation amount will be prorated to the effective date of the resignation, termination or Unilateral Severance.

3.7 Automobile Allowance. The Manager shall receive an automobile allowance in the sum of Five Hundred Dollars (\$500.00) per month, which payment is in lieu of mileage expense reimbursement, gasoline or other vehicle upkeep charges. This allowance shall be paid in addition to the annual salary set forth in Paragraph 3.1 of this Agreement. The Manager shall acquire and maintain a vehicle suitable for use during the term of this Agreement which shall be available for the Manager's exclusive and unrestricted use in the performance of Manager's duties. The Manager shall be responsible for paying for and maintaining all liability, property damage and comprehensive insurance coverage upon the vehicle and shall further be responsible for all expenses attendant to the purchase, operation, maintenance and repair and regular replacement of the vehicle. The vehicle may be used by the Manager for Manager's personal use. The vehicle allowance will be prorated to the effective date of any resignation, termination or Unilateral Severance of the Manager. The allowance will be net all applicable withholding or deductions required by the Applicable Laws and Authorities.

3.8 Expenses. The City shall pay or reimburse the Manager for reasonable expenses incurred by the Manager in the continuing performance of the Manager's duties under this Agreement. The City agrees to pay the actual and incidental costs incurred by the Manager for travel in accordance with approved City Travel policies, rules and regulations. Such actual or

incidental costs may include, but are not limited to, gasoline, hotels and accommodations, meals, rental car, and other expenses incurred in the performance of the business of the City. The Manager shall comply with all procedures and documentation requirements in accordance with Applicable Laws and Authorities.

3.9 Bonds. The City shall bear the full cost of any fidelity or other bonds required of the Manager under any law or ordinance.

3.10 Relocation Expenses – Reimbursement. In connection with the necessary relocation of the Manager and the Manager's family to the City, the City shall reimburse the Manager for necessary and reasonable expenses incurred in moving and relocating the Manager's family and belongings, provided that the amount reimbursed by the City shall not exceed Ten Thousand Dollars (\$10,000.00). The Manager shall document all moving and relocation expenses with receipts, cancelled checks or credit card statements, and the City shall reimburse the Manager for all such documented expenses within thirty (30) days of the City's receipt of such documented expenses.

3.11 Housing Allowance – Temporary. The City shall pay to the Manager a housing allowance of **TWO THOUSAND FIVE HUNDRED AND 00/100 DOLLARS** (\$2,500.00) per month for the first six (6) months the Manager is employed by the City.

3.12 Relocation Commuting Expenses – Travel, Lodging and Meals. The City shall pay all reasonable and necessary travel expenses for the Manager's travel to and from the City, as well as related lodging and meals, incurred between the signing date of this Agreement and the Commencement Date; provided all travel, lodging and meal expenses must be in accordance with approved City policies.

3.13 Total Benefit and Compensation Package. The Manager will not be entitled to receive any other compensation or benefits from the City not specifically set forth in this Agreement. Manager agrees that Manager will at no time make a claim against the City for more than what is provided for under the terms of the Agreement.

IV. PROFESSIONAL GROWTH

4.1 Professional Dues and Subscriptions. The City agrees to budget for and to pay for professional dues and subscriptions of the Manager necessary for continuation and full participation in national, state, regional, and local associations and organizations as necessary and/or desirable for the good of the City through the Manager's continued professional participation, growth and advancement.

4.2 Professional Development Travel. The City agrees to budget for and to pay for travel and subsistence expenses of the Manager for professional and official travel and meetings to adequately continue the professional development of the Manager and to pursue necessary official functions for the City, including but not limited to the ICMA Annual Conference, the Texas Municipal League, the Texas City Management Association, and such other national,

regional, state and local governmental groups and committees in which the Manager is a member. All travel expenses will be paid in accordance with the City's Travel Policies.

4.3 Professional Continuing Education. The City also agrees to budget for and to pay for travel and subsistence expenses of Manager for short courses, institutes, and seminars that are necessary and/or desirable for the good of the City through the Manager's professional development.

V. PERFORMANCE EVALUATION

5.1 Evaluation Process. The Mayor and Council shall review the Manager's job performance at least once annually. The first annual review shall take place during the month of June 2015, and subsequent annual reviews will occur during the month of June each year thereafter in order to complete the evaluation prior to the adoption of the City's annual operating budget. The Mayor shall be responsible for completing the performance evaluation recommendation and submitting it to City Council for approval. The Council shall provide the Manager a reasonable and adequate opportunity to discuss with the Council and/or respond to the Manager's evaluation.

5.2 Confidentiality. Unless the Manager expressly requests otherwise in writing, except to the extent prohibited by or in material conflict with Applicable Laws and Authorities, the evaluation of the Manager 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 Manager from sharing the content of the Manager's evaluation with their respective legal counsel.

5.3 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 Manager shall be provided a reasonable period of time to demonstrate such expected performance before being evaluated.

5.4 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.

VI. TERMINATION

6.1 Termination Events. This Agreement shall terminate upon any of the following:

- a. Mutual agreement of the Council and Manager in writing and signed by them;
- b. Retirement or death of the Manager;

- c. Inability of the Manager to perform Manager's duties due to permanent disability, sickness, accident, injury, mental incapacity
- c. Termination of Manager's Employment for "good cause" (as defined in Paragraph 6.2 below);
- d. A Unilateral Severance (as defined and set forth in Section 6.3 below); or,
- e. Expiration of the term of this Agreement.

6.2 **"Good Cause"**. For purposes of this Agreement the term "good cause" is defined as follows:

- (a) Failure to fulfill the City Manager's Duties as required in this Agreement;
- (b) Incompetence or inefficiency in the performance of the City Manager's Duties as documented by evaluations, supplemental memoranda, or other written communication from the Council; provided, however, the terms and conditions of this paragraph shall not justify good cause unless the Council has provided the Manager a reasonable opportunity to remediate any incompetency or inefficiency;
- (c) Insubordination or failure to comply with lawful written Council directives;
- (d) Failure to comply with Applicable Laws and Authorities;
- (e) Neglect of duties;
- (f) Drunkenness or excessive use of alcoholic beverages or other intoxicating substances, including misuse of prescription medications;
- (g) Illegal use of drugs, hallucinogens, or other substances regulated by the Texas Controlled Substances Act;
- (h) Conviction of a felony or crime involving moral turpitude;
- (i) Immorality, which is conduct that is not in conformity with the accepted moral standards of the community encompassed by the City. Immorality is not confined to sexual matters, but includes conduct inconsistent with rectitude or indicative of corruption, indecency, or depravity;
- (k) Assault on an employee or citizen of the City;
- (l) Knowingly falsifying records or documents related to the City's activities;
- (m) Conscious misrepresentation of material facts to the Council or other City officials in the conduct of the City's business; or,

- (n) Any other reason constituting "good cause" under Texas law.

6.3 Unilateral Severance. As one of the termination events specified above in Paragraph 6.1, the Council may end the employment relationship and terminate this Agreement, at the pleasure of the Council, whether with or without good cause, upon written notice to the Manager and payment to the Manager of the Severance Amount (as defined below) and the Current Obligations. If the Council determines that it desires a Unilateral Severance, it shall provide written notice to the Manager at least thirty (30) days in advance of the effective date of such termination.

In the event the Council unilaterally elects to end the employment relationship and terminate the Agreement and without "good cause", the "Severance Amount" means the total amount of: (a) an amount equal to the value of twelve (12) months of the Manager's then current salary plus (b) the value of any accrued and unused vacation and sick/personal leave days and the "Current Obligations" including all salary and benefits under this Agreement payable or otherwise owing by City to Manager through and including the Severance Effective Date.

Conditioned upon the City fulfilling its obligations to pay the Severance Amount and the Current Obligations, upon a Unilateral Severance, the Manager waives and releases the Manager's rights to continued employment with the City and further compensation and benefits.

6.4 Resignation by Manager. In the event the Manager voluntarily resigns Manager's position with the City, then Manager shall provide thirty (30) days prior written notice in advance of the effective date, unless both parties agree otherwise. The City shall have no obligation to pay a Severance Amount in the event of a voluntary resignation by Manager. If the Manager resigns prior to the expiration of twelve (12) months of the Commencement Date of this Agreement, Manager shall be required to reimburse the City the amount spent on relocation costs, temporary housing, and relocation commuting expenses. If the Manager resigns and provides thirty (30) days prior written notice, Manager shall be entitled to payment of any accrued sick leave and vacation leave. In the absence of thirty (30) days prior written notice, Manager will not be paid any remuneration of any kind or nature, accrued or otherwise, including sick leave vacation pay or automobile allowance. By accepting this Agreement, Manager expressly authorizes the City to withhold any amounts due and owing to the City due to Manager's resignation from any sums due and owing to Manager upon separation.

6.5 Disability of Manager. If the Manager is permanently disabled or is otherwise unable to perform Manager's duties because of sickness, accident, injury, mental incapacity or otherwise for a period of twelve (12) weeks beyond any accrued and/or other sick leave properly credited to Manager's account, the City may terminate this Agreement, and the only compensation the Manager shall receive is accrued, sick leave, vacation and other accrued benefits. The Manager will not be entitled to a Severance Amount as specified in paragraph 6.3 above.

6.6 Termination for Good Cause. In the event the Manager is terminated for good cause at any time during the term of this Agreement, the City shall have no obligation to pay a Severance Amount and Current Obligations shall cease on the effective date of the termination.

6.7 **Expiration of Agreement.** If the employment arrangement is terminated because of expiration of the Agreement, Manager shall be entitled to receive payment for all accrued and unused vacation and sick leave only and no Insurance amount.

VII. GENERAL PROVISIONS

7.1 **Complete Agreement.** This Agreement sets forth and establishes the entire understanding between the City and the Manager relating to the employment of the Manager 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 signed agreement may amend any provision of this Agreement during the term of this Agreement; such amendments shall be incorporated and made a part of this Agreement.

7.2 **Binding Effect.** This Agreement shall be binding on the City and the Manager as well as their heirs, assigns, executors, personal representatives and successors in interest.

7.3 **Savings Clause.** If any term or provision of this Agreement, as applied to any party or to any circumstance, is declared by a court of competent jurisdiction hereof to be illegal, unenforceable or void, such determination shall not affect the validity or enforceability of the remaining terms and provisions hereof.

7.5 **Controlling Law And Venue.** This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Texas and all rights, duties and obligations shall be performable in El Paso County, Texas. In the event of a dispute arising hereunder, venue shall be in the appropriate court located in El Paso County, Texas.

7.6 **Notice.** Notice pursuant to this Agreement shall be given in writing and delivered by personal service or deposit in the custody of the United States Postal Service, postage prepaid, and addressed as follows:

If to **CITY:** City of El Paso
ATTN: Mayor
P.O. Box 1890
El Paso, Texas 79950

With copy to: City of El Paso
ATTN: City Attorney
P.O. Box 1890
El Paso, Texas 79950-1890

If to **MANAGER:** Tomás González

Notice shall be deemed delivered and received as of the date of personal service or if mailed, three business days after the date of deposit of such written notice in the course of

transmission in the United States Postal Service. Either party may, from time to time by written notice to the other party, designate a different address for notice purposes.

7.7 **Reasonable Attorney's Fees.** In the event either of the parties hereto, brings an action against the other party concerning or relating to this Agreement, the losing party agrees to pay the prevailing party reasonable attorneys' fees and court costs, to be affixed by the Court.

7.8 **Assignment.** Neither party may assign its rights, duties or obligations under this Agreement to any person or entity, in whole or in part, nor any attempt to assign rights, duties or obligations arising from this Agreement shall be void and deemed a material breach of this Agreement.

7.9 **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.

Executed and effective the _____ day of May, 2014.

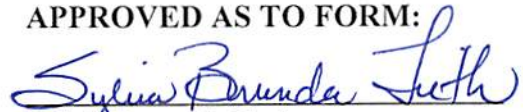
CITY OF EL PASO:

Oscar Leeser
Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:


Sylvia Borunda Firth
City Attorney

CITY MANAGER:

Printed Name: Tomás González