

**AMENDED AND RESTATED
CITY MANAGER EMPLOYMENT AGREEMENT**

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

THIS AMENDED AND RESTATED CITY MANAGER EMPLOYMENT AGREEMENT ("Agreement" on and after the effective date of this Amended and Restated Agreement) is made and entered into effective the 11th day of December 2018, by and between the City of El Paso, Texas, a Texas municipal corporation (the "City") and Tomás Gonzalez (the "Manager").

WITNESSETH:

WHEREAS, on May 20, 2014 the City and the Manager entered into a City Manager Employment Agreement which was subsequently amended on October 14, 2014 and August 31, 2015;

WHEREAS, the Original Initial Term under such Agreement provided that it would end on June 22, 2019, and pursuant to the provisions of the Initial Agreement, as amended, it was to extend and automatically renew for a one-year term, followed by additional evergreen renewals, unless the City were to elect to not renew the Agreement as provided therein;

WHEREAS, in anticipation of the Manager's continuing employment as is provided for in the current Agreement by and between the parties, the City and Manager desire to further amend the Agreement, as amended, as reflected in this Amended and Restated City Manager Employment Agreement, which amends and restates the Employment Agreement by and between the parties in its entirety as set forth herein.

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 is amended and restated to provide that the Original Initial Term of this Agreement shall end on June 22, 2019 and a new Initial Renewal Term of five (5) years shall begin on June 23, 2019 (the "Commencement Date") and end on June 22, 2024 (creating the "Initial Renewal Term"). Thereafter, the Agreement will automatically renew for terms of two (2) years ("Renewal Term") unless Council notifies the Manager not less than 120 days prior to the expiration of any Renewal Term that it intends not to renew the Agreement.

II. EMPLOYMENT

2.1 Chief Administrative Officer/Duties. The Manager is the chief administrative officer of the City and shall faithfully perform the duties of the Manager as prescribed in the City Charter, City ordinances and as may be lawfully assigned by the Council. 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 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 or for purposes of resolving conflicts between individual Council members.

2.3 Indemnification.

a. **Legal Proceedings.** To the extent permitted by applicable law, including, but not limited to Texas Civil Practice & Remedies Code Chapter 102, the City agrees to defend, hold harmless, and to indemnify Manager from any demands, claims, suits, actions, judgments, expenses, costs, and attorneys' fees arising out of, related to, or incurred in any legal proceedings brought against Manager his individual capacity in his official capacity as Manager, or in his general capacity as a City employee, in which the factual allegations underlying any legal proceeding arise out of or relate to, an alleged act or omission by Manager, acting within the course and scope of his employment by the City This clause (2.3 a) excludes a duty to indemnify Manager against any legal proceeding where it is finally determined by a tribunal of competent jurisdiction that Manager committed official misconduct, committed a willful or wrongful act or omission, committed an act or omission held to be gross negligence, or acted in bad faith, but this exclusion will not apply until after the exhaustion of all appeals in any legal proceeding contemplated by this clause (2.3 a). This clause (2.3 a) also excludes a duty to indemnify Manager for any costs, fees, expenses, settlements, or damages, recoverable or payable under an insurance contract held by the City or by Manager, but the City agrees to pay any deductible or self-insured retention amount required under any insurance policy that corresponds to any legal proceeding under this clause (23 a). To the extent that the provisions in this paragraph (2.3 a) exceed the authority provided and limitations imposed by to Texas Civil Practice & Remedies Code Chapter 102, the provisions will be construed and modified accordingly.

b. **Ethics Proceedings.** Notwithstanding any other provision of this Section, the Manager may request reimbursement for a legal defense should the Manager be named or have been named during the term of his employment as a respondent in a matter referred to the ethics review commission as a whole or otherwise be the respondent in a hearing before the ethics review commission. The City recognizes that there may be situations in which the employment of counsel to assist the Manager and the presentation of a vigorous defense can assist in the protection of the

process, which is on behalf of the public interest. The City Council may vote to reimburse the Manager for such defense, in accordance with the law, if the City Council finds that the provision of such defense is in the City's legitimate interest, and the Manager was acting in good faith and within the scope of his authority.

c. **Selection of Counsel.** Manager will have the right to select legal counsel to defend him in any legal or ethical proceeding contemplated by this paragraph (2.3), but Manager's selection of counsel will be subject to approval of the City. The City's approval will not be unreasonably withheld. Nothing in this Agreement will be construed to prevent Manger from retaining private counsel at his own expense to represent him in any legal or ethical proceeding. In addition, a legal defense may be provided to Manager through insurance coverage, in which case the parties' respective rights to select and to approve legal counsel will be subject to the terms of the applicable insurance contract.

d. **Insurance Coverage.** Nothing in this Section affects or serves to limit the coverage that may apply to the benefit or protection of Manager 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 Manager may seek coverage and protection as may be available to him, to include but not be limited to the provision of a legal defense, directly from the City's insurance carrier and the Manager is not required to obtain any permission from the City Council or any officer or employee 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 Manager before any such insurance is canceled or not renewed or replaced with substantially similar coverage from a different carrier.

e. **Survival.** The provisions of this Paragraph 2.3 shall survive the termination, expiration or other end of this Agreement, the Manager's employment with the City, or both.

2.4 Hours of Work. The Manager acknowledges the proper performance of the 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 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 as is customary for executive-exempt employees so long as the time off does not interfere with the normal conduct of the office of the City Manager. Except as permitted in Paragraph 2.5, 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.

2.5 Outside Consultant Activities. Notwithstanding anything to the contrary in this Agreement, after providing written notice to the Mayor and City Council and review and response by the City Attorney, 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 and there is no expense to the City. Consulting Services provided by the Manager under the terms and conditions of this paragraph must be consistent with state and federal law.

2.6 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. 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.

2.7 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 base salary in the sum of Three Hundred Thirty Thousand Seven Hundred Fifty and 00/100 dollars (\$330,750.00). This annual base 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.

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

b. The Manager 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 employees 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 to its other administrative, non-collective bargaining employees of the City, the Manager shall also be eligible to receive such benefit in the same manner.

c. The Manager shall be eligible for an annual merit increase equal to five percent (5%) of the Manager's annual base salary if the Manager receives an "exceeds standards" rating on the annual performance evaluation performed as set forth in Paragraph V below. Merit

increases shall be effective at the start of the next pay period following the approval of the performance evaluation by the City Council or at the start of the fiscal year immediately following the annual performance evaluation, whichever occurs first.

d. During the term of this Agreement and commensurate with the conduct of the Manager's annual performance evaluation, the City shall annually conduct a market-based review of the base salary of the Manager in comparison to the base salary of the city managers in Arlington, TX, Austin, TX, Dallas, TX, Fort Worth, TX, San Antonio, TX, Oklahoma City, OK, Phoenix, AZ and Tucson, AZ ("Comparison Cities"), and El Paso, TX ("Benchmark City"). In the event that after adding a merit increase, if any is earned, to the base salary, the Manager's base salary is below the average base salary of the Comparison Cities the Manager's base salary will be increased to the amount of the average base salary of the Comparison Cities effective at the start of the pay period following the approval of the performance evaluation by the City Council or at the start of the fiscal year immediately following the review, whichever occurs first.

3.3 Vacation, Sick Leave and Holidays.

a. Continuing Accrual and Use of Leave. The Manager shall continue to accrue sick leave benefits as authorized by El Paso Civil Service Rules and continue to be granted one hundred sixty (160) hours of vacation leave every fiscal year. The Manager shall maintain his vacation and sick leave, in the amounts reflected in the official records of the City, that he has accrued or been granted through the date of this Amendment to the Agreement. The vacation leave taken by the Manager will be taken at such time or times as will least interfere with the performance of his duties. The Manager may use such sick leave, including the use of sick leave as personal time, in accordance with El Paso Civil Service Rules and Procedures.

b. One-time Grant for Initial Renewal Term. Upon the start of the Initial Renewal Term under this Amended and Restated Agreement on June 23, 2019, the Manager will be granted a one-time additional amount of one hundred sixty (160) hours of vacation and eighty (80) hours of sick leave as of the pay period in which June 23, 2019 falls. The use of such leave is subject to the provisions under paragraph 3.3 a, and the maximum accrual under paragraph 3.3 c.

c. Maximum Accrual. The Manager may be granted and 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 this maximum amount shall be permanently withdrawn from the Manager's leave balances in the pay period in which his anniversary date of employment falls, which, for this purpose, is declared to be June 23rd, or upon the termination of this Agreement. The Manager may accrue an unlimited amount of sick leave, to include amounts of sick leave granted in lump sums. In the event of the termination of this Agreement and the City is obligated under a provision in Paragraph VI to make a lump sum payment for the Manager's vacation and sick leave, the maximum amount of such payment shall not exceed the hourly equivalent of six months of vacation and six months of sick leave, and after making a required lump sum payment for up to six months of the Employee's sick leave, the Manager has remaining granted and/or accrued sick leave, the Manager will be entitled to use any or all amounts of such sick leave for the purpose of adding to his credited service as may be allowed under the City's Pension Ordinance and Pension Plan.

d. **Holidays.** The Manager shall observe the same legal holidays as provided by the City for its non-collective bargaining administrative employees.

3.4 Health Insurance. Manager's eligibility for enrollment in the City's insurance plans for health, hospitalization, vision, dental and comprehensive medical insurance for the Manager shall continue pursuant to the group health care plan provided by the City for its non-collective bargaining administrative employees, as they may be amended from time to time during the term of this Agreement.

In addition to the health insurance benefits provided to City employees, the Manager shall be entitled to an annual Executive Health Exam at the Cooper Clinic for Preventative Medicine in Dallas, Texas. The City shall bear the cost of the core components of an Executive Health Exam and such additional services as may be medically indicated. All follow up treatments, procedures, prescriptions, etc. will be provided to Manager in accordance with the terms and conditions of the Manager's chosen health insurance plan coverage. The City shall bear the expense of travel and accommodations to Dallas by Manager for the annual examination, as well as any follow-up travel and accommodations costs as may be necessary in an amount not to exceed \$2,500 annually. All time necessary to undergo the physical and any follow up treatments, procedures, etc. shall be deducted from Manager's granted and/or accrued sick leave. It is understood and agreed to by the parties that the City bears no responsibility for continuing any coverage or payments under this paragraph as part of any severance payment that may be owed to Manager.

3.5 Life Insurance. During the Manager's continued employment with the City, the City shall pay the annual premium for the purchase of a 30-year level premium term life insurance policy on the life of the Manager in the amount of \$5 million, such premium payment constituting additional taxable compensation to Manager. The term life insurance policy provided here under shall be owned by the Manager or such Third Party as Manager may designate, with the Manager having the sole right to determine the beneficiaries under the life insurance policy. If the Manager chooses to obtain any additional life insurance or to continue paying the annual premiums after his employment with the City has ended, he 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 any payments or coverage under this paragraph as part of any severance payment that may be owed to Manager.

3.6 Disability Insurance. During the Manager's continued employment with the City, the City will, in accordance with and as allowed by law, reimburse the Manager for the costs of premiums for any long term and/or short-term disability insurance policies (not to include a City-offered coverage) that the Manager may wish to procure to cover himself which provides for a monthly benefit that is no more than eighty (80%) of the Manager's monthly salary. It is understood and agreed to by the parties that the City bears no responsibility for continuing any payments or coverage under this paragraph as part of any severance payment that may be owed to Manager.

3.7 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 have been made upon signing

this Agreement in 2014. In the event of the termination, expiration or other end of this Agreement, the Manager's employment with the City, or both (hereafter "Termination") prior to June 22, 2021 or such other date that the Manager vests in the City's Pension plan based on the computation of time in service under the City's Pension Plan if such date is earlier than June 22, 2021 (hereafter "Vesting Date"), the City shall pay a lump sum to the Manager an amount that is equal to the amount of contributions the City would have otherwise made to the Pension Fund on behalf of the Manager based on his salary at the time of the Termination for the time between the date of the Termination and the Vesting Date.

3.8 Deferred Compensation Payments. On or after the effective date of this Amended and Restated Agreement and on or before December 31, 2018, the Manager will receive a lump sum contribution from the City in the amount of \$20,000.00 to a 401(a) Deferred Compensation Plan, or such other amount that does not cause the maximum annual amount of contribution for calendar year 2018 to be exceeded, whichever is less, and thereafter within 10 business days after January 1st of each year this Agreement is in effect, the Manager shall receive an annual, lump sum contribution from the City in the maximum amount allowable by law to a 401(a) Deferred Compensation Plan.

3.9 Automobile Allowance. The Manager shall receive an automobile allowance in the sum of Two Hundred Thirty Dollars and 77/100 (\$230.77) bi-weekly, which payment is in lieu of mileage expense reimbursement, gasoline or other vehicle upkeep charges. This allowance shall be paid in in the same manner and in addition to the annual base 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 appropriate 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 or termination of the Manager. The allowance will be net all applicable withholding or deductions required by the Applicable Laws and Authorities.

3.10 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.

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

3.12 Total Benefit and Compensation Package. The Manager will not be entitled to receive any other compensation or benefits from the City except as set forth in this Agreement, in accordance with paragraph 2.3 (a)(b)(c)(d), and in accordance with Texas law.

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 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 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. The annual performance reviews and evaluations shall be reasonably related to the Manager's written job description and shall be based on goals for the Manager's performance that are jointly developed and adopted by the City Council and the Manager.

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.

VI. TERMINATION & COMPENSATION UPON TERMINATION

6.1 Termination Events. Manager's employment under this Agreement shall terminate upon any of the following:

a. Mutual Agreement of the Council and Manager in writing and signed by the City and the Manager.

b. Retirement, Resignation or Death of the Manager.

c. Termination of Manager's Employment by the City for "Good Cause." Prior to moving to terminate the Manager for good cause under clause (2)(a), or a negligent or grossly negligent act under clause (2)(d) below, the City, by and through the Mayor, will provide Manager with not less than 60 days written notice of the act or omission at issue and a reasonable opportunity to respond and cure the issue cited in the notice.

(1) The City may terminate the Manager's employment under this Agreement for "good cause" as defined below.

(2) "Good Cause" for purposes of this Agreement means:

(a) Any willful, knowing, grossly negligent, or negligent breach, disregard or habitual neglect of any provision of this Agreement, or any willful, knowing, grossly negligent, or negligent breach, disregard or habitual neglect of any duty or obligation required to be performed by Manager under this Agreement or under the City Charter and ordinances of the City and/or the laws of the United States or the State of Texas;

(b) Any misconduct of the Manager involving an act of moral turpitude, whether or not related to Manager's official duties hereunder;

(c) Conviction of a felony involving moral turpitude;

(d) Any willful, knowing, grossly negligent, or negligent misapplication or misuse, direct or indirect, by Manager of public or other funds or other property, real, personal, or mixed, owned by or entrusted to the City, any agency or corporation thereof, or the Manager in his official capacity;

(e) Disability, not otherwise protected by law, when in the written opinion of a qualified physician reasonably agreed to by the City and the Manager, the Manager is unable to perform his duties hereunder due to disability after a period of twelve (12) weeks beyond any granted and/or accrued sick leave properly credited to Manager's account;

- (f) Knowingly falsifying records or documents related to the City's activities;
or
- (g) The illegal use of drugs, hallucinogens or other substances regulated by state law, or being under the influence of such substances while on duty.

d. Termination of Manager's Employment Without Good Cause. The City may terminate the Manager's employment under this Agreement without "good cause" as defined above and after providing Manager with not less than 120 days written notice of its intent to terminate his employment.

e. Manager's Resignation. The Manager may terminate this Agreement for any reason upon 120 days written notice to the City.

f. Non-Renewal of Agreement. The City may elect to not renew this Agreement for any reason after providing 120 days written notice to Manager of its intention not renew. For avoidance of doubt, if the City does not provide 120 days written notice of its intention not to renew, the Agreement will automatically renew at the conclusion of the then existing term, and there is nothing in this Amended and Restated Agreement that precludes the City from electing to not renew this Agreement upon the conclusion of the Original Initial Term.

6.2 Compensation Upon Termination

a. Death. If the Manager's employment is terminated by his death, the City shall pay to the Manager's designated beneficiary his base salary plus his automobile allowance owed through the date of his death.

b. Termination by the City With Good Cause. If the Manager's employment is terminated by the City for Good Cause for a reason other than those reasons set forth in paragraph 6.1 c (2) (b), (c) or (f), the City shall pay the Manager his base salary and benefits through the date of termination plus all accrued and/or granted but unused vacation and sick leave as provided in paragraph 3.3 c, and his automobile allowance to the date of termination of the Agreement. These payments will be made in the manner required by law. If the Manager's employment is terminated by the City for Good Cause for a reason set for the in paragraph 6.1 c (2)(b), (c) or (f), the City shall have no obligation to pay any Severance Payment and current obligations shall cease on the effective date of the termination.

c. Termination by the City Without Good Cause. If the City terminates the Manager's employment without Good Cause, then the City shall pay the Manager:

- (1) **Severance Payment.** A Severance Payment consisting of 12 months of Manager's then current base salary and benefits. The Severance Payment shall be paid in one lump sum.
- (2) **Accrued Obligations.** In addition to the Severance Payment, the City shall pay the Manager, in the manner required by law, the Accrued Obligations consisting of a) his base salary to the date of termination of the Agreement, b) all granted and/or accrued but unused

vacation and sick leave as provided in paragraph 3.3 c, and c) his automobile allowance to the date of termination of the Agreement.

d. **Resignation by Manager.** If the Manager resigns his employment with not less than 120 days written notice, the City shall pay the Manager:

(1) **Severance Payment.** A Severance Payment consisting of 12 months of Manager's then current base salary and benefits. The Severance Payment shall be paid in one lump sum

(2) **Accrued Obligations.** In addition to the Severance Payment, the City shall pay the Manager the Accrued Obligations consisting of a) his base salary to the date of termination of the Agreement, b) all granted and/or accrued but unused vacation and sick leave as provided in paragraph 3.3 c, and c) his automobile allowance to the date of termination of the Agreement.

In the absence of 120 days prior written notice, Manager will not be paid any remuneration of any kind or nature accrued or otherwise including sick leave and vacation payout. By accepting this Amended and Restated 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.

e. **Non-Renewal of Agreement.** If the City elects not to renew this Agreement at the expiration of the Original Initial Term, the Initial Renewal Term or any Renewal Term, the City shall pay the Manager:

(1) **Severance Payment.** A Severance Payment consisting 12 months of Manager's then current base salary and benefits. The Severance Payment shall be paid in one lump sum within 30 days of the date of termination.

(2) **Accrued Obligations.** In addition to the Severance Payment, the City shall pay the Manager the Accrued Obligations consisting of a) his base salary to the date of termination of the Agreement b) all granted and/or accrued but unused vacation and sick leave as provided in paragraph 3.3 c, and c) his automobile allowance to the date of termination of the Agreement. The Accrued Obligations will be paid in the manner required by law.

f. **Payments in Accordance with the Law.** All payments under this paragraph shall be made as of the last day of this Agreement or the date of termination of employment, as applicable, in the manner required by law for the payment of final salary and expenses owed to an employee.

g. **Definition of Benefits Under Subparagraphs 6.2 b, c(2), d(2) and e(2).** For the purposes of the provisions in subparagraphs 6.2 b, c(2), d(2) and e(2), the term "benefits" is defined as all benefits set forth under Paragraphs 3.8, 3.9, 3.10 and 3.11, and 3.7 to the extent it may be applicable, and excludes the benefits under paragraph 3.3, which are included within the provisions relating to the payment of accrued vacation and sick leave and any benefit in paragraphs 3.4, 3.5 and 3.6, which specifically state that the obligations under these provisions are not part of any severance payment that may be owed to Manager. Whenever this contract

provides that benefits are included in a severance payment that is to be paid in a lump sum, the payment of deferred compensation will be paid on the first business day after the next following January 1st in compliance with federal law.

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 and amends and restates the Employment Agreement dated May 20, 2014 by and between the parties, as amended, in its entirety. 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.

7.4 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.

7.5 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: Tomas Gonzalez
To the address on file with the Human Resources Department

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.

7.8 **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.

7.8 **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 11th day of December 2018.

CITY OF EL PASO:



Dee Margo
Mayor

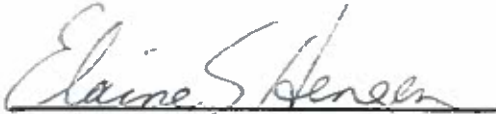
ATTEST:

APPROVED AS TO FORM:






Laura Prine
City Clerk



Elaine S. Hengen
Bojorquez Law Firm, P.C.,
Outside counsel

CITY MANAGER:



Tomás Gonzalez