

Elia Garcia
Mayor
Rene Rodriguez
At Large
Cesar Nevarez
District 1 / Mayor Pro Tem



Ralph Duran
District 2
Victor Perez
District 3
Yvonne Colon-Villalobos
District 4
Adriana Rodarte
City Manager

February 13, 2020

TO: CITY COUNCIL MEMBERS

FROM: City Manager, Adriana Rodarte

SUBJECT: DISCUSSION AND ACTION ON CITY MANAGER'S CONTRACT.

SUMMARY

City Manager's Contract ends on March 1, 2020.

STATEMENT OF THE ISSUE

Same as above

FINANCIAL IMPACT

Account Code (GF/GL/Dept): GF / 05520 / 10

Funding Source: General Fund

Amount: N/A

Quotes (Name/Commodity/Price) N/A

Co-op Agreement (Name/Contract#) N/A

ALTERNATIVE

N/A

STAFF RECOMMENDATION

N/A

REQUIRED AUTHORIZATION

1. City Manager _____ Date _____

2. Finance Director _____ Date _____

3. Attorney _____ Date _____

CITY MANAGER EMPLOYMENT AGREEMENT

This Employment Agreement ("Agreement") is entered into between the City of Socorro (the "City") and Adriana Rodarte ("City Manager").

The City and the City Manager (collectively the "Parties"), for and in consideration of the terms stated in this Agreement, hereby agree as follows:

1. **Employment and Term.** The City agrees to employ the City Manager for a period of twenty-four (24) months, beginning on March 1, 2018 and ending on March 1, 2020, unless such employment is otherwise terminated as set forth herein. This Agreement does not automatically renew. Rather, after the term of this Agreement ends, if the City Manager is allowed to continue as City Manager, it shall be at the will and pleasure of the City Council.
2. **Credentials.** The City Manager represents that any records or information provided in connection with her employment application are true and correct.
3. **Residency.** The City Manager shall maintain her primary residence in the City of Socorro.
4. **Representations.** At the beginning of this Agreement, and at any time during this Agreement, the City Manager agrees to submit to a review of his or her national criminal history record information, if required by the City. The City Manager also agrees to notify the City, in writing, of any arrest or of any indictment, conviction, no contest or guilty plea, or other adjudication of the City Manager, before or during the City Manager's employment.
5. **Duties.** The City Manager agrees to perform the duties of City Manager for the City as prescribed in the City Charter, City ordinances, and as may be assigned by the Socorro City Council. City Manager shall perform those duties with reasonable care, skill, and diligence. City Manager shall comply with all City Council directives, state and federal law and rules, City policy, and regulations as they exist or may hereafter be amended. The provisions of the Socorro City Charter that affect or relate to the City Manager's employment, duties and removal are incorporated into this Agreement by reference. Texas law shall govern construction of this Agreement.
6. **Evaluations.** The Socorro City Council shall provide a written evaluation of the City Manager every six (6) months.
7. **No Outside Employment:** The City Manager agrees to devote her full time, skill, labor, and attention to performing her duties. The City Manager shall not perform work, either as an employee or independent contractor, for any other person or entity without the approval of City Council. If outside employment is ever authorized by City Council, the City Manager agrees to comply with applicable ethics rules, laws, and City policies regarding reporting potential and actual conflicts of interest. In addition, the City Manager agrees to provide information regarding income from such activities to the City as necessary for financial reporting requirements.
8. **Compensation and Discretionary Bonus.** The City agrees to pay the City Manager an annual salary of \$120,000.00. At the end of the first twelve (12) months of this Agreement, the City

Manager shall be eligible for a bonus up to and not to exceed Three Percent (3%) of City Manager's annual salary, which is contingent on the receipt of a favorable written evaluation from City Council. At the end of the second twelve (12) months of this Agreement, the City Manager shall be eligible for a bonus up to and not to exceed Five Percent (5%) of City Manager's annual salary, which is contingent on the receipt of a favorable written evaluation from City Council.

9. **Standard Benefits:** The City shall provide benefits, including health insurance and vacation pay, to the City Manager as a full-time employee of City and as provided by Texas law and City policies. The City reserves the right to amend its policies at any time during the term of this Agreement to reduce or increase these benefits, at the City's sole discretion.
10. **Additional Benefits:** In addition to the Standard Benefits, referred to above, the City shall provide to City Manager the following Additional Benefits:
 - 10.1 **Automobile:** Monthly automobile allowance of \$600.00;
 - 10.2 **Retirement Plan:** Access to the City's Nationwide Insurance administered, 457(b) retirement plan wherein the City will match City Manager's monthly contribution up to 5% of City Manager's salary subject to the maximum tax deferred contribution permitted under the plan; and
 - 10.3 **Life Insurance:** Life Insurance, subject to any necessary health qualifications, of \$100,000.00.
 - 10.4 **Business Expenses:** The City shall pay or reimburse the City Manager for reasonable and necessary expenses incurred by the City Manager in the continuing performance of the City Manager's duties under this Contract. The City agrees to pay the actual and incidental costs incurred by the City Manager for travel, excluding mileage expense reimbursement for travel to destinations within El Paso County. Such costs may include, but are not limited to, airline tickets, hotels and accommodations, meals, rental cars, and other expenses incurred in the performance of the business of the City. Reimbursement for such expenses shall include reasonable expenses incurred by the City Manager for meals with business, civic and local government leaders and members of the City Council, when appropriate. The City Manager shall comply with all applicable laws, policies, procedures and documentation requirements in accordance with established policy and procedures, which shall be subject to review by the City's independent auditors. The City Manager shall report to the City, on no less than a quarterly basis, all expenses and travel by her covered by this section.
 - 10.5 **Professional Association and Continuing Education:** The City shall pay for reasonable and appropriate (a) professional dues and subscriptions of the City Manager necessary for participation in municipal and managerial associations and organizations; and (b) professional development seminars and short courses.
 - 10.6 **Civic Activities:** The City Manager is encouraged to participate in community and civic

organizations and activities. The cost of reasonable and appropriate activities shall be paid by the City.

11. Termination and Suspension.

11.1 Suspension: The City may suspend the City Manager's employment, with pay, at any time.

11.2 Termination (Good Cause): The City may terminate this Agreement for "good cause." The term "good cause" means: (i) any act or omission committed by City Manager after the City has notified City Manager that the same or substantially similar act or omission previously committed by City Manager is contrary to the policies, procedures and standards established by the City; (ii) any other failure by City Manager to perform City Manager's duties; (iii) any act of dishonesty, fraud, negligence or misconduct by City Manager or conduct by City Manager that is unprofessional, unethical, or detrimental to the reputation, character, or standing of the City, including without limitation any arrest, indictment or conviction for any criminal offense, not including minor traffic violations; and (iv) any other material breach of this Agreement by City Manager.

11.3 Severance if Termination Without Good Cause: If the City terminates this Agreement without good cause, the City shall pay the City Manager, as severance pay, a sum equal to the lesser of (a) an amount equal to six months of City Manager's salary (excluding insurance, accrued leave and other non-salary benefits), or (b) an amount equal to City Manager's salary for the remaining term of this Agreement. City Manager is not entitled to a severance payment under any other circumstance.

11.4 Termination (Death): This Agreement shall be automatically terminated upon the death of City Manager.

11.5 Termination (Disability): This Agreement shall terminate if City Manager is unable to perform the essential job functions of the position with reasonable accommodation.

12. Notice to City Council Prior to Vacation or Leave: City Manager shall notify City Council at least five days in advance of taking vacation or personal leave, unless an emergency, illness or other unforeseeable event makes such notice impractical.

13. Legal Defense and Indemnity:

13.1 Indemnification: To the extent it may be permitted to do by applicable law, including, but not limited to Chapter 102 of the Texas Civil Practice & Remedies Code, the City does hereby agree to defend, hold harmless, and indemnify City Manager from any and all demands, claims, suits, actions, judgments, expenses and attorneys' fees incurred in any legal proceedings brought against City Manager in the City 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 City Manager, as an employee of the City, acting within the course and scope of the City 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 City Manager. The selection of the City Manager's legal counsel shall be with the mutual agreement of the City 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 City Manager's right to agree to legal counsel provided for him will depend on the terms of the applicable insurance contract. To the extent this Paragraph exceeds the authority provided and limitations imposed by Chapter 102 of the Texas Civil Practice & Remedies Code, it shall be construed and modified accordingly.

- 13.2 **City's liability insurance:** The City may purchase insurance to provide a legal defense to the City Manager in connection with claims for which the City Manager is entitled to indemnification as set forth in Paragraph 11.1.
- 13.3 **Legal Defense for claims not covered by insurance:** The City will directly provide a legal defense to the City Manager when: (a) the City Manager is entitled to indemnification as set forth in Paragraph 11.1.; and (b) either the City does not possess insurance or the City's insurance carrier refuses to accept responsibility to defend such claim.
- 13.4 **Request:** The City Manager must submit a written request for legal defense to the City, the request must include a copy of the demand, summons or other legal papers evidencing the claim or cause of action;
- 13.5 **Reasonable Cooperation.** City Manager agrees to immediately deliver a copy of any summons or other legal process served upon City Manager to the City's City Clerk and City Attorneys and provide reasonable assistance to and cooperate with the City, its Mayor, agents, employees and attorneys in response to any legal proceeding or claims brought against the City, its Mayor, agents and employees. The City shall pay or reimburse the City Manager for all reasonable expenses incurred by City Manager in the course of fulfilling the obligation of reasonable assistance and cooperation pursuant to this Section including, but not limited to, expenses for travel, meals and overnight stays.
- 13.6 **Survival:** The City's obligation to provide a legal defense to the City Manager under this paragraph shall survive the termination of this Agreement.

14. **General Provisions.**

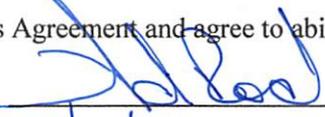
- 14.1 **Amendment:** This Agreement may not be amended except by written agreement of the Parties.

- 14.2 **Severability:** If any provision in this Agreement is, for any reason, held to be invalid, illegal, or unenforceable, such invalidity, illegality, or unenforceability shall not affect any other provision of the Agreement. This Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been a part of the Agreement.
- 14.3 **Entire Agreement:** All existing agreements and contracts, both verbal and written, between the Parties regarding the employment of the City Manager are superseded by this Agreement. This Agreement, and any addenda, constitutes the entire agreement between the Parties.
- 14.4 **Applicable Law and Venue:** Texas law shall govern construction of this Agreement. The Parties agree that venue for any litigation relating to the City Manager's employment with the City, including this Agreement, shall be in El Paso County, Texas. If litigation is brought in federal court, the Parties agree that venue shall be with the El Paso Division of the United States District Court for the Western District of Texas.
- 14.5 **Paragraph Headings:** The headings used at the beginning of each numbered paragraph in this Agreement are not intended to have any legal effect; the headings do not limit or expand the meaning of the paragraphs that follow them.
- 14.6 **No Property Interest:** The City has not adopted any policy, rule, regulation, law, or practice providing for tenure. No right of tenure is created by this Agreement. No property interest, express or implied, is created in continued employment under this Contract.
- 14.7 **Joint Drafting of Agreement:** Should any of the terms of this Agreement be determined to be ambiguous, it shall be presumed that both parties drafted this document and the terms of the document will not be construed against either party.

15. **Notices.**

- 15.1 **To the City Manager:** The City Manager agrees to keep a current address on file with the City's human resources office. The City Manager agrees that the City may meet any legal obligation it has to give the City Manager written notice regarding this Agreement or the City Manager's employment by hand-delivering the notice to the City Manager or by sending the notice by certified mail, regular mail, and/or express delivery service to the City Manager's address of record.
- 15.2 **To the City:** The City agrees that the City Manager may meet any legal obligation he or she has to give the City written notice regarding this Agreement or the City Manager's employment by providing one copy of the notice to the Mayor and one copy to the City Clerk. The City Manager may provide such notices by hand delivery, or by certified mail, regular mail, and/or express delivery service.

I have read this Agreement and agree to abide by its terms and conditions:

City Manager: 

Date signed: 3/7/18

City of Socorro

By: *W. Davis*
Mayor

Date signed: 3-7-18