

**CITY OF EL PASO, TEXAS
AGENDA ITEM
AGENDA SUMMARY FORM**

DEPARTMENT: Mayor and Council

AGENDA DATE: June 20, 2023

CONTACT PERSON NAME AND PHONE NUMBER: Mayor Oscar Leeser
(915) 212-0021

DISTRICT(S) AFFECTED: All

STRATEGIC GOAL: Goal 6 Set the Standard for Sound Governance and Fiscal Management

SUBJECT:

APPROVE a resolution / ordinance / lease to do what? OR AUTHORIZE the City Manager to do what? Be descriptive of what we want Council to approve. Include \$ amount if applicable.

Discussion and action on the Mutual Release between the City of El Paso and the City Manager relating to his separation from employment.

BACKGROUND / DISCUSSION:

Discussion of the what, why, where, when, and how to enable Council to have reasonably complete description of the contemplated action. This should include attachment of bid tabulation, or ordinance or resolution if appropriate. What are the benefits to the City of this action? What are the citizen concerns?

The City Council and City Manager have agreed to terms related to the City Manager's separation from the City to ensure a smooth transition for the City of El Paso.

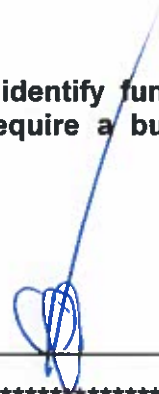
PRIOR COUNCIL ACTION:

Has the Council previously considered this item or a closely related one?

City Council took action on February 28, 2023, to provide the contractual 120 day notice of termination without cause to the City Manager, Tommy Gonzalez. Per the relevant Employment Agreement, Exhibit "A", the parties shall enter into a Mutual Release.

AMOUNT AND SOURCE OF FUNDING:

How will this item be funded? Has the item been budgeted? If so, identify funding source by account numbers and description of account. Does it require a budget transfer?



*****REQUIRED AUTHORIZATION*****



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 Tomas Gonzalez (hereinafter referred to as “Gonzalez”) from the City of El Paso (hereinafter referred to as the “City”).

1. **Separation & Last Day Worked.** the City and the Manager entered into the Amended and Restated City Manager Employment Agreement dated effective December 11, 2018, which was subsequently amended by the parties, and which memorializes the basic terms of employment and includes provisions relating to severance pay to which Gonzalez is entitled under certain circumstances (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 June 29, 2023 Gonzalez separated from employment as the City Manager as the City of El Paso (“Manager”) 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, Gonzalez and the City agree to release any and all claims that either may have against the other concerning Gonzalez’ employment and separation from employment and following such release, the City shall pay the Severance Payment described in the Employment Agreement in the total amount of Eight Hundred Eighty-nine Thousand Nine Hundred Seventy-nine and 54/100 Dollars (\$889,979.54), which has been separately set forth and disclosed with Gonzalez. The Severance Payment will be in the form of a lump sum distribution and will be subject to normal withholdings for taxes and other applicable deductions and will be paid to Gonzalez no later than fourteen days after the Effective Date of this Agreement.
3. **Release of Claims by Gonzalez.** Effective upon payment of the Severance Payment described in Paragraph 2 above and in consideration for the mutual promises and undertakings contained in this Agreement, Gonzalez hereby waives, releases and discharges, and agrees that Gonzalez 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 Gonzalez 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

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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. Gonzalez also affirms that Gonzalez 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 Gonzalez is unaware of any claim, right, demand, debt, action, obligation, liability or cause of action that Gonzalez may have against the City, which has not been released by this Agreement.

4. **Release by City.** Effective upon Gonzalez'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 Gonzalez or his 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. **No Admission of Liability.** This Agreement is a compromise of disputed claims, 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..
6. **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. .
7. **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.
8. **Attorney Consultation; Time to Consider.** The City hereby advises Gonzalez that he should consult with an attorney before executing this Agreement. Gonzalez shall have a period of up to twenty-one (21) days after Gonzalez receives this Agreement within which to review and consider the provisions of this Agreement.
9. **Voluntary Agreement, Advice of Counsel and Return of Payments.** In signing this Agreement, Gonzalez expressly warrants that Gonzalez has read and fully understands this Agreement and acknowledges that this Agreement is voluntary and that no one is making or

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forcing Gonzalez to enter into it. Gonzalez understands and acknowledges that Gonzalez has seven (7) calendar days following the execution of this Agreement to revoke his acceptance of the Agreement. If Gonzalez chooses to revoke the Agreement during the 7-day revocation period, Gonzalez must inform the City in writing of his decision to revoke the Agreement. If Gonzalez signs this Agreement prior to the expiration on the 21-day period, the 7-day period commences on the date Gonzalez 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.

- 10. **Non-Assignment of Claims.** Gonzalez 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.
- 11. **Binding Effect.** The City and Gonzalez 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.
- 12. **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.
- 13. **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 Gonzalez and the City’s Mayor and the revocation period has expired without Gonzalez revoking the Agreement.

Agreed to:

The City of El Paso

By: _____
Tomas C. Gonzalez

By: _____
Oscar Leeser
Mayor

Date

Date