

EMPLOYMENT AGREEMENT

THIS AGREEMENT (“Agreement”), is made and entered into by and between the CITY OF EL PASO, TEXAS (“City”), a municipal corporation chartered under the constitution and Laws of the State of Texas as a Home-Rule city, and Sylvia Borunda Firth.

WITNESSETH

WHEREAS, the City desires to appoint Sylvia Borunda Firth, as City Attorney (“Attorney”) of the City of El Paso, Texas, as provided by the Charter of the City of El Paso, Texas (“Charter”) and

WHEREAS, it is the desire of the Council of the City of El Paso, (“Council”) to provide certain benefits, establish certain conditions of employment, and to set certain working conditions for the Attorney; and

WHEREAS, Sylvia Borunda Firth desires to accept the appointment as City Attorney under the terms outlined herein.

NOW THEREFORE, the parties hereto agree as follows:

SECTION 1. Duties.

The City hereby agrees to appoint Sylvia Borunda Firth as City Attorney to perform the functions and duties specified in the Charter and to perform such other duties and functions as the Council shall from time to time assign, assuming she is willing and able to perform such duties.

In addition to the duties specified in this paragraph, Attorney agrees to abide by the City’s ethics ordinance.

SECTION 2. Term.

A. The term of this Agreement is for a period of three (3) years beginning December 20, 2011 and terminating on December 19, 2014 (the “Initial Term”). Unless Council notifies the Attorney that Council intends not to renew the Agreement 120 days prior to the expiration of the Initial Term, Agreement will automatically renew for a one-year term.

After the expiration of the one-year term, this Agreement will automatically renew on a year to year basis for subsequent one year terms unless Council notifies the Attorney 60 days prior to the expiration of any subsequent term that it intends not to renew the Agreement, and in such event the Agreement shall terminate at the expiration of the term. This Agreement for the Attorney’s appointment herein shall remain and all times be subject to Section 3.7 of the Charter of the City of El Paso, Texas.

B. Nothing in this Agreement is intended, nor shall same be construed, to in any way create a definite term for the Attorney's appointment as City Attorney, nor to in any way abridge the authority of the Mayor and Council granted under Section 3.7 of the City Charter.

C. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the Mayor and Council to terminate the Attorney at any time at the will of the Mayor and Council, in accordance with the Charter, subject only to specific provisions set forth in this Agreement.

D. Nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of the Attorney to resign at any time from her position with the City, subject only to the specific provisions of this Agreement.

SECTION 3. Termination and Severance Pay.

A. Subject to Paragraph B of this Section 3, in the event the Attorney is terminated by the City Council within eighteen (18) months after the effective date of this Agreement and during such time the Attorney is willing and able to perform her duties of City Attorney, the City agrees to pay Attorney a lump sum payment ("severance payment") in an amount equal to twelve (12) months salary at her then current base salary. In the event the Attorney is terminated by the City Council at any time after expiration of (18) months after the effective date of the Agreement and during such time the Attorney is willing and able to perform her duties of City Attorney the City agrees to pay Attorney a lump sum payment ("severance payment") in an amount equal to six (6) months salary at her then current base salary. Payment by City of such lump sum payment, and any accrued vacation or sick leave owing in accordance with the terms of this Agreement and Civil Service Rules, shall be deemed and constitute a full, complete and final acquittance to the Attorney.

B. In the event the Attorney is terminated "with cause," or resigns her position as City Attorney before December 19, 2014, the City shall have no obligation to pay the cash severance payment designated in Paragraph A of this Section. The term "with cause" shall mean:

1. 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 Attorney under this Agreement or under the Charter and ordinances of the City and/or the laws of the United States of the State of Texas or any willful, knowing, grossly negligent, or negligent breach, disregard or neglect of any lawful duties directed to or requested of Attorney by the City Council.
2. Any conviction of Attorney involving an act of moral turpitude, criminal illegality (excepting minor traffic violations), or habitual violations of the traffic laws, whether or not related to her official duties hereunder.

3. Any willful, knowing, grossly negligent, or negligent misapplication or misuse, direct or indirect, by Attorney of public or other funds or property, by Attorney.

C. In the event the Attorney voluntarily resigns her position with the City, then Attorney shall give the City thirty (30) days written notice in advance of the effective date of such resignation, unless both parties agree otherwise. If the Attorney voluntarily resigns and provides thirty days written notice, she shall be entitled to payment for any accrued sick or vacation leave. In the absence of the thirty (30) days written notice, Attorney shall NOT be paid any remuneration of any kind or nature, accrued or otherwise, vacation, or car allowance.

D. The City shall not at any time during the term, reduce the salary, compensation, or other financial benefits of the Attorney, except to the degree of such a reduction across-the-board for all employees of the City. In the event the City violates this Section 3D of this Agreement and upon thirty days written notice from Attorney to the City, the city fails or refuses to honor any other valid, applicable and enforceable provision benefiting Attorney herein, Attorney may, at her option, be deemed to be “terminated” as of the date of such reduction or such failure/refusal and be entitled to Severance Pay in accordance with Section 3 at the salary in effect prior to the reduction in pay. Should the Attorney elect this option, she shall send written notice to the City.

SECTION 4. Salary.

A. Starting from date this Agreement is approved by Council, the City agrees to pay for her services rendered pursuant hereto, an annual base salary of \$190,000.00 payable in installments at the same time and in the same general manner as other employees of the City are paid. After the second anniversary of the effective date of this Agreement Attorney may be eligible for an annual merit increases of five percent of her base salary. The merit increases may be given if she receives an “exceeds standard” rating on her annual performance evaluation. In addition to this base salary, the Attorney shall be entitled to the following benefits:

1. Vacation and sick leave will continue to accrue in accordance with City of El Paso Civil Service Rules and Procedures and Attorney will be entitled to retain leave balances in place at the time this Agreement is approved.
2. The City’s Insurance Plans. Enrollment shall continue in accordance with the provisions of those Plans as they may be amended from time to time. After Attorney’s employment with the City is terminated, Attorney may elect to continue in the City’s Insurance Plan as a retiree.
3. The City’s Pension Plan. Attorney retains the right to continue to participate in the City’s Pension Plan and shall be entitled to retain whatever rights and benefits accrued prior to the execution of this Agreement.

4. The Attorney duties require that she shall have the exclusive and unrestricted use of an appropriate motor vehicle. The City agrees to pay Attorney, the sum of \$325.00 per month, as vehicle allowance, beginning the month in which the City first pays salary to the Attorney under this Agreement. The monthly allowance shall be payable with the first paycheck of each month following the month for which the payment is due. The Attorney shall acquire and maintain a suitable motor vehicle during the term of this Agreement, which shall be available for Attorney's exclusive and unrestricted use in the performance of her duties hereunder. Attorney shall be responsible for paying all liability, property damage and comprehensive insurance coverage upon such motor vehicle and shall further be responsible for all expenses attendant to the purchase operation, maintenance, repair and regular replacement of said motor vehicle. The vehicle may be used by the Attorney for her own personal use. The monthly vehicle allowance shall be prorated to the effective date of any resignation or termination of the Attorney. It is understood and agreed that such car allowance shall be paid by City to Attorney in full compliance with the Federal Internal Revenue Code, as it may from time to time be amended or succeeded, and under current law is subject to income tax withholding and FICA taxes.

The City will provide no other fringe benefits; however, additional employee benefits may be provided in accordance with Section 8 of this Agreement. Employee agrees that she at no time will make a claim against the City for more than what is provided under the terms of this Agreement.

SECTION 5. Performance Evaluation.

The City shall review and evaluate the performance of the Attorney at least once annually in advance of the adoption of the annual operating budget. The Mayor, with input from the City Manager and City Council, will have the responsibility of completing the performance evaluation recommendation and submitting the proposed performance evaluation.

SECTION 6. Disability.

During the term of this Agreement, if Attorney is permanently disabled or is otherwise unable to perform her duties because of sickness, accident, injury, mental incapacity or health for a period of four (4) successive weeks beyond any accrued and/or other sick leave properly credited to her account, the City may terminate this Agreement, and the Attorney shall be compensated for any accrued sick leave, vacation and other regular accrued benefits, if any. Furthermore, the severance pay provisions as contained in Section 3(A) of this Agreement shall not apply.

SECTION 7. Hours of Work.

It is agreed and understood that Attorney is an exempt employee expected to engage in those hours of work which are necessary to fulfill the obligations of the City Attorney position,

and therefore does not have designated hours of work and is available at all times. Attorney acknowledges that the proper performance of duties as City Attorney of the City will often require the performance of necessary services at times and for extended periods outside the normal work hours. Attorney agrees to devote the normal work hours to her official duties of office, and such additional time as may be reasonably necessary for the full and proper performance of her duties hereunder, and that the compensation herein provided includes compensation for the performance of all services.

SECTION 8. Dues and Subscriptions and Professional Development

A. The City encourages Attorney to participate in professional associations and agrees to budget and pay for all professional dues and subscriptions of the which are reasonably necessary for her participation in national, regional, state, and local associations and organizations and which are necessary and desirable for her continued professional development participation, growth and advancement and for the good of the City unless otherwise budgeted, shall be specifically determined in advance by the Mayor. Any expense incurred by Attorney in violation of this Paragraph shall be at Attorney's expense, and Attorney shall immediately reimburse the City for any such unauthorized expense.

B. The City agrees to budget and to pay for reasonable travel and related expenses permitted under the City's travel policy for reasonable professional and official travel, meetings and occasions reasonably necessary to continue the profession development of Attorney limited to the Texas Municipal League, Texas City Attorney's Association, International City Attorney Association, and such other governmental groups and committees of which the Attorney serves as a member, unless otherwise previously budgeted shall be approved in advance by the Mayor. Any expense incurred by Attorney in violation of this Paragraph shall be at Attorney's expense, and Attorney shall immediately reimburse the City for any such unauthorized expense. The Attorney is not required to obtain prior approval for non-overnight travel and expenses otherwise budgeted; provided however, Attorney account to the City Council for such non-overnight travel and or related expenses exceeding \$100.00 at the first regular Council meeting immediately following the month in which such expenses were incurred.

C. The City agrees to budget and pay for the travel and related expenses as permitted under City's travel policy expenses of Attorney for short courses, institutes and seminars that are reasonably necessary for this professional development and for the good of the City. Any expense incurred by Attorney in violation of this paragraph shall be at Attorney expense, and Attorney shall immediately reimburse the City for any such unauthorized expense.

SECTION 9. Outside Employment and Investments.

Attorney acknowledges that Attorney shall devote her full time and effort to performance of the duties required hereunder and shall not undertake, nor accept, any outside or other employment. It is further understood and agreed that because of the duties of Attorney within and on behalf of the City and its citizenry, Attorney shall not without the prior written consent of Council, individually, as a partner, joint venture, officer or shareholder, invest or participate in any business venture conducting business with 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.

SECTION 10. Residence.

Attorney shall maintain her permanent residence within the corporate City limits of the City during the term of this Agreement.

SECTION 11. Other Terms and Conditions of Employment.

The city Council shall fix such other terms and conditions of employment, as it may determine from time to time, relating to the performance of Attorney, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement, the City Charter, or any other law.

SECTION 12. General Provisions.

A. This Agreement supersedes any and all other agreements, either oral or in writing, between the parties. This Agreement contains the entire agreement of the parties.

B. If any provision of this Agreement is held by a court to be invalid, void, or unenforceable, the remaining provisions will continue in full force and effect without being impaired or invalidated in any way.

C. The waiver by one party of any breach of this Agreement by the other party will not be deemed a waiver of any other provisions of this Agreement.

D. Except as otherwise specifically provided herein, this Agreement may be amended or modified only by written instrument signed by both Attorney and Council and dated subsequent to the effective date hereof.

E. Any notice to be given under this Agreement by either party to the other must be in writing and may be effected by registered or certified mail, return receipt. Notice to City will be sufficient if made or addressed to the following:

City of El Paso
ATTN: Mayor
#2 Civic Center Plaza
El Paso, Texas 79901

Notice to Attorney will be sufficient if made or addressed to the following:

Sylvia Borunda Firth
6460 Calle del Sol
El Paso, Texas 79912

or may be hand-delivered to the Attorney.

F. This Agreement shall be governed by, and shall be construed in accordance with, the laws of the State of Texas.

G. Reasonable attorney's fees and expenses of a party incurred in successfully prosecuting or defending a suit under this Agreement against the other party will be recoverable by the successful party in such action.

H. All rights, duties, and obligations under this Agreement are payable and enforceable in El Paso County, Texas. In the event of a dispute arising hereunder, venue shall be set in an applicable state court located in El Paso County, Texas.

IN WITNESS WHEREOF the parties have executed this Agreement at El Paso, Texas this 20th day of December, 2011.

CITY OF EL PASO

Joyce A. Wilson
City Manager

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

John R. Batoon
Assistant City Attorney

ATTORNEY:

Printed Name: Sylvia Borunda Firth