

EMPLOYMENT AGREEMENT

THIS AGREEMENT, entered into this ___ day of March, 2013, by and between THE CITY OF GONZALES, a general law city (“City”), THE CITY OF GONZALES AS SUCCESSOR AGENCY TO THE GONZALES REDEVELOPMENT AGENCY, a public body corporate and politic (“Agency”), hereinafter collectively called “EMPLOYER,” and RENE L. MENDEZ, hereinafter called and referred to as “Mendez.”

RECITALS

WHEREAS, Mendez has been gainfully employed as City Manager of the City of Gonzales, California, and Executive Director of the Gonzales Redevelopment Agency since 2005, and in 2012 transitioned to Director of the City of Gonzales as Successor Agency to the Gonzales Redevelopment Agency; and

WHEREAS, EMPLOYER desires to continue its employment relationship with Mendez; and,

WHEREAS, Mendez desires to continue to serve in such capacity; and,

WHEREAS, the City Council, as appointing authority, and Mendez desire to agree in writing on the terms and conditions of Mendez’s continued employment as City Manager and Agency Director.

NOW THEREFORE, in consideration of the mutual covenants, promises, and representations hereinafter set forth, the parties hereto do now agree as follows:

SECTION I **DUTIES**

(a) EMPLOYER hereby agrees to employ Mendez as City Manager of the City of Gonzales and Director of the City of Gonzales as Successor Agency to the Gonzales Redevelopment Agency to perform the functions and duties specified by the general laws of the State of California and by the Gonzales Municipal Code, as from time to time amended, by other ordinances and resolutions of City, by the provisions of AB1x27 and AB1484 and all amendments and enactments related thereto, and to perform other legally permissible and proper duties and functions as the EMPLOYER may from time to time assign.

(b) Mendez shall perform his duties as City Manager and Director.

(c) Mendez shall perform his duties to the best of his ability in accordance with the highest professional and ethical standards of the profession and shall comply with all general rules and regulations established by EMPLOYER.

(d) Mendez shall not engage in any activity, which is or may become a conflict of interest, prohibited contract, or which may create an incompatibility of office as defined under California law.

SECTION II
TERM

(a) Mendez shall continue to be retained as the City Manager of the City and Director of the Agency, said employment having commenced on February 1, 2005 and January 1, 2012, respectively.

(b) The term of this Agreement is for a period of three (3) years, commencing January 1, 2013, and ending on December 31, 2015.

(c) Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of EMPLOYER to terminate the services of Mendez at any time, subject only to the provisions set forth in Section III, paragraphs (a), (b), and (c) of this Agreement.

(d) The parties recognize and affirm that: (1) Mendez is an “at will” employee whose employment may be terminated by the EMPLOYER without cause; (2) there is no express or implied promise made to Mendez for any form of continued employment; and (3) this Agreement is the sole and exclusive basis for an employment relationship between Mendez and EMPLOYER. Notwithstanding the at-will nature of the City Manager/Director position, it is in EMPLOYER’s and Mendez’s best interests to make every effort to insure that any separation is performed in a professional and businesslike manner.

(e) Mendez agrees to remain in the exclusive employ of EMPLOYER during the term of this Agreement. This Agreement shall not be construed to preclude incidental and occasional teaching, writing or consulting performed by Mendez.

SECTION III
TERMINATION AND SEVERANCE PAY

(a) EMPLOYER, through the City Council, may terminate this Agreement for convenience at its absolute discretion upon thirty (30) days written notice to Mendez. If Mendez is terminated by the City Council for (1) conviction of a felony; (2) conviction of any illegal act involving moral turpitude or personal gain; or (3) a plea of *nolo contendere* to any felony or illegal act involving moral turpitude or personal gain, EMPLOYER shall have no obligation to provide thirty (30) days advance written notice or to pay the severance pay set forth in this section.

(b) In the event Mendez is terminated by a majority vote of the entire City Council (three votes) during the term of this Agreement without cause, EMPLOYER agrees to pay Mendez a cash payment equal to twelve (12) months salary (“Severance Pay”), or the maximum number of months not to exceed twelve (12) months as authorized by Government Code Section 53260. At the option of Mendez, the cash payment may be paid in one (1) lump sum upon the

date of termination, or a lump sum on January 1 of the calendar year following termination. Such payment shall be contingent on the execution of a "Release and Waiver" that will release EMPLOYER from any liability or further obligations under this Agreement, unless otherwise noted. Additionally, health benefits shall be continued and paid for by EMPLOYER for the same duration of time established for the above-referenced Severance Pay, or until Mendez finds other employment, whichever occurs first.

(c) In the event Mendez voluntarily resigns his position with EMPLOYER at any time during the term of this Agreement, then Mendez shall give EMPLOYER no less than sixty (60) days written notice, unless the parties otherwise agree. Failure of Mendez to give the required sixty (60) days' written notice of resignation will result in a pro-rata reduction in benefits normally payable to resigning City employees, such as, but not limited to, accrued vacation payment, and the like. Voluntary resignation by Mendez will result in a loss of all Severance Pay to his by EMPLOYER.

(d) Nothing in this Agreement shall be construed to create a property interest for Mendez, in the position of City Manager or Director.

SECTION IV **DISABILITIES**

(a) If Mendez is permanently disabled or is otherwise unable to perform his duties because of sickness, accident, injury, mental incapacity or health for a period of four (4) successive weeks beyond any accrued sick leave, or for twenty (20) working days over a thirty (30) day working period, EMPLOYER shall have the option to terminate this Agreement, subject to the severance pay requirements of Section III, Paragraph (b).

(b) Nothing in this Agreement shall be construed to require a waiver of rights that Mendez may have under the Family and Medical Leave Act, or other similar federal and/or state laws.

SECTION V **COMPENSATION**

(a) Effective January 1, 2013, EMPLOYER agrees to pay Mendez for his services rendered hereunder at an annual rate of One Hundred and Thirty Two Thousand Eight Hundred Forty Dollars (\$132,840.00), which sum shall be considered the base salary and shall be payable in installments at the same time as other employees of the City are paid, and subject to customary withholdings. Adjustment to this base salary may be considered as part of the annual performance evaluation referenced in Section VI (a).

(b) City shall provide Mendez with a monthly housing allowance of \$1,000.00 (one thousand dollars) during the term of this Agreement as long as Mendez continues to reside in the City of Gonzales.

(c) A portion of Mendez's total compensation will be paid from the Agency Budget. Said sum shall be based on the actual proportion of Mendez's time spent on Agency duties, and will be paid from Agency funds on a pro-rata basis. Payment from Agency funds will not cause Mendez's total compensation to exceed that established in Paragraph (a) above.

(d) EMPLOYER agrees to contribute an amount equal to 5% of Mendez's salary into either a CalPERS or ICMA deferred compensation plan.

(e) In the event Mendez dies while employed by EMPLOYER under this Agreement, Mendez's beneficiaries or those entitled to Mendez's estate shall be entitled to all salary earned by Mendez up to the time of death, and any in-lieu payments of accrued benefits, including compensation for the value of all accrued leave balances, to the extent allowed by law.

SECTION VI **EVALUATION OF PERFORMANCE**

(a) EMPLOYER, through the City Council, shall review and evaluate the performance of Mendez, by no later than December of each year of the term of this Agreement, and at any other times chosen by the City Council. Said review and evaluation shall be in accordance with specific criteria developed by the City Council with consultation from Mendez. Said criteria may be added to or deleted as the City Council may from time to time determine, in consultation with Mendez. Further, the City Council shall provide Mendez with a summary written statement of the findings of the City Council and provide an adequate opportunity for Mendez to discuss his evaluation with the City Council.

(b) The annual evaluation process shall also provide EMPLOYER and Mendez with the opportunity to discuss potential modifications to compensation, as established in Section V, and benefits, as set forth in Section X. All such modifications must be mutually agreeable to EMPLOYER and Mendez and memorialized in writing.

(c) EMPLOYER, through the City Council, and Mendez shall periodically define such goals and performance objectives which they determine necessary for the proper operations of the City and Agency in the attainment of the Council and Agency's policy objectives, and shall further establish a relative priority among those various goals and objectives, said goals and objectives to be reduced to writing. They shall generally be reasonably attainable within the time limitations as specified in the annual operating and capital budgets and appropriations provided.

SECTION VII **HOURS OF WORK**

It is recognized that Mendez must devote a great deal of time outside the normal office hours to business of the EMPLOYER, and to that end, Mendez shall be allowed to take administrative time off from work as provided in Section X of this Agreement. For all purposes under this Agreement, Mendez shall be considered an FLSA "exempt" employee.

SECTION VIII
INSURANCE

EMPLOYER shall make available to Mendez and eligible dependants the same health and life insurance package (life insurance, accidental death and dismemberment insurance and long term disability coverage) as is provided to all other management employees of City. Currently, the City pays 100% of the cost of health insurance premiums for an employee's medical, vision and dental coverage. If an employee's individual health insurance premium is less than \$800 per month, the City pays the difference between the cost of the individual employee's premium and the \$800 limit towards dependent health insurance coverage. All costs over the limit of \$800 per month for dependent coverage are paid by the employee through payroll deductions. In addition, EMPLOYER shall pay for the cost of a \$1,000,000 personal liability policy for Mendez.

SECTION IX
AUTOMOBILE

Mendez's responsibilities require that he shall have the use of a City-owned radio-equipped automobile for his professional use, including transportation to and from his residence. With the exceptions noted below, personal use of the City Automobile is not allowed. The City Automobile shall also not be used to transport family members, friends or other persons not involved in the conduct of EMPLOYER's business. Exceptions to this policy are as follows:

1. A family member may accompany Mendez in the City Automobile to an official function to which the family member is welcomed or invited to attend.
2. Mendez may use the City Automobile for personal use that is reasonable and incidental to primary use. For purposes of this Agreement, incidental use is defined as a use that does not exceed the primary use of the City Automobile in either time or distance traveled in a 24 hour period. Examples would be stops at the grocery store on the way home from work, use of the automobile for an errand during the lunch hour, or stopping for a meal on the way to or from and out of town meeting.

SECTION X
VACATION, SICK AND OTHER BENEFITS

Unless otherwise noted, EMPLOYER shall provide Mendez with vacation, sick and holiday pay in accordance with the provisions that apply to all other City management employees as set forth in the City of Gonzales Personnel Rules, Regulations and Policies, including:

- 14 hours of vacation leave per month
- 8 hours of sick leave per month
- 1 floating holiday per year (credited January 1 of each year)
- standard holidays provided to other employees.

EMPLOYER shall provide Mendez with all other benefits as provided to City management employees. As used herein, benefits include, but are not limited to, vacation, sick leave, holidays, retirement (PERS) benefits and payments, health insurance, dental and vision benefits, life insurance, disability insurance, and educational tuition reimbursement. Additionally, EMPLOYER shall provide Mendez with eighty (80) hours per year of administrative leave, credited on July 1 of each year. Neither vacation or administrative leave shall be subject to any “cap” or timed use-restrictions established in the City of Gonzales Personnel Rules, Regulations and Policies, or any other applicable City codes, policies or procedures.

SECTION XI
DUES AND SUBSCRIPTIONS

EMPLOYER shall pay for the professional dues and subscriptions of Mendez necessary for his continuation and full participation in ICMA, as well as dues and fees for other professional and civic organizations and entities.

SECTION XII
RESIDENCE IN CITY

It is considered City Policy that Mendez shall be required to reside within the City of Gonzales. (Either at 304 Day Street or other residence within the City limits of the City of Gonzales.)

SECTION XIII
PROFESSIONAL DEVELOPMENT

At the time of the execution of this Agreement, the parties acknowledge that Mendez is or will be a member of the organizations described in Section XI above. As such, Mendez will maintain an active membership, and is, in some cases, obligated to attend various meetings, activities and seminars of said organizations. As well, other organizations sponsor and offer short courses, institutes, seminars, and the like, the attendance at which by Mendez would be necessary for his professional development and would be beneficial to EMPLOYER. Accordingly, and subject to budgetary constraints, time limitation and convenience of both EMPLOYER and Mendez, Mendez is permitted and encouraged, and in some instances, may be required by EMPLOYER, to attend said meetings, activities, seminars, courses, institutes, and the like as may be permitted by the City Council, in consultation with Mendez. Mendez’s travel, subsistence, and other expenses associated in connection with the same shall be governed in accordance with applicable CITY policy.

SECTION XIV
ENTIRE AGREEMENT

This Agreement is the final expression of the complete Agreement of the parties with respect to the matters specified herein and supersedes all prior oral or written understandings.

Except as prescribed herein, this Agreement cannot be modified except by written mutual agreement signed by the parties. Upon execution, all terms and conditions of this Agreement shall be retroactively applied to January 1, 2013.

SECTION XV
ASSIGNMENT

This Agreement is not assignable by either EMPLOYER or Mendez.

SECTION XVI
INDEMNIFICATION

EMPLOYER shall defend, save harmless and indemnify Mendez against any tort, professional claim or demand or other legal action arising out of an alleged act or omission occurring in the performance of Mendez's duties as City Manager or Agency Director in accordance with the provisions of California Government Code Sections 825 and 925. Mendez's conviction for any felony or misdemeanor involving moral turpitude shall be a basis for exemption from such indemnification. EMPLOYER retains the right to compromise and settle any claim or suit and pay the amount of any settlement or judgment therefore.

SECTION XVII
COMPATIBILITY WITH MUNICIPAL CODE

This Agreement is subject to the provisions of Chapter 1.28 of the City Code of Gonzales, and in the event of any conflict between the provisions of this Agreement and Chapter, 1.28, unless otherwise noted herein, the provisions of Chapter 1.28 shall be controlling. Notwithstanding, the termination provisions set forth in Section III above shall prevail over the provisions of Code Section 1.28.100. The language of Code Section 1.28.100, which places limitations on removal of the City Manager after a general municipal election shall remain in full force and effect.

SECTION XIII
SEVERABILITY

In the event that any provision of this Agreement is finally held or determined to be illegal or void by a court having jurisdiction over the parties, the remainder of the Agreement shall remain in full force and effect unless the parts found to be void are wholly inseparable from the remaining portion of the Agreement.

IN WITNESS WHEREOF, the parties hereto have hereunto affixed their signatures as of the date and year first above written.

CITY OF GONZALES

By _____
Maria Orozco, Mayor

CITY OF GONZALES AS SUCCESSOR AGENCY TO THE GONZALES REDEVELOPMENT AGENCY

By _____
Maria Orozco, Chair

By _____
Rene L. Mendez
City Manager/Director

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney