

EMPLOYMENT AGREEMENT FOR
THE CITY MANAGER

This Agreement (“**Agreement**”) is a contract between Erik Walsh (“**City Manager**”) and the City of San Antonio (“**City**”). City Manager and City both may be referred to collectively as the “Parties.”

RECITALS AND REPRESENTATIONS

WHEREAS the City represents that it is a Texas home-rule municipal corporation and a “Local governmental entity” as defined in TEXAS LOCAL GOVERNMENT CODE §271.151(3) and is authorized by statute or the Constitution of the State of Texas to enter into contracts; and

WHEREAS the City represents that it is executing this Agreement by and through its City Council, and that the Mayor has the authority of the City Council and the City to execute this Agreement; and

WHEREAS this Agreement states the essential terms of the agreement pursuant to which Walsh will provide employment services to the City as the City Manager of the City; and

WHEREAS the City represents and the parties contemplate that all of the obligations under this Agreement can and will be satisfied out of current revenues or out of funds within the immediate control of the City; and

WHEREAS the Parties each represent and agree that this is a contract subject to Subchapter I. of Chapter 271 of the TEXAS LOCAL GOVERNMENT CODE;

NOW, intending to be legally bound, the Parties agree as follows:

I. SCOPE OF SERVICES

1.1 The City appointed Erik Walsh as City Manager of the City of San Antonio, Texas, on January 31, 2019 to perform the functions and duties of that position as specified in the City Charter of the City of San Antonio, Article V, Section 45 (Attachment A) and to perform other legally permissible duties and functions as the Council shall assign.

1.2 Council has appointed Erik Walsh as City Manager for an indefinite term but the City Manager may not serve in the capacity of City Manager for more than 8 years.

1.3 City may remove the City Manager at any time subject only to applicable provisions of the City Charter and consistent with the provisions in the section of this Agreement titled “Termination.” Nothing in this Agreement is intended, nor shall be construed in any way to create a definite term of employment for the City Manager of the City or to in any way abridge or limit the right of Council to terminate the City Manager at any time at the will

of the Council subject to the provisions in the section of this Agreement titled "Termination."

1.4 Erik Walsh shall assume the duties of City Manager from the current City Manager on March 1, 2019 ("**Commencement Date**").

II. COMPENSATION

2.1 In consideration of City Manager's performance in a satisfactory manner as described in Article I, the City shall pay the City Manager a base salary plus specified benefits. The initial base salary will be paid at an annual rate of \$312,000 and is payable in installments at the same time as other employees of the City are paid.

2.2 The City Manager's base salary may be increased as determined by the City Council in compliance with applicable law or as provided through the adoption of the City's annual budget as a result of an increase in the compensation of other non-uniformed City employees and at the direction of City Council.

III. EXPENSES AND PROFESSIONAL DEVELOPMENT

3.1 As a condition of this employment, the City Manager is required to incur necessary and reasonable expenses, including without limitation travel expenses, to fulfill official duties of the City in the nature of professional dues, subscription fees, educational expenses and similar items. The City shall budget and pay these reasonable expenses including but not limited to the following:

- i. Annual Conference of the Conference of the International City Management Association,
- ii. "Big City" meetings,
- iii. the Texas City Management Association,
- iv. the National League of Cities,
- v. the Texas Municipal League, and
- vi. other national, regional, state, and local governmental groups, association, or committees in which the Manager serves as a member, officer, or committee member.

The City shall budget and pay the reasonable travel and subsistence expenses of the City Manager for short courses, institutes, and seminars that are related to his/her continued professional development or for which participation furthers objectives of the City.

3.2 To effectively perform assigned duties, the City Manager requires effective and reliable tools and resources, including staff, IT assets and support, and transportation. To further effective performance by the City Manager the City shall pay City Manager a monthly stipend in the following amounts:

- i. a car allowance of not less than \$500 per month; and

- ii. an allowance for acquisition, maintenance, and data plan for a mobile phone of not less than \$75 per month.

3.3 The City Manager is required as a condition of employment to incur ordinary, necessary and reasonable expenses for the promotion of the work of the City, which includes but is not limited to, fulfilling the official duties of the City Manager, meeting with leaders of government, labor and business, and recruiting businesses to remain, expand, or establish operations in San Antonio. Accordingly, the City expects the City Manager to incur fees and expenses. Accordingly, the City shall pay City Manager an allowance of \$700 per month for such purposes.

3.4 Benefits made available to non-uniformed executive employees and included in the annual budget process shall also be extended to the City Manager.

3.5 The amounts established in this Article III are intended to be good faith estimates by the City and the City Manager of the approximate cost of certain categories of tools and resources necessary for City Manager to perform his job as chief executive officer of the seventh largest city in the country. Nothing in this Agreement is intended to require Employee to provide an accounting of individual expenditures or to allow the City to claw back any allowance provided for under this Agreement.

IV. PERFORMANCE REVIEW

4.1 The City Council shall review the City Manager's performance in conjunction with base salary annually, and may formally provide feedback to the City Manager on his performance from time to time.

4.2 Every year the City Council shall, with input from the City Manager, develop a set of objectives and criteria for performance evaluation that will be used by the City Council to evaluate performance and to consider compensation increases consistent with the City Charter and other applicable law.

V. TERMINATION

5.1 The City may terminate the employment of the City Manager at any time subject only to applicable provisions of the City Charter. Similarly, the City Manager may resign his employment at any time by providing 30 days' notice as described below. However, if City Manager's employment is terminated by the City or by City Manager in a "Without Cause Termination," as defined herein, then the City shall pay City Manager severance pay ("Severance Payment") as follows:

A lump sum payment equal to (i) eighteen (18) months of base salary based upon the highest base salary rate in effect for the City Manager at any time during the City Manager's employment plus (ii) the amount that, after deductions for state and federal taxes, including FICA and Medicare, equals eighteen (18) times the amount of the then-applicable single-month's premium for City Manager and dependents through

COBRA or such other program in which the City Manager and/or his dependents may be enrolled.

The lump sum payment described herein shall be paid within thirty (30) days of the termination date.

5.2 For purposes of this Article V, a **“Without Cause Termination”** shall mean:

- (a) City Manager’s removal from the position of City Manager by the City other than a removal “For Cause” as defined in this Agreement;
- (b) City Manager’s resignation following a reduction in the City Manager’s salary or benefits by the City Council or following a material diminution by the City Council of the amounts paid pursuant to Section III of this Agreement;
- (c) City Manager’s resignation following a formal request for him to resign, or other expression of no confidence by a majority of the City Council at a meeting of the City Council;
- (d) City Manager’s resignation following an affirmative act by City Council indicating that the City Manager’s services are no longer desired by a majority of the City Council;
- (e) City Manager’s resignation following written notice informing the City Council of its failure to comply with a material provision of this Agreement.
- (f) City Manager’s resignation following an affirmative act by a majority of the City Council suggesting that City Manager’s services are no longer wanted by a majority of the City Council.

5.3 Before resigning his position, the City Manager agrees to give the City Council at least thirty (30) days’ notice in writing of his intention to resign, stating the reason(s) for resignation, and providing a date of departure from City employment. If the City Manager fails to provide at least thirty (30) days’ notice then he may not be eligible for any potential severance pay provided for in section 5.1 of this Agreement but will not forfeit his accrued leave. If the City Manager fails to provide at least thirty (30) days’ notice and the severance provision of section 5.1 of this Agreement does not apply, he will forfeit his accrued leave.

5.4 The City may terminate the City Manager **“For Cause”**, as defined below. The Council, upon consultation and deliberation with the City Council and City Attorney, may direct the City Attorney to provide written notice to the City Manager immediately suspending him from duty “For Cause” and placing him on Administrative Leave pending his resignation, or termination consistent with the provisions in paragraph 2, Section 45, Article V of the City Charter.

5.5 For purposes of this Article V, termination “**For Cause**” shall mean termination due to:

- (a) The commission of any crime of moral turpitude that occurs in the commission by City Manager of his duties hereunder or that was enabled by the abuse of such duties or the indictment or conviction of any felony;
- (b) A failure to carry out the material duties or responsibilities of the City Manager, which failure causes material harm, costs, liability, or risk to the City and provided that, if such failure is capable of cure, City Manager has failed to cure after reasonable written notice; or
- (c) The commission of an act of moral turpitude. Moral turpitude is an act or behavior that gravely violates the widely-accepted moral standard of the community and substantially and directly reflects negatively on the City.

In the event of a dispute over whether the City terminated City Manager’s employment “For Cause,” the City shall bear the burden of proof of establishing its termination of City Manager was “For Cause.”

VI. LEAVE

6.1 The City Manager shall be entitled to receive Annual Leave in accordance with his years of service. By virtue of his long service to the City, City Manager currently has 805 hours of accrued Annual Leave, which accrued Annual Leave shall be retained by City Manager. The City Manager may accumulate his Annual Leave without limitation, but shall not carry forward more than 200 days of Annual Leave, on December 31st of any year. Upon separation of employment for any reason whatsoever, the City Manager shall be reimbursed his actual Annual Leave balance, in the same manner of payment as other non-uniformed employees of the City, but in an amount as provided for in this Section 6.1. The maximum reimbursement allowed under this provision is 200 days. Payments under this Section 6.1 are calculated at the rate of employee’s then-current hourly rate multiplied by the number of eligible unused Annual leave hours except that, in the event the City lowers City Manager’s rate of pay, payments under this Section shall be calculated at the rate of City Manager’s highest rate of pay during City Manager’s employment.

6.2 The City Manager shall be entitled to receive his accrual of personal leave and shall be eligible to participate in the City’s annual personal leave buy-back program. The City Manager can sell up to 80 hours of unused personal leave back to the City beginning at the same time as other civilian employees in 2019 and thereafter. Payments under this Section 6.2 are calculated at the rate of employee’s then-current hourly rate multiplied by the number of eligible unused personal leave hours except that, in the event the City lowers City Manager’s rate of pay, payments under this Section shall be calculated at the rate of City Manager’s highest rate of pay during City Manager’s employment.

VII. PARTICIPATION IN TEXAS MUNICIPAL RETIREMENT SYSTEM AND 457 RETIREMENT PLAN CONTRIBUTION

7.1 The City Manager shall participate in the Texas Municipal Retirement System (TMRS) to the extent provided for in the Texas Municipal Retirement System Act, Texas Government Code, Subtitle G. Texas Municipal retirement System, Chapter 851, as amended.

7.2 On or by March 15, 2019, the City shall contribute to City Manager's 457 Retirement Plan an amount equal to the maximum allowable contribution plus the maximum allowable "Age 50" Catch-Up Contribution for 2019. In addition, on every subsequent January 15 on which City Manager remains employed under this Agreement, the City shall contribute on or by such date to City Manager's 457 Retirement Plan an amount equal to the maximum allowable 457 contribution for such calendar year plus the maximum allowable "Age 50" Catch-Up Contribution for such calendar year.

VIII. INSURANCE

8.1 The City Manager will remain in the Pre-2009 category of employee health, dental and vision insurance coverage. The City Manager will pay the employee share of premiums for basic health, dental, and vision insurance elected by the City Manager for himself and his dependents. Any additional and optional benefits available or which may become available to non-uniformed executive employees in the unclassified civil service category will also be available to the City Manager. The City shall provide and pay for long term disability insurance coverage for City Manager and the maximum employer-provided life insurance policy for City Manager.

8.2 On or by March 15, 2019, the City shall contribute to City Manager's Health Savings Account an amount equal to the maximum allowable contribution for the year 2019. In addition, on every subsequent January 15 on which City Manager remains employed under this Agreement, the City shall contribute on or by such date to City Manager's Health Savings Account an amount equal to the maximum allowable contribution for that calendar year.

IX. TAX TREATMENT OF BENEFITS AND EXPENSES

To the extent that payments under the sections of the Agreement titled "Expenses and Professional Development," or "Participation in Texas Municipal Retirement System and 457 Retirement Plan Contribution," or "Insurance" are taxable income under the applicable provisions of the Internal Revenue Code of 1986, as amended ("Code"), the City shall indemnify City Manager and hold City Manager harmless against all Federal wage and income taxes, interest and penalties relating thereto. To effect this indemnification, the City shall pay City Manager and additional amount that is sufficient to pay any Federal wage and income taxes under the Code on the payments and benefits to which Manager is entitled without the additional amount plus another additional amount sufficient to pay all the income and wage taxes on the additional amounts.

X. INDEMNIFICATION

9.1 To the extent permitted under state and local law, the City Manager shall have all rights and privileges under the City's Employee Liability Plan adopted by City Council in accordance with City Ordinance 83927, as amended.

XI. SEVERABILITY

If any clause or provision of this Agreement is held invalid, illegal or unenforceable under present or future federal, state or local laws, including, but not limited to the City Charter, City Code, or ordinances of the City of San Antonio, Texas, then and in that event, it is the intention of the Parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this Agreement shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein; it is also the intention of the Parties hereto that in lieu of each clause or provision of this Agreement that is found to be invalid, illegal, or unenforceable, there be added as a part of this Agreement a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

XII. LAW APPLICABLE

THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS. Any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Agreement shall be heard and determined in the City of San Antonio, Bexar County, Texas.

XIII. GENERAL PROVISIONS

The City shall appropriate, set aside and encumber funds of the City in an amount sufficient to fund and pay all financial obligations of the City pursuant to this Agreement, including, but not limited to, the severance pay, salary, adjustments, and terms set forth and described in this Agreement.

This Agreement constitutes the final and entire agreement between the Parties and contains all of the terms and conditions agreed upon.

EXECUTED and **AGREED** to as of the dates indicated below.

CITY:
CITY OF SAN ANTONIO

CITY MANAGER:
ERIK WALSH

01/30/2019

Ron Nirenberg
MAYOR

Erik Walsh

Date: _____

Date: _____

Approved as to Form and Content:

Andy Segovia
City Attorney

DRAFT