

City of Las Cruces³

PEOPLE HELPING PEOPLE

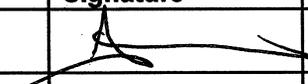
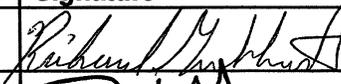
Council Action and Executive Summary

Item # 1 Ordinance/Resolution# 11-138 Council District:

For Meeting of December 13, 2010
(Adoption Date)

TITLE: A RESOLUTION APPROVING AN AGREEMENT EMPLOYING ROBERT L. GARZA AS CITY MANAGER EFFECTIVE JANUARY 1, 2011.

PURPOSE(S) OF ACTION: Approve the employment contract for the City Manager.

Drafter and Staff Contact: Andre Moquin		Department: Human Resources		Phone: 528-3100	
Department	Signature	Phone	Department	Signature	Phone
Department Director		528-3100	Budget		541-2107
Other			Assistant City Manager		541-2271
Legal		541-2128	City Manager		541-2076

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS: The City received a resignation from its current City Manager in June of 2010. The City Council has determined that Mr. Robert Garza possesses the knowledge, skills and abilities necessary to fulfill the duties and responsibilities generally delegated to the City Manager position and that, given his intimate knowledge of the organization's operations and structure, he is a highly qualified person and the best choice for the organization.

Mr. Garza has numerous years of public sector experience including fulfilling the duties of Assistant City Manager for the City of Las Cruces since March 6, 2006.

The governing body and Mr. Garza met in closed session and have mutually negotiated an employment agreement. This agreement is for a period of three (3) years at a base annual salary of one hundred and forty nine thousand five hundred (149,500) dollars, plus additional benefits such as a vehicle allowance.

The employment agreement is effective on January 1, 2011.

- SUPPORT INFORMATION:**
1. Resolution/Ordinance.
 2. Exhibit "A": Employment contract

SOURCE OF FUNDING:

Is this action already budgeted?	Yes	<input checked="" type="checkbox"/>	See fund summary below
	No	<input type="checkbox"/>	If No, then check one below:
	<i>Budget Adjustment Attached</i>	<input type="checkbox"/>	Expense reallocated from:
		<input type="checkbox"/>	Proposed funding is from a new revenue source (i.e. grant; see details below)
<input type="checkbox"/>		Proposed funding is from fund balance in the (# and Fund Name) Fund.	
Does this action create any revenue?	Yes	<input type="checkbox"/>	Funds will be deposited into this fund: (Fund #) in the amount of \$ _____ for FY _____.
	No	<input checked="" type="checkbox"/>	There is no new revenue generated by this action.

BUDGET NARRATIVE

Proposed expenditure of \$149,500 on an annual basis.

FUND EXPENDITURE SUMMARY:

Fund Name(s)	Account Number(s)	Expenditure Proposed	Available Budgeted Funds in Current FY	Remaining Funds	Purpose for Remaining Funds
General Fund	10100080 - 610111	\$149,500			

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this will approve the resolution as drafted;
2. Vote "No"; this will not approve the resolution drafted;
3. Vote to "Amend"; this will require the contract to be renegotiated;
4. Vote to "Table"; this could delay the employment of a City Manager.

REFERENCE INFORMATION

None

RESOLUTION NO. 11-138

A RESOLUTION APPROVING AN AGREEMENT EMPLOYING ROBERT L. GARZA AS CITY MANAGER EFFECTIVE JANUARY 1, 2011.

The City Council is informed that:

WHEREAS, the Council received a resignation from its City Manager in June of 2010; and

WHEREAS, Mr. Robert L. Garza possess the knowledge, skills and abilities necessary to fulfill the duties of the City Manager; and

WHEREAS, the Governing Body and Mr. Garza met in closed session and have mutually negotiated an employment agreement; and

WHEREAS, the agreement is for a period of three (3) years; and

WHEREAS, the agreement provides for a base annual salary of one hundred and forty nine thousand five hundred (149,500) dollars; and

WHEREAS, this agreement contains other provisions such as a residency requirements and a vehicle allowance.

NOW, THEREFORE, Be it resolved by the governing body of the City of Las Cruces:

(I)

THAT The Employment Agreement attached hereto between the Governing Body and Robert L. Garza is hereby approved.

(II)

THE City staff is hereby authorized to do all deeds necessary in the accomplishment of the herein above.

DONE AND APPROVED this 13th day of December, 2010.

APPROVED:

(SEAL)

Mayor

ATTEST:

City Clerk

VOTE:

Mayor Miyagishima: _____
Councillor Silva: _____
Councillor Connor: _____
Councillor Pedroza: _____
Councillor Small: _____
Councillor Sorg: _____
Councillor Thomas: _____

Moved by: _____

Seconded by: _____

APPROVED AS TO FORM:


City Attorney



City of Las Cruces

**EMPLOYMENT
AGREEMENT**

City Manager

December 2010

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CITY MANAGER EMPLOYMENT AGREEMENT

This Agreement is made and entered into this 13th day of December 2010, by and between the City of Las Cruces, a New Mexico home rule municipality ("Employer"), and Robert L. Garza ("Employee").

A. Employee is an individual who has the education, training, and directly related experience needed to effectively manage a local government agency.

B. Employee is subject to the ICMA Code of Ethics.

Employer and Employee agree as follows:

Section 1: Term

This agreement shall remain in full force in effect for a period of 3 years, from January 1, 2011 through December 31, 2013, unless terminated by the Employer or Employee as provided in Section 9, 10 or 11 of this agreement.

Section 2: Duties and Authority

Employer hereby employs Employee as City Manager to perform the functions and duties specified in the Employer's City Charter, Ordinances, and Personnel Manual and to perform other legally permissible and proper duties and functions as prescribed by the City Council.

Section 3: Compensation

A. Employer agrees to pay Employee an annual base salary of \$149,500 payable in installments at the same time and method that other employees of the Employer are paid.

B. Employer may increase the compensation of the Employee annually dependent upon the results of the performance evaluation conducted under the provisions of Section 12 of this Agreement. Increased compensation may be in the form of a salary increase and/or a bonus.

C. The Employee is not automatically entitled to any annual increase in pay that may be granted to any other employee.

Section 4: Health Disability and Life Insurance Benefits

- A. The Employee shall be eligible for and receive all benefits normally provided to other non-represented employees. Said benefits shall be provided for in the same manner as made available to other employees.

Section 5: Leave Accrual and Credit

- A. The Employee shall accrue sick, vacation, and personal leave on an annual basis at the highest rate provided to any other employees.
- B. The Employee will maintain all leave balances accrued with Employer prior to the date of this agreement.
- C. The Employee shall, at least once during each year of this Agreement, take a two-week consecutive vacation.
- D. The Employee is entitled to accrue all unused leave, without limit. In the event the Employee's employment is terminated, either voluntarily or involuntarily, the Employee shall be compensated for all accrued sick leave through the termination date at a ratio of two hours of leave to one hour of pay (2:1) and for all accrued annual leave at one hour of leave to one hour of pay (1:1).
- E. The Employee shall be entitled to holiday, jury, and bereavement leave as provided to any other regular employee.
- F. The Employee may elect to sell back up to 240 hours of accrued sick leave each fiscal year at a two to one (2:1) ratio.

Section 6: Vehicle Use Allowance

- A. The Employer agrees to pay to the Employee, during the term of this Agreement and in addition to other salary and benefits herein provided, the total sum of \$6,000 per year, payable in bi-weekly installments, as a vehicle allowance to be used to purchase, lease, or own, operate and maintain a vehicle.
- B. The Employee shall be responsible for paying for liability, property damage, and comprehensive insurance coverage upon such vehicle and shall further be responsible for all expenses attendant to the purchase, operation, maintenance, repair, and regular replacement of said vehicle.

- C. The Employer shall reimburse the Employee at the IRS standard mileage rate for any business use of the vehicle beyond and outside the greater Las Cruces area. For purposes of this Section, the greater Las Cruces area is defined as locations within a 50 mile radius of City Hall, 700 N. Main Street, Las Cruces, NM 88001.

Section 7: Retirement

- A. The Employee shall be required to continue his enrollment with the Public Employee Retirement Association ("PERA"). The Employer shall make all appropriate contributions on the Employee's behalf as provided for in Employer's Resolution concerning contributions to PERA for non-union represented employees.
- B. The Employee may contribute a part of his base salary to a deferred compensation plan in lieu of a portion of the compensation described in section 3.

Section 8: General Business Expenses

- A. Employer agrees to budget for and to pay for professional dues and subscriptions of the Employee necessary for continuation and full participation in national, regional, state, and local associations, and organizations necessary and desirable for the Employee's continued professional participation, growth, and advancement, and for the good of the Employer.
- B. Employer agrees to budget for and to pay for travel and subsistence expenses of Employee for professional and official travel, meetings, and occasions to adequately continue the professional development of Employee and to pursue necessary official functions for Employer, including but not limited to the ICMA Annual Conference, the New Mexico Municipal League, and such other national, regional, state, and local governmental groups and committees in which Employee serves as a member. Employee will be required to notify the Mayor and City Council prior to departure for any planned travel out of state.
- C. Employer also agrees to budget for and to pay for travel and subsistence expenses of Employee for short courses, institutes, and seminars that are necessary for the Employee's professional development and for the good of the Employer.
- D. Employer recognizes that certain expenses of a non-personal but job related nature are incurred by Employee, and agrees to reimburse or to pay said general expenses. City finance staff charged with closing out all travel orders is authorized to disburse such moneys upon receipt of duly

executed expenses, receipts, statements or personal affidavits. All record keeping must be in line with standard travel procedures required of City employees.

- E. The Employer acknowledges the value of having Employee participate and be directly involved in local civic clubs or organizations. Accordingly, Employer shall pay for the reasonable membership fees and/or dues to enable the Employee to become an active member in local civic clubs or organizations.
- F. The Employer shall provide Employee with a computer, software, and cell phone required for the Employee to perform the job and to maintain communication with City Council and operational units of the organization.

Section 9: Termination

For the purpose of this agreement:

- A. Termination shall occur when the majority of the governing body votes to terminate the Employee at a duly authorized public meeting.
- B. Termination shall occur when the Employee dies or becomes permanently disabled. "Permanent disability" shall mean the Employee's physical or mental inability to substantially performing his duties under this Agreement for a period of sixty (60) calendar days, which inability shall be certified by a physician duly licensed to practice in the State of New Mexico and acceptable to the Employer and the Employee or his legal representative.
- C. If the Employer, citizens or legislature acts to amend any provisions of the City of Las Cruces Charter and Personnel Manual pertaining to the role, powers, duties, authority, responsibilities of the Employee's position that substantially changes the form of government, the Employee shall have the right to declare that such amendments constitute termination.
- D. If the Employer reduces the base salary, compensation or any other financial benefit of the Employee, unless it is applied in no greater percentage than the average reduction of all department heads, such action shall constitute a breach of this agreement and will be regarded as a termination.
- E. If the Employee resigns following an offer to accept resignation, whether formal or informal, by the Employer as representative of the majority of the governing body that the Employee resigns, then the Employee may declare a termination as of the date of the suggestion.

- F. In the event that this Agreement is materially breached by either party, notice and opportunity to cure within thirty (30) days must be given to the breaching party with a 30 day period, before the breach shall provide the basis for termination. Written notice of a breach of contract and the opportunity to cure shall be provided in accordance with the provisions of Section 19.

Section 10: Severance

Severance shall be paid to the Employee when employment is terminated as defined in Section 9, as follows:

- A. If the Employee is terminated during the first year of this Agreement's term, the Employee shall receive severance pay equal to eighteen (18) months of base salary. If the Employee is terminated during the second year of this Agreement's term, the Employee shall receive severance pay equal to twelve (12) months of base salary. If the Employee is terminated during the third year of this Agreement's term, the Employee shall receive severance pay equal to six (6) months of base salary.
- B. Severance shall be paid in a lump sum unless otherwise agreed to by the Employer and the Employee.
- C. In addition to any applicable severance pay, the Employee shall also be compensated for all accrued sick leave, annual leave, and all paid holidays in the same way described in section 5.
- D. Subject to this Agreement, the Employee is at all times subject to removal at the discretion of the Employer. However, if the Employee is terminated because of a conviction of a felony, or for cause, then the Employer is not obligated to pay severance under this section. For the purpose of this section only, and not for any other reason or claim of entitlement, cause shall include, but not be limited to the following:
- i. Dereliction of duty;
 - ii. Failure to report any criminal conviction;
 - iii. Flagrant or continued failure to obey work rules and regulations, as required by the City Council, or for flagrant or continued violations of this Agreement;
 - iv. Dishonesty in the execution of job duties;
 - v. For mis-use of City funds or issued credit cards.
- E. If the Employee voluntarily resigns or terminates employment, the Employer is not obligated to pay severance under this section. Section 5 provisions will remain in full force and affect.

Section 11: Resignation

In the event that the Employee voluntarily resigns his position with the Employer, the Employee shall provide a minimum of 30 days notice unless the parties agree otherwise.

Section 12: Performance Evaluation

- A. Employer shall annually review the performance of the Employee. The evaluation shall take place within the month of June.
- B. The performance evaluation process will include a form, criteria, and format which shall be mutually agreed upon by the Employer and Employee prior to the period of evaluation.
- C. The process, at a minimum, shall include the opportunity for both parties to:
 - i. Prepare a written evaluation,
 - ii. Meet and discuss the evaluation in a closed meeting, and
 - iii. Present a written summary of the evaluation.
- D. The final written evaluation should be completed and delivered to the Employee within 30 days of the evaluation meeting. The evaluation is not considered a public document pursuant to Las Cruces Municipal Code 1997, Section 22-211(5).

Section 13: Hours of Work

It is recognized that the Employee must devote a great deal of time outside the normal office hours on business for the Employer, and to that end Employee shall be allowed to establish an appropriate work schedule.

Section 14: Outside Activities

The employment provided for by this Agreement shall be the Employee's sole employment. Recognizing that certain outside consulting or teaching opportunities provide indirect benefits to the Employer and the community, the Employee may elect to accept limited teaching, consulting or other business opportunities with the understanding that such arrangements shall not constitute interference with or a conflict of interest with his or her responsibilities under this Agreement.

Section 15: Moving and Relocation Expenses

- A. The Employee agrees to establish residence within the corporate boundaries of the City of Las Cruces after employment as outlined in the City Charter.
- B. Residency shall be achieved within ninety (90) days of the beginning of the term of employment, and shall be maintained during the term of employment.
- C. The Employer shall reimburse Employee for actual moving expenses or \$3,500, whichever is less. Said payment will be made within 10 days from the date of submission of receipts for directly related moving expenses.

Section 16: Indemnification and Litigation Expenses

- A. Beyond that required under Federal, State or Local Law, the Employer shall defend, save harmless and indemnify the Employee against any tort, professional liability claim or demand or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of the Employee's duties as City Manager or resulting from the exercise of judgment or discretion in connection with the performance of program duties or responsibilities, unless the act or omission involved willful or wanton conduct.
- B. Legal representation, provided by the Employer for the Employee, shall extend until a final determination of the legal action including any appeals brought by either party. The Employer shall indemnify employee against any and all losses, damages, judgments, interest, settlements, fines, court costs and other reasonable costs and expenses of legal proceedings including attorneys fees, and any other liabilities incurred by, imposed upon, or suffered by such Employee in connection with or resulting from any claim, action, suit, or proceeding, actual or threatened, arising out of or in connection with the performance of his or her duties. Nothing in this Agreement is intended to alter or amend any of the rights or obligations found in the New Mexico Tort Claims Act and case-law interpreting same.
- C. The Employer agrees to pay all reasonable litigation expenses of the Employee throughout the pendency of any litigation to which the Employee is a party, witness or advisor to the Employer. Such expense payments shall continue beyond the Employee's service to the Employer as long as litigation is still pending. Further, in the event that the litigation continues after the Employee's service under this Agreement is complete, the Employer agrees to pay the Employee reasonable consulting fees and travel expenses when the Employee serves as a witness, advisor or consultant to the Employer regarding pending litigation.

- D. Each of the parties shall bear all expenses (including attorney's fees) incurred by such party in connection with the preparation, review and negotiation of this Agreement.
- E. In the event that either party incurs legal expenses to enforce any provision of this Agreement in a court of law, those expenses shall be borne by the party seeking enforcement during the pendency of any such action. However, the prevailing party in such a dispute will be entitled to recover legal expenses, including reasonable attorney's fees and costs in addition to any other relief to which the prevailing party may be entitled.

Section 17: Bonding

The Employer shall bear the full cost of any fidelity or other bonds required of the Employee under any law or ordinance.

Section 18: Other Terms and Conditions of Employment

The Employer, only upon agreement with the Employee, shall fix any such other terms and conditions of employment, as it may determine from time to time, relating to the performance of the Employee, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement, the City of Las Cruces Charter or any other state or federal law.

Section 19: Notices

Notice pursuant to this Agreement shall be sufficient if in writing and mailed either by depositing in the custody of the United States Postal Service, postage prepaid, or by e-mail with receipt requested, addressed as follows:

EMPLOYER: City of Las Cruces Mayor and City Council
Copy: City Attorney
P.O. Box 20000
Las Cruces, NM 88004
(or)
CityCouncil@las-cruces.org
Legal_main_line@las-cruces.org

EMPLOYEE: Robert L. Garza, City Manager
P.O. Box 20000
Las Cruces, NM 88011
(or)
rlgarza@comcast.net

Alternatively, notice required pursuant to this Agreement may be personally served in the same manner as is applicable to civil judicial practice. Notice shall be deemed given as of the date of personal service or as the date of deposit of such written notice in the course of transmission in the United States Postal Service or upon verification of receipt of electronic mail.

Section 20: General Provisions

- A. **Integration:** This Agreement sets forth and establishes the entire understanding between the Employer and the Employee relating to the employment of the Employee by the Employer. Any prior discussions or representations by or between the parties are merged into and rendered null and void by this Agreement. The parties by mutual written agreement may amend any provision of this agreement during the life of the agreement. Such amendments shall be incorporated and made a part of this agreement.
- B. **Binding Effect:** This Agreement shall be binding on the Employer and the Employee as well as their heirs, assigns, executors, personal representatives and successors in interest.
- C. This Agreement shall become effective on January 1, 2011.
- D. **Severability:** The invalidity or partial invalidity of any portion of this Agreement will not affect the validity of any other provision. In the event that any provision of this Agreement is held to be invalid, the remaining provisions shall be deemed to be in full force and effect as if they have been executed by both parties subsequent to the expungement or judicial modification of the invalid provision.

CITY OF LAS CRUCES:

ATTEST:

By: _____
Ken Miyagishima, Mayor

Esther Martinez, City Clerk

APPROVED AS TO FORM:

City Attorney

EMPLOYEE:



Robert L. Garza