



City of Las Cruces®

PEOPLE HELPING PEOPLE

Council Action and Executive Summary

Item # 11Ordinance/Resolution# 17-090For Meeting of _____
(Ordinance First Reading Date)For Meeting of November 7, 2016
(Adoption Date)

Please check box that applies to this item:

 QUASI JUDICIAL LEGISLATIVE ADMINISTRATIVE

TITLE: A RESOLUTION APPROVING AN AGREEMENT TO EMPLOY STUART C. ED AS CITY MANAGER.

PURPOSE(S) OF ACTION:

To approve an agreement.

COUNCIL DISTRICT: ALL		
Drafter/Staff Contact: Monica Campbell	Department/Section: Legal/City Attorney	Phone: 541-2128
City Manager Signature: INTERIM		

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

A search was conducted for a City Manager following the retirement of Robert L. Garza in May 2016. Applicant interviews were held and the City Council determined that Stuart C. Ed possesses the knowledge, skills and abilities necessary to fulfill the duties and responsibilities of City Manager.

Mr. Ed brings to Las Cruces his wide-ranging experience with the City of El Paso as well as employment as a chief executive officer and a consultant.

The City Council and Mr. Ed have mutually negotiated an employment agreement. The agreement is for a period of two years at a base salary of \$169,500 plus additional benefits.

The employment agreement is effective on November 7, 2016.

SUPPORT INFORMATION:

1. Resolution.
2. Exhibit "A", City Manager Employment Agreement.

(Continue on additional sheets as required)

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 _____ Fund.
Does this action create any revenue?	Yes	<input type="checkbox"/>	Funds will be deposited into this 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 \$169,500.00 on an annual basis effective November 7, 2016.
 Prorated expenditure for remaining FY2017 of \$113,000.00.

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	13000000-601050	\$113,000.00	158,532.00	\$45,532.00	To be determined

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this will approve the City Manager Employment Agreement effective November 7, 2016.
2. Vote "No"; this means a City Manager will not be employed.
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:

The resolution(s) and/or ordinance(s) listed below are only for reference and are not included as attachments or exhibits.

N/A.



City of Las Cruces[®]

PEOPLE HELPING PEOPLE

COUNCIL ACTION AND EXECUTIVE SUMMARY PACKET ROUTING SLIP

For Meeting of _____
(Ordinance First Reading Date)

For Meeting of November 7, 2016
(Adoption Date)

TITLE:

A RESOLUTION APPROVING AN AGREEMENT TO EMPLOY STUART C. ED AS CITY MANAGER.

Purchasing Manager's Request to Contract (PMRC) {Required?} Yes No

DEPARTMENT	SIGNATURE	PHONE NO.	DATE
Drafter/Staff Contact	<i>Yhonica Campsbeck</i>	541-2128	10/25/16
Department Director	<i>[Signature]</i>	541-2128	
Other			
Assistant City Manager /CAO Management & Budget Manager	<i>[Signature]</i>	541-2100 541-2107	10/25/16
Assistant City Manager/COO		541-2271	
City Attorney	<i>[Signature]</i>	541-2128	25 October 2016
City Clerk	<i>[Signature]</i>	541-2115	10-27-16

RESOLUTION NO. 17-090

A RESOLUTION APPROVING AN AGREEMENT TO EMPLOY STUART C. ED AS CITY MANAGER.

The City Council is informed that:

WHEREAS, a search was conducted for a City Manager following the retirement of Robert L. Garza in May 2016; and

WHEREAS, Stuart C. Ed was determined to possess the knowledge, skills and abilities necessary to fulfill the duties and responsibilities of City Manager; and

WHEREAS, the City Council and Stuart C. Ed have mutually negotiated an employment agreement; and

WHEREAS, the agreement provides for a base annual salary of \$169,500; and

WHEREAS, the agreement contains other provisions and benefits such as a residency requirement and use of a vehicle.

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

(I)

THAT the City Manager Employment Agreement between the City of Las Cruces and Stuart C. Ed, attached hereto as Exhibit "A" and made a part of this Resolution, is hereby approved.

(II)

THAT the Mayor, on behalf of the City of Las Cruces and the City Council, is hereby authorized to sign the City Manager Employment Agreement.

(III)

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

DONE AND APPROVED on this _____ day of _____, 20__.

APPROVED:

Mayor

ATTEST:

City Clerk

(SEAL)

Moved by: _____

Seconded by: _____

VOTE:

Mayor Miyagishima: _____

Councillor Gandara: _____

Councillor Smith: _____

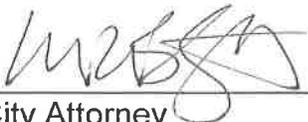
Councillor Pedroza: _____

Councillor Eakman: _____

Councillor Sorg: _____

Councillor Levatino: _____

APPROVED AS TO FORM:



City Attorney

CITY MANAGER EMPLOYMENT AGREEMENT

THIS Agreement is made and entered into on this ____ day of _____, 2016 by and between the **City of Las Cruces**, New Mexico, a New Mexico home rule municipality ("Employer"), and **Stuart C. Ed** ("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 Code of Ethics of the International City/County Management Association ("ICMA").

Employer and Employee agree as follows:

Section 1: Term

This Agreement was originated on November 7, 2016 through November 6, 2018. The parties may agree to add one (1) additional year to the employment term through November 6, 2019, unless terminated by 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 \$169,500 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 benefits. The Employer will meet with the Employee in February 2017 to review the terms and conditions of this Agreement. This initial meeting will be separate from the annual performance evaluation meeting held annually in July.

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. Employee may decline such benefits with the Employer's portion of benefits being added to the Employee's base salary.

Section 5: Leave Accrual and Credit

A. The Employee shall accrue annual (vacation), sick and personal leave on an annual basis at the highest rate provided to any other employee. Employee shall be entitled to accrue 160 hours of annual leave per year, and 96 hours of sick leave per year. Employee is also entitled to take 16 hours of personal leave each year.

B. The Employee shall, at least once during each year of this Agreement, take a two-week consecutive vacation. This two-week vacation will be "Paid Executive Leave", separate from annual leave and will not require use of any accrued annual leave.

C. 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 accrued sick leave at a two to one (2:1) ratio (two hours of sick leave for one hour of pay) in any amount at any time.

Section 6: Vehicle Use Allowance

A. The Employer shall furnish Employee with a City-owned vehicle.

B. The Employer shall reimburse the Employee at the Internal Revenue Service 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 40-mile radius of City Hall, 700 North Main Street, Las Cruces, New Mexico 88001. This provision does not apply to travel to and from Las Cruces and Employee's current home in El Paso.

Section 7: Retirement

A. The Employee shall be required to enroll 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. Employee agrees to become a member of ICMA.

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 and software and monthly allowance in the amount of \$80 for cell phone expenses 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 purposes 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 perform 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 and 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 by the Employer, whether formal or informal, as representative of the majority of the governing body that the Employee resign, 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 ninety (90) days must be given to the breaching party 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 at any time within 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:

- (1) Dereliction of duty;
- (2) Failure to report any criminal conviction;

- (3) 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;
- (4) Substantial failure in the execution of job duties; and
- (5) For misuse of City funds or issued credit cards.

E. If the Employee voluntarily resigns or terminates employment at his sole will, 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 thirty (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 July.

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:

- (1) Prepare a written evaluation;
- (2) Meet and discuss the evaluation in a closed meeting; and,
- (3) Present a written summary of the evaluation.

D. The final written evaluation should be completed and delivered to the Employee within thirty (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).

E. Failure to conduct an annual performance evaluation in the month of July shall imply the Employee's performance evaluation is satisfactory.

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 Employee's responsibilities under this Agreement, and which are approved by Employer.

Section 15: Moving and Relocation Expenses

A. The Employee agrees to maintain residence within the corporate boundaries of the City of Las Cruces after employment as outlined in the City Charter.

B. The Employee agrees to maintain a residence within the corporate boundaries of Las Cruces within 90 (ninety) days of the signing of this Agreement. Employer agrees to reimburse Employee up to \$5,000 (Five Thousand Dollars) for moving and relocation expenses.

Section 16: Indemnification and Litigation Expenses

A. 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 attorney 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 Employee's 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.

B. The Employer agrees to pay all reasonable and necessary 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.

C. 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.

D. 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.

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

A. 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 Charter or any other state or federal law.

B. Employee will obtain a post-employment offer physical examination which Employer will pay for. Employee may use his personal physician for this physical.

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

cityattorney@las-cruces.org

EMPLOYEE:

Stuart Ed, City Manager

P.O. Box 20000

Las Cruces, NM 88011

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 of 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 October 24, 2016. Employee's first day of work shall be November 7, 2016.

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.

EMPLOYER:

CITY OF LAS CRUCES

By: _____
Ken Miyaghisima, Mayor

Approved as to form:



William R. Babington Jr., City Attorney

EMPLOYEE:

Stuart C. Ed