

TOWN OF PECOS CITY
City Manager Employment Agreement

THE STATE OF TEXAS §
 § KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF REEVES §

THIS CITY MANAGER AGREEMENT (“Agreement”) is made and entered into effective the 13th day of October, 2017, by and between the Town of Pecos City, Texas, a Texas municipal corporation (the “City”) and Seth A. Sorensen (the “Manager”).

WITNESSETH:

WHEREAS, the City Council of the City (the “Council”) and the Manager believe that an employment agreement negotiated between the Council, on behalf of the City, and the Manager can be mutually beneficial to the City, the Manager, and the community they serve;

WHEREAS, when appropriately structured, the Council and the Manager believe an employment agreement can strengthen the Council-Manager relationship by enhancing the excellence and continuity of the management of the City for the benefit of its citizens;

WHEREAS, the Council, on behalf of the City, desires to employ the services of the Manager, as the city manager of the City (“City Manager”, or “Manager”), pursuant to the terms, conditions and provisions of this Agreement;

WHEREAS, the Manager has agreed to accept employment as the City Manager, subject to the terms, conditions and provisions of this Agreement.

NOW, THEREFORE, the City and the Manager, for and in consideration of the terms, conditions and provisions hereinafter established have agreed, and do hereby agree as follows:

I. TERM

1.1 TERM. The term of this Agreement shall begin on October 13, 2017 (the “Commencement Date”) and shall remain in full force and effect until terminated by the Manager, however, that the term of this Agreement shall be subject to earlier termination by a Unilateral Severance (as defined and set forth in Section 6.4 below) at the pleasure of the Council or for good cause, as set forth in Section 6.2 below.

1.2 AT WILL EMPLOYMENT. The employment of the Manager is at will. The Manager is free to leave the employ of the City at any time. The Council is likewise free to terminate the Manager at any time, with or without cause. Separation shall follow the process(es) outlined in this Agreement.



II. EMPLOYMENT

2.1 CHIEF EXECUTIVE OFFICER. The Manager is the chief executive officer of the City and shall faithfully perform the duties of the City Manager as prescribed in the job description, as set forth in the City Charter, if any, and City ordinances and, as may be lawfully assigned by the Council (collectively the "City Manager's Duties"). Further, the Manager shall comply with (collectively "Applicable Laws and Authorities"): state and federal law; the City's Charter, if any; all City policies, rules, regulations and ordinances as they exist or may hereinafter be amended; and, all lawful Council directives. All duties assigned to the Manager by the Council shall be appropriate to and consistent with the professional role and responsibility of the City Manager position.

2.2 DUTIES. The Council does hereby employ Manager as City Manager to perform the City Manager's Duties in accordance with and pursuant to all Applicable Laws and Authorities and each of the following duties to the full extent not prohibited by or in material conflict with any existing provisions of the City's Charter or Applicable Laws and Authorities:

- i. Employ, on behalf of the City, all other employees of the City except the City Attorney, Chief of Police, PEDC/PMDD Executive Director, and Municipal Judge.
- ii. Direct, assign, reassign and evaluate all of the employees of the City except the City Attorney, Chief of Police, PEDC/PMDD Executive Director, and Municipal Judge.
- iii. Organize, reorganize and arrange the staff of the City except the City Attorney, Chief of Police, PEDC/PMDD Executive Director, and Municipal Judge.
- iv. Develop and establish internal regulations, rules, and procedures which the Manager deems necessary for the efficient and effective operation of the City.
- v. Accept all resignations of employees of the City, except the Manager's, Chief of Police, PEDC/PMDD Executive Director, City Attorney's or Municipal Judge's resignation which must be accepted by the Council.
- vi. City Manager will adhere to the International City Management Association ("ICMA") Code of Ethics.
- vii. Perform all other duties as prescribed in Chapter 2; Article V; Division 2 of the City Code of Ordinances.

The Manager shall perform the City Manager's Duties with reasonable care, diligence, skill and expertise.

2.3 REASSIGNMENT. The Manager cannot be reassigned from the position of City Manager to another position without the Manager's prior express written consent.



2.4 COUNCIL MEETINGS. Except to the extent prohibited by or in material conflict with Applicable Laws and Authorities, the Manager or the Manager's designee shall attend, and shall be permitted to attend, all meetings of the Council, both public and closed, with the exception of those closed meetings devoted to the consideration of any action or lack of action on this Agreement, or any amendment thereto, the Manager's evaluation, or for purposes of resolving conflicts between individual Council members.

- i. The City Council commits to spending time each year outside of regularly scheduled City Council meetings to work with the Manager and City Staff on budget and for setting goals, expectations and priorities for the City and its government.

2.5 CRITICISMS, COMPLAINTS, AND SUGGESTIONS. The Council, individually and collectively, shall refer in a timely manner all substantive criticisms, complaints, and suggestions called to the Council's attention to the Manager for study and/or appropriate action, and the Manager shall refer the matter(s) to the appropriate City employee or shall investigate such matter(s) and inform the Council of the results of such efforts.

- i. Except for the purpose of inquiry, the City Council and its members shall deal with all subordinate City employees, officers, contractors and consultants solely through the Manager or the Manager's designee, and neither the City Council nor any member thereof shall give orders to any subordinate of the City Manager, either publicly or privately.

- ii. The City Council agrees none of its individual members, or collectively, will order the appointment or removal of any person to any office or employment under the supervision and control of the City Manager.

- iii. The City Council agrees that any criticism of City Staff members shall be done privately through the Manager.

- iv. Neither the City Council nor any of its members shall interfere with the execution of the powers and duties of the City Manager. The Manager shall take orders and instructions from the City Council only when it is sitting as a body in a lawfully held meeting, and such order or instruction agreed to by a majority of the Council as signified by a vote.

- v. Should the City Council or any of its members fail to adhere to the terms of this section, the Manager shall have the right to declare that such violation constitutes termination which will initiate a Unilateral Severance as defined and set forth in Section 6.3 below.

2.6 INDEMNIFICATION. To the extent it may be permitted to do by applicable law, including, but not limited to Texas Civil Practice & Remedies Code Chapter 102, the City does hereby agree to defend, hold harmless, and indemnify Manager from any and all demands, claims,

suits, actions, judgments, expenses and attorneys' fees incurred in any legal proceedings brought against Manager in the Manager's official capacity as an employee and as City Manager, providing the incident(s), which is (are) the basis of any such demand, claim, suits, actions, judgments, expenses and attorneys' fees, arose or does arise in the future from an act or omission of Manager, as an employee of the City, acting within the course and scope of the Manager's employment with the City; excluding, however, any such demand, claim, suits, actions, judgments, expenses and attorneys' fees for those claims or any causes of action where it is determined that the Manager committed official misconduct, or committed a willful or wrongful act or omission, or an act or omission constituting gross negligence, or acted in bad faith; and excluding any costs, fees, expenses or damages that would be recoverable or payable under an insurance contract, held either by the City or by the Manager. The selection of the Manager's legal counsel shall be with the mutual agreement of the Manager and the City if such legal counsel is not also City's legal counsel. A legal defense may be provided through insurance coverage, in which case the Manager's right to agree to legal counsel provided for him will depend on the terms of the applicable insurance contract. To the extent this Paragraph 2.6 exceeds the authority provided and limitations imposed by Texas Civil Practice & Remedies Code, Chapter 102, it shall be construed and modified accordingly. The provisions of this Paragraph 2.6 shall survive the termination, expiration or other end of this Agreement and/or the Manager's employment with the City.

2.7 APPROPRIATION. The Council has appropriated, set aside and encumbered, and does hereby appropriate, set aside, and encumber, available and otherwise unappropriated funds of the City in an amount sufficient to fund and pay all financial obligations of the City pursuant to this Agreement.

2.8 HOURS OF WORK. The Manager acknowledges the proper performance of the City Manager's Duties require the Manager to generally observe normal business hours and will also often require the performance of necessary services outside of normal business hours. The Manager agrees to devote such additional time as is necessary for the full and proper performance of the City Manager's Duties and that the compensation herein provided includes compensation for the performance of all such services. However, the City intends that reasonable time off be permitted the Manager, such as is customary for exempt employees so long as the time off does not interfere with the normal conduct of the office of the City Manager. The Manager will devote full time and effort to the performance of the City Manager's Duties, and shall remain in the exclusive employ of the City during the term of this Agreement; provided that, with the prior consent of the Council, the Manager may accept outside professional employment which does not interfere with the Manager performing the City Manager's Duties hereunder. The term "outside professional employment" means professional services provided to third parties for which the Manager is compensated and which are performed on the Manager's time off. The Council encourages the Manager to accept invitations to speaking engagements, writing or other opportunities to communicate with the community, to make use of and share data and information with relevant persons and groups, and shall encourage the participation of the Manager in pertinent seminars, groups, associations and organizations, as well as in informational meetings with those individuals whose particular skills, expertise, or backgrounds would serve to improve the capacity of the Manager to perform the City Manager's Duties.



2.9 CONFLICT OF INTERESTS. Manager shall further execute and adhere to any Conflict of Interest Guidelines made available to Manager from time to time.

2.10 RESIDENCY. Manager's residency within Pecos' City limits is required as a strict condition of employment.

III. COMPENSATION

3.1 SALARY. The City shall provide the Manager with an annual salary in the sum of ONE HUNDRED TWENTY-FIVE THOUSAND Dollars (\$125,000.00). This annual salary rate shall be paid to the Manager in equal installments on the schedule as other City employees and shall be paid net of any applicable withholding or deductions required by the Applicable Laws and Authorities. The Manager's then current annual salary shall be increased each year, on the anniversary of the commencement date of this Agreement, by an amount mutually agreeable to the Council and the Manager contingent on satisfactory performance and available funds.

3.1.1 RETENTION INCENTIVE. Should the Manager complete three consecutive years (1095 consecutive calendar days) of voluntary employment with the Town of Pecos City from the original employment date of May 8, 2017, the City will pay incentive pay of TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00) as a lump sum payment, net applicable taxes, payable in the pay period directly following the third anniversary date. No partial payment will be made if three full years' voluntary service is not completed or if Manager is terminated for "Good Cause".

These incentives shall remain in effect regardless of promotion, demotion or reassignment of the Manager by the City.

3.2 SALARY ADJUSTMENTS. At any time during the term of this Agreement, the Council may, in its discretion, review and adjust the salary of the Manager, but in no event shall the Manager be paid less than the salary set forth in Paragraph 3.1 of this Agreement, except by mutual agreement of the two parties. Such adjustments, if any, shall be made pursuant to lawful Council resolutions. In such event, the parties agree to provide their best efforts and reasonable cooperation to execute a new agreement incorporating the adjusted salary.

3.3 PAID LEAVES – PAID TIME OFF AND HOLIDAY. The Manager may take, at the Manager's choice, the same number of hours of paid time off (PTO) authorized for other administrative employees of the City; the leave to be in a single period or at different times. The leave taken by the Manager will be taken at such time or times as will least interfere with the performance of the City Manager's Duties. The Manager is hereby granted 11.08 total hours of combined personal/sick leave (PTO) per pay period. All accrued paid time off of the Manager shall be paid according to City policy. The Manager shall observe the same legal holidays as provided by the City for its administrative employees.

At the sole option of the Manager, Manager may request payment for accrued but unused PTO leave in the amount(s) requested, to be paid at ½ of face value (i.e. a 40 hour request shall be paid

at 20 hours) with the full amount of accrued PTO adjusted accordingly. Manager shall make no more than one such request per fiscal year. This payment shall be in a lump sum computed on an hourly basis determined by dividing the Manager's then current annual salary by 2080 hours. Payment shall be subject to all applicable withholdings as required by State and Federal law. Intermittent payments shall in no way affect section 6.3 *Unilateral Severance* of this agreement.

3.4 BENEFITS - GENERAL. Unless expressly provided otherwise in this Agreement, in addition to those benefits specifically set forth herein, the Manager shall be entitled to the same benefits that are enjoyed by any other administrative employees of the City pursuant to all Applicable Laws and Authorities.

3.5 INSURANCE – HEALTH. The City agrees to pay the entirety of premiums for health, hospitalization, vision, dental and comprehensive medical insurance for the Manager and the Manager's dependents pursuant to the group health care plan provided by the City for its administrative employees.

3.6 RETIREMENT BENEFIT. The City agrees to enroll the Manager into the applicable state retirement system (Texas Municipal Retirement System, or TMRS) and to make at least the same level of contributions for the Manager or on the Manager's behalf as the City does for its other administrative employees consistent with all Applicable Laws and Authorities.

3.7 WORK EXPENSES. The City shall pay or reimburse the Manager for reasonable expenses incurred by the Manager in the continuing performance of the Manager's duties under this Agreement. The City agrees to pay the actual and incidental costs incurred by the Manager for travel to destinations outside the City. Such actual or incidental costs may include, but are not limited to, gasoline, hotels and accommodations, meals, rental car, and other expenses incurred in the performance of the business of the City. The Manager shall comply with all procedures and documentation requirements in accordance with Applicable Laws and Authorities. The Manager shall complete and present to the City Finance Director a voucher outlining incurred expenses in sufficient detail to comply with the City's purchasing policy. Approval or disapproval of said voucher shall be determined by the Finance Director and may be appealed to the Council by Manager.

3.8 BONDS. The City shall bear the full cost of any fidelity or other bonds required of the Manager under any law or ordinance.

3.9 CIVIC ACTIVITIES. The Manager is encouraged to participate in community and civic organizations and activities. The cost of such activities shall be borne by the City.

3.10 HOUSING AND LIVING EXPENSES. City shall provide and pay for Manager's housing within the city limits of Pecos, Texas. Housing shall be furnished with a functional refrigerator, stove, dishwasher, clothes washer, clothes dryer and microwave. City shall cover expenses including, and limited to, any rents, improvements and major repairs, repair and replacement of appliances, city water, city sewer and solid waste disposal. Appropriate housing for the manager shall be determined by the Council. The Council shall appropriate on an annual basis, a maximum



of ten thousand dollars (\$10,000.00) for improvements and repairs to the Manager's City-provided housing. Housing improvement and repair funds shall be expended in accordance with the City's Purchasing Policy.

3.11 AUTOMOBILE - CITY VEHICLE. The City shall provide the Manager with a late model, full-size automobile for the Manager's business and incidental personal use. The City shall fully maintain the automobile in a safe and good working condition and maintain an automobile liability insurance policy on the automobile in accordance with City policy. The City shall fully pay or reimburse the Manager for expenses incurred in the maintenance and use of said automobile and will provide the Manager with a credit card owned by the City to which such reasonable automobile expenses may be charged. This vehicle will be made available to other City employees and Council members as needed for training outside of Reeves County.

3.12 MOBILE TELEPHONE. The City shall provide the Manager with a late model smartphone of his choosing for professional use, and pay for an unlimited talk and unlimited data plan, wall charger(s), car charger(s), phone case and other accessories as necessary in accordance with City policy.

3.13 ADDITIONAL BENEFITS. Such other benefits as the City Council may authorize in the future will be amended to this agreement.

IV. PROFESSIONAL GROWTH

4.1 BUDGETARY CAP. All Professional Growth (Sections 4.2, 4.3, and 4.4) may not collectively exceed ten thousand dollars (\$10,000) per year without Council approval.

4.2 PROFESSIONAL DUES AND SUBSCRIPTIONS. The City agrees to budget for and to pay for professional dues and subscriptions of the Manager necessary for continuation and full participation in national, state, regional and local associations and organizations as necessary and desirable for the good of the City through the Manager's continued professional participation, growth and advancement. Membership in said associations and organizations shall be at the Manager's discretion. City shall pay annual dues for the Manager to retain active status as a Professional Engineer in the State of Texas.

4.3 PROFESSIONAL DEVELOPMENT TRAVEL. The City agrees to budget for and to pay for travel and subsistence expenses of the Manager for professional and official travel and meetings to adequately continue the professional development of the Manager and to pursue necessary official functions for the city, including but not limited to the ICMA Annual Conference, the Texas Municipal League, the Texas City Management Association, American Public Works Association Annual Conference, Texas Public Works Association Conferences, and such other national, regional, state and local governmental groups and committees in which Manager is or may become a member. Manager shall be paid for such time as is necessary to travel and attend professional development activities as if he were physically present at work.

4.4 PROFESSIONAL CONTINUING EDUCATION. The City agrees to budget for and to pay for travel and subsistence expenses of Manager for short courses, institutes, and seminars that are necessary and/or desirable for the good of the city through the Manager's professional development and continuing education. Costs shall include, but are not limited to, continuing education necessary for the Manager to retain active status as a Professional Engineer in all states in which he is registered.

V. PERFORMANCE EVALUATION

5.1 EVALUATION PROCESS. The Council shall review the Manager's job performance at least once annually in the anniversary month of the commencement date. The Council reserves the right to review the manager's job performance at any time the Council deems reasonably necessary for such review. The annual performance reviews and evaluations shall be in writing and in accordance with criteria and format developed jointly by the Council and the Manager. The Council shall provide the Manager a reasonable and adequate opportunity to discuss with the Council and/or respond to the Manager's evaluation. The annual performance reviews and evaluations shall be reasonably related to the Manager's written job description and shall be based, in whole or in part, on goals for the Manager's performance that are jointly developed and adopted by the Council and the Manager.

5.1.1 MODIFICATION OF EVALUATION PROCESS. In the event the Council determines that the evaluation instrument, format and/or procedure are to be modified by the Council, and such modifications would require new or different performance expectations, the Manager shall be provided a reasonable period of time, which shall in no case be less than one hundred-eighty (180) calendar days, to demonstrate such expected performance before being evaluated.

5.2 CONFIDENTIALITY. Unless the Manager expressly requests otherwise in writing, except to the extent prohibited by or in material conflict with Applicable Laws and Authorities, the evaluation of the Manager shall at all times be conducted in closed session of the Council and shall be considered confidential to the maximum and full extent permitted by law. Nothing herein shall prohibit the Council or the Manager from sharing the content of the Manager's evaluation with their respective legal counsel.

VI. TERMINATION

6.1 TERMINATION EVENTS. This Agreement shall terminate upon any of the following:

- a. Mutual agreement of the Council and Manager in writing and signed by them;
- b. Retirement or death of the Manager;
- c. Termination of Manager's Employment for "good cause" (as defined in Paragraph 6.2 below);
- d. The legally adjudicated incompetence of the Manager;

- e. Manager's Disability or inability to perform the work;
- f. The majority of the governing body votes to terminate the Manager at a properly posted and duly authorized public meeting. Notice of termination shall be given to the Manager in writing. Such action shall constitute a Unilateral Severance as defined and set forth in Section 6.3 below; or,
- g. If the Employer, citizens or legislature acts to amend any provisions of the charter, code, or other enabling legislation, pertaining to the role, powers, duties, authority, responsibilities of the Manager's position that substantially changes the form of government, the Manager shall have the right to declare that such amendments constitute termination and will initiate a Unilateral Severance as defined and set forth in Section 6.3 below.

6.1.1 TERMINATION EVENT PRIOR TO OR FOLLOWING AN ELECTION. The Manager shall not be terminated during the sixty (60) day period preceding any City election which may result in the change of one or more governing members, except upon unanimous vote of the City Council, and subject to the terms of the Unilateral Severance schedule. In the event the Manager is terminated by the City during the six (6) months immediately following the seating and swearing-in of one or more new governing body members, and during such time Manager is willing and able to perform his duties under this Agreement, then, City agrees that termination shall be tantamount to a Unilateral Severance. City shall pay Severance Amount in accordance with Section 6.3, Severance schedule "i." (equal to 12 months), in addition to unused but accrued personal/sick time, plus associated severance benefits as provided for in Section 6.3 below.

6.2 "GOOD CAUSE". For purposes of this Agreement the term "good cause" is defined as follows:

- (a) Failure to fulfill the City Manager's Duties as required in this Agreement;
- (b) Incompetence or inefficiency in the performance of the City Manager's Duties as documented by evaluations, supplemental memoranda, or other written communication from the Council; provided, however, the terms and conditions of this paragraph shall not justify good cause unless the Council has provided the Manager a reasonable opportunity to remediate any incompetency or inefficiency;
- (c) Insubordination or failure to comply with lawful written Council directives;
- (d) Failure to comply with Applicable Laws and Authorities;
- (e) Neglect of duties;
- (f) Drunkenness or excessive use of alcoholic beverages;
- (g) Illegal use of drugs, hallucinogens, or other substances regulated by the Texas Controlled Substances Act;
- (h) Conviction of a felony or crime involving moral turpitude;
- (i) Immorality, which is conduct that is not in conformity with the accepted moral standards of the community encompassed by the City. Immorality is not confined



to sexual matters, but includes conduct inconsistent with rectitude or indicative of corruption, indecency, or depravity;

- (j) Assault on an employee or citizen of the City;
- (k) Knowingly falsifying records or documents related to the City's activities;
- (l) Conscious misrepresentation of material facts to the Council or other City officials in the conduct of the City's business;
- (m) 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 City Manager under this Agreement or under the Charter and ordinances of the City and/or the laws of the United States or the State of Texas.
- (n) Any misconduct of the City Manager involving an act of moral turpitude, criminal illegality (excepting minor traffic violations), deliberate misrepresentation of the City, or habitual violations of the traffic laws, whether or not related to City Manager's official duties hereunder.
- (o) Any willful, knowing, grossly negligent, or negligent misapplication or misuse, direct or indirect, by City Manager of public or other funds or other property, real, personal, or mixed, owned by or entrusted to the City, any agency or corporation thereof, or the City Manager in his official capacity;
- (p) A material breach of this Agreement by the Manager;
- (q) A violation of the terms of any Non-Disclosure agreement entered into between the City and Manager or between the City and third-parties; or,
- (r) Any other reason constituting "good cause" under Texas law.

In the event the City terminates the Manager for Cause, the City and the City Manager shall prepare a joint press release, which is mutually agreeable to both parties. The joint press release shall not contain any text or information that would be disparaging to either party.

In the event the City terminates the Manager for cause, City Manager shall be permitted to remain in the then-current City-provided housing for no more than ninety (90) calendar days. During this time, Manager shall pay as all-inclusive rent, the amount of five hundred dollars (\$500.00) to the City for each thirty (30) calendar days where the Manager remains in the home. Manager shall also assume full costs of utilities in the period between termination and vacating the home, reimbursable to the City based on actual invoice (i.e. usage) amounts. Manager shall receive a lump sum payment of all accrued paid time off upon termination of employment for any reason. The City shall withhold enough funds from final payment to cover any rent and utilities not previously paid by Manager.

6.3 UNILATERAL SEVERANCE. As one of the termination events specified above in Paragraph 6.1, the Council may end the employment relationship and terminate this Agreement, at the pleasure of the Council, whether with or without good cause, upon written notice to the Manager as specified below and payment to the Manager of the Severance Amount (as defined below), the Severance Benefits (as defined below) and the Current Obligations (the "Unilateral Severance"). If the Council determines that it desires a Unilateral Severance it shall provide



written notice to the Manager at least thirty (30) days in advance of the effective date of such termination, which specifies: (a) the Council has voted to pursue a Unilateral Severance pursuant to this Paragraph 6.3 of the Agreement, (b) the effective date of the Unilateral Severance ("Severance Effective Date"), and (c) the City's commitment to pay the Severance Amount (including a specific line item breakdown of the items that constitute the total Severance Amount), the Severance Benefits and the Current Obligations. On or before the Severance Effective Date, the Manager may by written notice to the City direct that the Severance Amount be paid and payable in a manner directed by the Manager, provided that the total Severance Amount must be paid and payable on or before the first anniversary of the Severance Effective Date and there shall be no limitations on the City making all deductions and withholdings required by law.

The "Severance Amount" means the total amount of: (a) an amount equal to the following schedule:

Should severance occur within the:

- i. First Twelve months of employment from the commencement date of this agreement, value equal to twelve months
- ii. Second Twelve months of employment from the commencement date of this agreement, value equal to nine months
- iii. Third Twelve months from the commencement date of this agreement and thereafter, value equal to six months

of the Manager's then current salary to serve as the primary basis for the Manager's severance pay, plus (b) the value of any accrued but unused sick/personal (PTO) leave days, computed on an hourly basis determined by dividing the Manager's then current annual salary by 2080 hours.

The "Severance Benefits" means, at the City's expense: (i) continued health insurance benefit pursuant to Paragraph 3.5 of the Agreement, for a period of six months or if sooner, until the Manager obtains other full time employment and coverage through a group health insurance plan from the Manager's new employer; (ii) professional out placement services with a firm selected by the Manager, in a total amount not to exceed Five Thousand Dollars (\$5,000.00); (iii) continued housing and associated housing benefits as outlined in Section 3.10 of this Agreement for a period of no less than ninety (90) calendar days; and (iv) full payment of Retention Incentives as outlined in Section 3.1.1, regardless of time of service with the City, unless the retention incentives had been paid previously.

The "Current Obligations" includes all salary and benefits under this Agreement payable or otherwise owing by City to Manager through and including the Severance Effective Date.

Conditioned upon the City fulfilling its obligations to pay the Severance Amount, the Severance Benefits and the Current Obligations, upon a Unilateral Severance, the Manager waives and releases the Manager's rights to continued employment with the City and the parties waive and release the right to an arbitration hearing on the issue of good cause. In the event of a Unilateral Severance, the parties agree not to make disparaging comments or statements about each other.

6.4 DISABILITY OR INABILITY TO PERFORM WORK FUNCTIONS. In the event the City Manager becomes physically or mentally incapable of performing his job duties and functions with reasonable accommodations, and it reasonably appears such incapacity will last for more than six months (6 mos.), the Council may terminate the City Manager. Should the Council determine to terminate the Manager due to incapacity, the Manager shall receive all benefits as outlined in Section 6.3 of this agreement.

6.5 RESIGNATION OR RETIREMENT OF MANAGER. The City Manager may resign at any time and agrees to give the City at least 45 calendar days advance written notice of the effective date of resignation, unless both Parties otherwise agree in writing. Should the City Manager voluntarily retire from service with the City, Manager shall provide no less than six months (6 mos.) written notice to the City. The Manager's actual retirement date shall be mutually established between the Manager and Council.

6.6 CONFIDENTIAL INFORMATION AFTER TERMINATION OF EMPLOYMENT. Regardless of the circumstances surrounding the Manager's departure from the City:

- i. Manager acknowledges that the sale or unauthorized use of or disclosure of confidential information of the City constitutes unfair competition. Manager promises and agrees not to engage in any unfair competition.
- ii. Manager shall not:
 - a. Make known to any person, firm, or corporation the names or addresses of any of the customers or principals of the City.
 - b. For a period of three (3) years immediately following the termination of employment with the City; either directly or indirectly, solicit, or take away, or attempt to solicit, or take away any of the customers or principals of the City either for him/herself or for any other person, firm, or corporation, by the use of confidential information obtained from the City during his term of employment.
 - c. Violate the terms of any non-disclosure agreement entered into by the Manager or by the City.

VII. GENERAL PROVISIONS

7.1 COMPLETE AGREEMENT. This Agreement sets forth and establishes the entire understanding between the City and the Manager relating to the employment of the Manager by the City. 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 signed agreement may amend any provision of this Agreement during the term of this Agreement; such amendments shall be incorporated and made a part of this Agreement.

7.2 BINDING EFFECT. This Agreement shall be binding on the City and the Manager as well as their heirs, assigns, executors, personal representatives and successors in interest.

7.3 SAVINGS CLAUSE. If any term or provision of this Agreement, as applied to any party or to any circumstance, is declared by a court of competent jurisdiction hereof to be illegal,



unenforceable or void in any situation and in any jurisdiction, such determination shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending provision in any other situation or in any other jurisdiction. The parties agree that the court or arbitrator making such determination shall have the power to reduce the scope, duration, area or applicability of the term or provision, to delete specific words or phrases or to replace any illegal, unenforceable or void term or provision with a term or provision that is valid and enforceable and that comes closest to expressing the intention of the invalid or unenforceable term or provision.

7.4 CONFLICTS. In the event of any conflict between the terms, conditions and provisions of this Agreement and the Applicable Laws and Authorities, then, unless otherwise prohibited by law, the terms of this Agreement shall take precedence over the contrary provisions of the Applicable Laws and Authorities during the term of this Agreement.

7.5 CONTROLLING LAW. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Texas and shall be performable in Reeves County, Texas, unless otherwise provided by law.

7.6 NOTICE. Notice pursuant to this Agreement shall be given in writing and delivered by personal service to either party; To the Mayor in the case of the City.

IN WITNESS WHEREOF, the City has caused the Agreement to be signed and duly executed on its behalf by its Mayor, and duly attested by its City Secretary, and Employee has signed and executed this agreement on the date above written.

TOWN OF PECOS CITY, TEXAS

CITY MANAGER

By: 
Venetta Seals
Mayor

By: 
Seth A. Sorensen

ATTEST:

APPROVED AS TO FORM AND FUNCTION:

By: 
Syra Nichols
City Secretary

By: 
Rod Ponton
City Attorney

