

TOWN OF PECOS CITY



CITY MANAGER 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 22 day of September, 2015, by and between the Town of Pecos City, Texas, a municipal corporation (the "City") and Eric Honeyfield (the "Manager").

WITNESSETH:

WHEREAS, the City Council of the Town of Pecos 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"), pursuant 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 and Termination

1.1 TERM AND TERMINATION.

(a) The term of this Agreement shall be for a term of three (3) years beginning October 9, 2014 (the "Commencement Date") and ending on October 9, 2017, provided, however, that the term of this Agreement shall be subject to such instances of earlier termination (as specified below) at the pleasure of the Council or City Manager.

(b) At will employment. The employment of Manager is at will. The Manager is free to leave the employment with the City at any time. Conversely, the City may terminate the employment at any time, with or without cause. This employment agreement shall terminate immediately and automatically for any of the following reasons:

i. Upon notice for cause, including but not limited to, the Manager's dishonesty in relations with or on behalf of City; or upon a material breach of this agreement by Manager; or a violation of the terms of the Non-Disclosure entered into between the City and Manager or between the City and third parties.

ii. The death of the Manager.

iii. The legally adjudicated incompetence of the Manager.

iv. Thirty (30) days notice from one party to the other.

v. Termination of Manager's Employment for "good cause" (as defined in Paragraph (b) below);

vi. A violation of Paragraphs (c) and (d) as set out below.

(c) For purposes of this agreement the term "good cause" is defined as follows:

i. 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 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.

ii. Any misconduct of the Manager involving an act of moral turpitude, criminal illegality (except minor traffic violations), or habitual violations of the traffic laws whether or not related to Manager's official duties hereunder.

iii. Any willful, knowing, grossly negligent, or negligent misapplication or misuse, direct or indirect, by 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 Manager in his official capacity.

(d) As another alternative to the termination events specified above, 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: (i) the Council has voted to pursue a Unilateral Severance, (ii) the effective date of the Unilateral Severance ("Severance Effective Date"), and (iii) 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 deductions and withholdings required by law.

The "Severance Amount" means the total amount of: (i) an amount equal to the value of six (6) months of the Manager's then current salary to serve as the primary basis for the Manager's severance pay, plus (ii) the value of any accrued but unused personal 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: (1) continued health insurance benefits pursuant to this 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. The "Current Obligations" includes all salary and

benefits under this Agreement payable or otherwise owing by the City to the Manager through and including the Severance Effective Date.

Conditioned upon the City fulfilling its obligations to pay a 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 and any and all claims for damages of any kind 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

(c) Protection of Confidential Information After Termination of Employment.

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 his/her 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/her term of employment.

- C. Violate the terms of any non-disclosure agreement entered into by the Manager or by the City.

(d) Restriction on Competitive Activity During Employment/Protection of Confidential Information/Conflict of Interests.

So long as Manager is employed by the City, Manager shall not, unless specifically directed or authorized to do so in writing by the City Council, directly or indirectly:

- i. Engage in any business or activities in competition in any manner whatsoever with the business of the City.
- ii. Call on, Solicit, or attempt to call on or solicit, any client or customer of the City for the account of anyone other than the City.
- iii. Reveal confidential information of either the City or a principal to any individual, partnership, corporation, or association, including one in a business competitive with the City in any manner whatsoever, other than that is necessary and appropriate in the ordinary course of the City's business. Confidential information includes but is not limited to, the names or addresses of any principal or customer of the City, contact persons, purchasing or buying patterns, operating

- patterns, confidential technical information of a customer or principal, and/or any information subject to a non-disclosure agreement.
- iv. Use or disclose any proprietary information or trade secrets of any former or current employer or other person or entity, or bring onto the business premises of the City any unpublished document or data or proprietary information belonging to any former or current employer or other person or entity, or store any data evidencing any proprietary information or trade secrets of any former or current employer or other person or entity in any computer which is used to store data of the City or perform work for the City, whether stand alone, or in network, and whether such computer is located on the business premises of the City or elsewhere.
 - v. Manager shall further execute and adhere to any Conflict of Interest Guidelines made available to Manager from time to time.

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, and City ordinances and, as may be lawfully assigned by the Council (collectively the "City Manager's Duties"). Further the Manager shall comply

with policies, rules, regulations and ordinances as they exist or may hereafter 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.

2.1 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.
- ii. Direct, assign, reassign and evaluate all of the employees of the City.
- iii. Organize, reorganize and arrange the staff of the City.
- 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 resignation, which must be accepted by the Council.
- vi. Manager shall be at his place of employment or anywhere else needed to conduct City business Monday through Friday excluding holidays, religious or otherwise.
 - A. If manager cannot be at his place of employment on said days, for any reason, Manager shall make said reason known in a timely

fashion to City Staff and make himself available to staff as is reasonable. If not at place of employment on said days and reason is of a personal nature Manager must submit for personal paid time off in accordance with City policies and procedures.

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

2.3 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.

2.4 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) and inform the Council of the results of such efforts.

2.5 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 attorney's fees incurred in any legal proceedings brought against Manager in the Manager's individual or official capacity as an employee and as City Manager, providing the incident(s), which is (are) the basis of any such demand, claim, 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 attorney's fees for those claims or any cause 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 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 to him will depend on the terms of the applicable insurance contract. To the extent this Paragraph 2.5 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 2.5 shall survive the termination, expiration or other end of this Agreement and/or the Manager's employment with the City.

2.6 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.

2.7 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 the exempt employees so long as the time off does not interfere with the normal conduct of the office of the 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.

III. Compensation

3.1 SALARY.

The City shall provide the Manager with a yearly salary in the sum of one hundred and fifty thousand dollars (\$150,000.00). This monthly 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 withholdings or deductions required by the Applicable Laws and Authorities.

3.2 SALARY ADJUSTMENTS.

At any time during the time 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 – VACATION, SICK/PERSONAL AND HOLIDAY.

The Manager may take, at the Manager's choice, the same number of hours of vacation authorized for other administrative employees of the City, the leave to be in a single period or at different times. The vacation 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 the same sick/personal leave benefits as authorized by Council policies for administrative employees. That being 11.08 hours of Leave per pay period. The Manager shall observe the same legal holidays as provided by the City for its administrative employees.

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 premiums for health, hospitalization, vision, dental, and comprehensive medical insurance for the Manager pursuant to the group health plan provided by the City for its administrative employees.

3.6 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. 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 said expenses in sufficient detail. Approval or disapproval of said voucher shall be determined by the Finance Director and may be appealed to the Council by Manager.

The City shall provide mileage reimbursement to the Manager, at the applicable State rate, for a total of two round trips a month from Pecos, Texas to Manager's residence in located in Las Cruces, New Mexico.

Until the City provides a car for official business, the City shall provide a three hundred dollar (\$300.00) a month car allowance to Manager to compensate Manager for expenses related to the use of Manager's vehicle.

Lastly, the City shall provide and pay for Manager's housing at Pecos, Texas. Said appropriate housing for Manager shall be determined by the Town of Pecos City.

3.7 BONDS.

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

3.8 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.

IV. Professional Growth

4.1 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/or desirable for the good of the City through the Manager's continued professional participation, growth and advancement.

4.2 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, and such other national, regional, state and local governmental groups and committees in which the manager is a member.

4.3 PROFESSIONAL CONTINUING EDUCATION.

The City also 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.

V. Performance Evaluation

5.1 EVALUATION PROCESS.

The Council shall review the Manager's job performance at least annually. The Council reserves the right to review the Manager's job performance at any time the Council deems reasonably necessary for such review. The Council shall provide the Manager a reasonable and adequate opportunity to discuss with the Council and/or respond to the Manager's evaluation.

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 provided 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. General Provisions

6.1 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.

6.2 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.

6.3 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 provision 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 that is valid and enforceable and that comes closest to expressing the intention of the invalid and unenforceable term or provision.

6.4 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.

6.5 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.

Town of Pecos City, Texas

By: Venetta Seals
Venetta Seals, Mayor

Executed this the 22nd day of January, 2015.

City Manager:

Eric Honeyfield

Eric Honeyfield

Executed this the 22 day of January, 2015.

10% Increase to Eric Honeyfield's salary (from \$150,000 to \$165,000) effective 9/1/2016: Approved by City Council on August 25, 2016. Motioned by Councilman Orona, Seconded by Councilman Knudsen, all in favor-none opposed.