

# **EXHIBIT D-- TCMA Sample Employment Agreement**

## **AGREEMENT FOR PROFESSIONAL SERVICES AND EMPLOYMENT AS CITY MANAGER**

This Agreement for Professional Services and Employment as City Manager (this "Agreement"), is made and entered into effective as of this the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the City of \_\_\_\_\_, Texas, a municipal corporation (the "City"), and \_\_\_\_\_, (the "Manager"), to establish and set forth the terms and conditions of the employment of the Manager as the City Manager of the City.

### **W I T N E S S E T H:**

WHEREAS, the City Council of the City (the "Council") City Manager believe that employment agreements negotiated between City Councils and City Managers can be mutually beneficial to the city organization, the City Manager, and the community they serve;

WHEREAS, when appropriately structured, the City Council and City Manager believe employment agreements 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 City Council and City Manager believe it is important to thoughtfully consider guidelines that will be consistent with both the letter and the spirit of State law, and to the extent applicable, the city's charter and personnel policies, that will uphold the principle of "serving at the pleasure of the Council," that will clearly define and

incorporate the benefits to the community and organization, and that will address the protection of the Manager and family through provisions that are reasonable in nature and scope when compared to professional practices and local/regional market conditions and appropriately funded within the city's budget;

WHEREAS, the City desires to employ the services of the Manager as the City Manager of the City, pursuant to the terms, conditions and provisions of this Agreement;

WHEREAS, it is the desire of the Council, to provide compensation and benefits, establish conditions of employment for, and to set the working conditions of, the Manager as provided in this Agreement;

WHEREAS, the Council desires to secure and retain the services of the Manager, to provide inducements for the Manager to accept employment as the City Manager of the City and to remain in such employment, to encourage full work productivity by assuring the Manager's morale and peace of mind with respect to future security, and to provide a proper means for termination, resignation, or retirement of the Manager;

WHEREAS, except as otherwise specifically provided herein, the Manager shall have and be eligible for the same benefits as are provided to all non-Civil Service employees of the City; and

WHEREAS, the Manager has agreed to accept employment as the City Manager of the City, subject to and on the terms, conditions, and provisions agreed to and set forth in this Agreement;

NOW, THEREFORE, in consideration of Manager accepting employment with the City, and other good and valuable consideration, including the mutual covenants herein contained, the City and the Manager hereby contract, covenant, and agree as follows:

**Section 1. Duties.** The Council hereby employs the Manager as the chief administrative officer of the City to perform the duties and functions specified in \_\_\_\_\_ (insert ordinance or charter reference), this Agreement, and as the Council shall, from time to time, assign to the Manager consistent with the intent of this Agreement.

The Manager shall report for work, and the duties and employment of the Manager shall commence on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ (the “Commencement Date”).

**Section 2. Term.** The term of this Agreement shall be indefinite and this Agreement shall be and remain in full force and effect until terminated by the Manager or the Council as herein provided (the “Term”).

*The Manager shall serve at the pleasure of the Council and nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the Council, or the Manager, to terminate the services of the Manager at any time, subject only to applicable provisions of the city charter, city personnel policies, and the provisions set forth hereinafter in the section titled “Termination.”*

**Section 3. Salary.** City agrees to pay the Manager an annual base salary, which salary shall initially be \$\_\_\_\_\_, payable in installments at the same time as other employees of the City are paid.

City further agrees to review the base salary and other benefits of the Manager at least annually.

**Section 4. Deferred Compensation.** City agrees to pay the Manager annual deferred compensation in an amount equal to \_\_\_\_% of base salary. The deferred compensation shall be paid monthly to the qualified deferred compensation fund or funds designated by the Manager.

**Section 5. Disability and Retirement Benefits.** The Manager shall be covered and governed by the same retirement system as are all other employees. Retirement contributions shall be paid as required by the retirement system's plan documents.

If the Manager retires pursuant to a qualified retirement plan or is permanently disabled during the Term, the Manager shall be compensated for all sick leave, vacation leave, holidays, and other benefits then accrued or credited to the Manager, and, at the Manager's option, shall be permitted to continue to participate in the City's health insurance plan on the same basis as other retirees from the City are permitted to do so, or, if such other retirees are not permitted to do so, at the cost of the Manager.

**Section 6. Insurance and Annual Physical.**

- A. **Health Insurance.** The Manager shall be covered by the same health, dental, and vision plans as all other employees, or such plans that are available through City and selected by the Manager, except that the City shall pay the employee share of premiums for the Manager and the Manager's dependents. The coverage shall be in full force and effect immediately upon the Commencement Date, including no waiting period for pre-existing conditions. The City further agrees to coordinate its insurance plan with the Manager's current insurance plan and coverage, with the intent that no exclusion, hiatus or break in coverage in health, disability or life insurance coverage occurs for the Manager and the Manager's dependents. The City also agrees to reimburse Manager up to \$500 annually toward the cost of a physical examination of the Manager by a qualified physician selected by the Manager.
  
- B. **Life Insurance.** The City agrees to purchase and pay the required premiums for a life insurance policy for the Manager, providing coverage in an amount equal to a multiple of the Manager's base salary. The multiple, type of policy, and policy terms will be pursuant to the same policies and

conditions as are available to the other employees of the City. The Manager shall designate the beneficiary of such policy.

- C. **Disability Insurance.** The City agrees to put into force for the Manager, and to make the required premium payments for, an insurance policy providing 24 hour coverage for occupational disability as well as total and permanent disability income benefits, with no expiration. The policy will provide 75% income replacement for short-term coverage from the expiration of any accrued sick leave until long-term coverage begins, and 60% income replacement for long-term coverage. The policy shall be noncancellable and be guaranteed renewable, with cost of living provisions included.

**Section 7. Automobile.** The Manager's duties require the Manager to have the exclusive and unrestricted use, at all times during the Manager's employment with City, of a fully equipped (including phone), automobile provided to the Manager by the City.

The City shall be responsible for paying for liability, property damage, and comprehensive insurance and for the purchase, operations (includes fuel), maintenance, repair, and regular replacement of the automobile.

**Section 8. Leave Benefits.** All provisions of the rules and regulations of the City applicable to fringe benefits, leave and working conditions as they now exist or hereafter may be amended, shall also apply to the Manager as they apply to all other employees of the City, in addition to the benefits enumerated specifically for the benefit of the Manager herein; provided that vacation, sick leave, and all other benefits which vary according to tenure shall be calculated and granted to the Manager in accordance with the City's regulations using an equivalent original employment date of the Manager with the City as \_\_\_\_\_, 20\_\_\_\_.

Additionally, to offset leave being lost or used by Manager as a result of employment transition, on the Commencement Date the Manager will be credited with \_\_\_\_\_ days of vacation leave and \_\_\_\_\_ days of sick leave.

The Manager may retain and carry forward two years accrual of vacation and sick leave, and shall be entitled to five days paid leave each year for teaching, speaking, and writing related to the profession and which brings credit to the city.

**Section 9. Professional and Civic Development.** The City agrees to budget and pay for the civic and professional membership dues and subscriptions of Manager necessary for the Manager's continuation and participation in national, regional, state, and local associations necessary and desirable for the Manager's continued professional participation, growth and advancement, and for the good of the City. Developing and maintaining professional association contacts and standing provide the City access to valuable resources, and the reasonable participation and related travel by Manager as provided for in the annual budget will be a part of the Manager's duties.

**Section 10. Business Expenses.** Certain expenses of a non-personal and job-related nature will necessarily be incurred by the Manager in the performance of the Manager's duties. The City will pay or reimburse such business expenses, and the Finance Director is authorized to disburse such monies upon receipt of duly executed expense or petty cash vouchers, receipts, statements or personal affidavits. The City will also pay the full cost of any bond, if any is required by the City to be made by the Manager.

**Section 11. Relocation Expenses.** The Manager will establish residence within the City's corporate boundaries within \_\_\_\_\_ months of the Commencement Date, and will thereafter maintain a residence within the City during the term of this Agreement.

- A. **Moving.** The City will reimburse, or pay directly, for the expenses of moving the Manager, the Manager's family, and the Manager's personal property from the Manager's current residence to the City. The moving

expenses will include packing, moving, storage costs, unpacking, and insurance charges. The moving expenses shall be reimbursed after actual invoices are presented and shall not exceed \$\_\_\_\_\_.

- B. **Related Travel.** The City shall reimburse the Manager for actual lodging and meal expenses for the Manager and the Manager's family in route from the Manager's current residence to the City; and for up to two round trips by air or automobile, together with related lodging and meal expenses, incurred by the Manager and/or the Manager's family to assist with house hunting or other facets of the relocation; and the City shall pay an interim housing supplement of \$\_\_\_\_ per month, beginning on the Commencement Date and continuing for a maximum of \_\_\_\_ months or until the Manager purchases or leases a home within the City.

**Section 12. Indemnification.** To the fullest extent permitted by law, City shall defend, save harmless and indemnify Manager 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 Manager's duties, and shall obtain and keep in full force and effect liability insurance, or risk pool coverage, including errors and omissions coverage on a "per occurrence" basis, in sufficient amounts to assure accomplishment of such hold harmless and indemnification; provided that this section shall not be construed as creating any right, cause of action, or claim of waiver or estoppel for or on behalf of any third party, nor shall it be construed as a waiver or modification of the availability of the defense of governmental immunity or any other legal defense available to either City or the Manager as to any third party; and provided further that City shall not indemnify and hold harmless the Manager from and with respect to any claim or liability for which the conduct of the Manager is found by the courts to have been grossly negligent or intentional wrongful conduct.

City will compromise and settle any such claim or suit and pay the amount of any settlement or judgment rendered thereon. This indemnification shall extend beyond and survive the termination of employment and the expiration of this Agreement.

**Section 13. Hours of Work.** It is recognized that the Manager is expected to engage in the hours of work that are necessary to fulfill the obligations of the position, must be available at all times, and must devote a great deal of time outside the normal office hours to the business of the City.

The Manager acknowledges the proper performance of the duties of the City Manager of the City will 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 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 duties of the City Manager of the City, 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 temporary, outside professional employment which will not in anyway limit the performance of, or the Manager's availability for the performance of, the Manager's duties hereunder. The term "outside professional employment" shall be construed to include occasional teaching, writing or consulting performed on the Manager's time off.

#### **Section 14. Termination and Severance Pay.**

A. **Termination.** In the event Manager is terminated by the Council during the Term of this Agreement and Manager is then willing and able to perform all the duties of the City Manager under this Agreement, then, in that event, the City agrees to pay the Manager a lump sum cash payment equal to \_\_\_ \_\_\_ months full salary and benefits, plus the value of all sick and vacation leave, holidays and other benefits accrued by, or credited to, the Manager prior to the termination; provided that, if the Manager is terminated because of a conviction for a misdemeanor involving moral turpitude or personal gain, or any felony, then, in that event, the City shall have no obligation to pay the severance payments designated in this Section.

B. **Reductions.** In the event the Council during the Term of this Agreement reduces the authority of the Manager, or reduces the salary or other financial benefits of Manager in a greater percentage than an applicable across-the-board reduction for all employees of the City, or in the event the City refuses, following written notice, to comply with any other provision benefiting the Manager herein, or the Manager resigns following a suggestion, whether formal or informal, by the Council that the Manager resign, then in that event, the Manager may, at the Manager's option, be deemed to have been terminated as of the date of such reduction, or as of the date the Manager resigns at the Council's suggestion; provided that, notice having first been given, the suspension of the Manager with pay pending the resolution of any criminal charge filed against the Manager shall not constitute a termination, or a reduction under this Section. The Council shall be deemed to have suggested the resignation of the Manager at any time when a majority of the members of the Council shall at a Council meeting, or in writing, suggest that the Manager resign.

- C. **Resignation.** If the Manager terminates this Agreement by voluntary resignation of the position of City Manager, the Manager shall give 30 days notice in advance unless the Council agrees otherwise.

**Section 15. Notices.** All notices, demands, and other writings may be delivered by either party hereto to the other by United States Mail, or by a reliable commercial courier at the following address:

- (1) City: \_\_\_\_\_  
(2) Manager: \_\_\_\_\_

Alternatively, notices 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 three (3) days after the date the notice is deposited in the United States Mail or with a commercial courier.

**Section 16. Conflict of Interest Prohibition.** The Manager shall not, during the Term of this Agreement, individually, as a partner, joint venture, officer or shareholder, invest or participate in any business venture conducting business in the corporate limits of the City, except for stock ownership in a company whose capital stock is publicly held and regularly traded on any stock exchange, without the prior written approval of the Council. For and during the Term of the Agreement, the Manager shall, except for a personal residence or residential property acquired or held for future use as the Manager's personal residence, not invest in any other real estate or property improvements within the City, without the prior written consent of the Council.

**Section 17. Appropriations.** The Council has appropriated, set aside and encumbered, and does hereby appropriate, set aside, and encumber, available and unappropriated funds of the City in an amount sufficient to fund and pay all financial obligations of the City pursuant to this Agreement, including, but not limited to, the severance pay, salary and benefits set forth and described herein.

## **Section 18. General Provisions.**

- A. **Section headings.** All section headings contained herein are for the convenience of reference only and are not intended to define or limit the scope of any provision of this Agreement.
- B. **Governing Law.** This Agreement shall be construed in accordance with, and governed by, the laws of the State of Texas. Venue shall lie exclusively in \_\_\_\_\_ County, Texas.
- C. **Severability.** In the event any one or more of the sections, provisions or clauses contained herein shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement, but this Agreement shall be construed as if such invalid, illegal or unenforceable provision had not been contained herein.
- D. **Entire Agreement.** This Agreement incorporates all the agreements, covenants and understandings between the City and the Manager concerning the subject matter hereof, and all such covenants, agreements and understandings have been merged into this written Agreement. No other prior agreements or understandings, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.
- E. **Amendment.** This Agreement shall not be modified or amended except by a written instrument executed by the Manager and the duly authorized representative of the Council.
- F. **Effective Date.** This Agreement shall be and become in full force and effect as of the date above first written upon the adoption and approval of

the Council, and the execution and delivery hereof by the authorized officer of the City and the Manager.

G. **Counterparts.** This Agreement may be executed in duplicate original counterparts, each of which when so executed shall be deemed to be an original, and such counterparts shall together constitute but one in the same instrument.

IN WITNESS WHEREOF, the City and the Manager have executed this Agreement effective as of the date first written above.

CITY OF \_\_\_\_\_

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Secretary (City Seal)

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

AGREED AND ACCEPTED this the \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

\_\_\_\_\_  
*City Manager*

# **EMPLOYMENT AGREEMENT: OPTIONS FOR CONSIDERATION**

In addition to the suggested base agreement, TCMA recognizes that some city councils and city managers may wish to consider other options.

The following list of options is provided to give interested city councils and city managers with not only examples of ideas but, sample wording for agreement-related activities that are taking place throughout the state and profession.

## **1. VEHICLE**

**Discussion.** Rather than provide a vehicle to the Manager, some cities may wish to lease a vehicle or provide a vehicle allowance.

### **Sample**

“Monthly Vehicle Allowance. The Manager’s duties require exclusive and unrestricted use of a vehicle. The City agrees to pay to the Manager, during the term of this Agreement and in addition to other salary and benefits herein provided, the sum of \_\_\_\_\_ per year, payable monthly, as a vehicle allowance. The Manager shall acquire and maintain a vehicle during the term of this Agreement, which shall be available for the Manager’s exclusive and unrestricted use in the performance of his/her duties hereunder. The Manager 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.”

“Lease Vehicle. A new, leased, American-manufactured automobile comparable to a full-sized Chevrolet, Oldsmobile, Ford or Buick, provided by the City every two years, for reasonable personal and City business use, including gas, oil, and maintenance. Liability insurance shall be furnished under City and/or lessor’s policies covering business and personal use by the Manager and dependents.”

## **2. RELOCATION EXPENSES**

**Discussion.** Due to the nature of some relocation situations and in order to complete negotiations in recruitment of a new city manager, the City may need to consider reimbursing the Manager for extra expenses related to the Manager’s relocation to the city.

### **Sample**

“It shall be a condition of employment that the Manager shall within 180 days of the execution of this Agreement move and thereafter maintain a permanent residence within the city limits. It is understood that this condition shall cause the incurrence of additional expenses and therefore, the City agrees to reimburse the Manager for the following costs: (1) actual reasonable costs of moving and/or storage of household goods and furniture to the City; (2) all closing costs normally charged to the seller associated with the sale of the Manager’s current residence including the reasonable real estate broker’s commission; (3) all closing costs normally charged to the buyer associated with the sale of the Manager’s new residence including the reasonable real estate broker’s commission; (4) all reasonable costs of transition housing should the Manager be unable to move directly from one residence to the other. Any profit or loss on the sale of the Manager’s current residence shall be the responsibility of the Manager.”

### **3. SOCIAL SECURITY REIMBURSEMENT**

**Discussion.** Some cities do not contribute to Social Security. In the recruitment process, the City that does contribute to Social Security may find itself in a position to “make up the difference” in the net pay to Manager.

#### **Sample**

“For and during the term of this Agreement, the City agrees to reimburse the Manager for the Manager’s required \_\_\_\_% employee contribution of the base salary and benefits to the Social Security Administration.”

### **4. TEXAS MUNICIPAL RETIREMENT SYSTEM REIMBURSEMENT**

**Discussion.** In some instances, either as a benefit or as a recruitment tool when considering a Manager from another state, the City may wish to consider reimbursement to the Manager for Texas retirement contribution requirements.

#### **Sample**

“For and during the term of this Agreement, the City agrees to reimburse the Manager for the Manager’s required \_\_\_\_% employee contribution of the base salary and benefits to the Texas Municipal Retirement System retirement fund.”

### **5. TECHNOLOGY ITEMS**

**Discussion.** Although these may not be considered a “benefit” to the Manager, they are a benefit to the City. In addition to helping the Manager be more productive, such technology improves communication between the Manager, the City, and others. Such

provisions outlined within the Agreement will document that such “city equipment” will be located at the Manager’s home, so as not to appear being done behind the scenes which may cast a negative light upon the City or the Manager. It should also be specified, for the Manager and City’s protection, that the Manager may have personal use of such equipment so as not to require the Manager to have two sets of such items as a computer and related equipment, fax machine, and cell phone.

### **Sample**

“Recognizing the importance of constant communication and maximum productivity, the City Manager shall be provided at City expense at Manager’s residence, for both City and personal use, an appropriate computer system, telephone connections, fax machine, and Internet access.”

## **6. ACCRUED PAY**

**Discussion.** At times a City may wish to provide a retention incentive (sometimes referred to as “golden handcuffs”) to encourage the Manager to remain in the community and in the position of City Manager. This can be especially important if the Manager has many successful accomplishments and received positive, notable attention beyond the community.

### **Sample**

“Accrued Pay. In addition to the foregoing Severance Pay, the Manager shall accrue additional pay (Accrued Pay) for each month from October 1, 2\_\_\_ through September 30, 2\_\_\_, or the Manager’s termination date, whichever occurs first, in an amount equal to the Manager’s current annual salary during the monthly period multiplied by \_\_\_%. Any uncompleted month shall be pro-rated on a daily basis. The Accrued Pay shall be paid to the Manager within 30 days of the date of the Manager’s termination by the City. In the event the Manager’s employment is not terminated prior to September 30,

2\_\_\_, then the Accrued Pay shall be paid to the Manager within 30 days as additional salary. The Manager shall not be entitled to receive any of the Accrued Pay in the event the Manager terminates employment with the City prior to September 30, 2\_\_\_. The right of the Manager to receive the Accrued Pay in a lump sum shall not be affected by the Manager's re-employment."

## **7. AUTOMATIC SALARY INCREASE**

**Discussion.** In some communities, the City Council may not wish for the Manager's annual salary increase consideration to be highlighted. In such instances, a City Council may wish to consider implementing an automatic salary increase for the Manager. Such automatic action can also help maintain the integrity of the City's pay plan by addressing the compression issue in pay scales between the Manager and other pay levels. The City Council can, of course, provide a large increase, or a smaller increase, by special action.

### **Sample**

"In any year that the City's adopted annual operating budget contains a compensation package for city employees, the Manager's base salary shall be increased by an amount equal to the average increase approved by the City Council for the executive classification of employees, unless otherwise directed by Council action. The effective date of any salary increase for the Manager shall be the same as the effective date of salary increases for all city employees."

## **8. DUES TO COMMUNITY SERVICE CLUBS, COUNTRY CLUBS, HEALTH CLUBS & OTHER SPECIAL MEMBERSHIPS.**

**Discussion.** In some communities, it may be important to the City that the Manager belongs to and attends functions at the local country club and/or certain civic groups.

Additionally, attendance at such activities may relate to the City's economic development efforts and program. In that event, the City may wish to provide for such expenses. Membership in a local health club may be in the nature of health and insurance benefits for the Manager.

### **Sample**

“Civic and Country Club Memberships. The City agrees to budget and pay for civic club and/or country club membership dues for the Manager's participation in local community events and activities, and for participation in functions at \_\_\_\_\_ Country Club. It is the desire of the City that the Manager develop and maintain local business association contacts, communication, and standing with such local clubs as a benefit to City.”

“Health Club Membership. As part of a wellness program for the Manager, and along with the Manager's health benefits, the City agrees to budget and pay for an individual membership for the Manager at \_\_\_\_\_ health/fitness club.”

## **9. ESTABLISHMENT OF AN INTEREST & SINKING FUND**

**Discussion.** Some cities may feel more comfortable with establishing an interest and sinking fund for the provisions within the Manager's employment agreement. This may be done by ordinance.

### **Sample**

“During each year while there is any liability by reason of the terms and provisions of the City Manager's Employment Agreement, including the fiscal year in which the Agreement is first approved and executed, the City Council shall compute and ascertain the rate and amount of ad valorem tax, based upon the latest approved tax rolls of the City, with full allowances being made for tax delinquencies and costs of tax collection, which will be sufficient to raise and produce the money required to pay any sums which

become or may become due during any such year, in no instance to be less than \_\_\_\_ percent (\_\_\_\_%) of such obligation, together with all interest thereon, because of the obligation assumed and undertaken under the Agreement. Said rate and amount of ad valorem tax is hereby ordered to be levied and is hereby levied against all taxable property in the City for each year while any liability exists by reason of the obligation undertaken by the Agreement, and said ad valorem tax shall be assessed and collected each year until all of the obligations of the Agreement shall have been discharged and all liability thereunder discharged.”

## **10. OTHER ITEMS**

City Councils and City Managers should continue to discuss and negotiate various options that will be of benefit for their particular situations. Texas communities today, if they are to be competitive, must recognize and support the concept that market conditions change rapidly and will vary according to the area of Texas. Texas communities should feel free to consider whatever may work well within their organizations and communities. For example, articles have recently been published regarding sabbaticals, international travel exchanges, and various “flexible time” options.

Too, the initial year of the Council-Manager relationship is critical and unpredictable. It may be valuable to consider an additional payment to the city manager if he/she is fired at any time during the initial year. To relocate a family, especially with children and, then have the city council terminate that manager can create an unreasonable hardship.