SAMPLE – OPTIONS

City Manager Agreement

Many different benefit options exist for each city to compensate its city manager. Likewise many provisions exist as alternatives to those set forth in the accompanying base Sample City Manager's Agreement.

Below are sample benefit options and other alternative provisions compiled in this listing (organized by reference to the sections of the accompanying base Sample City Manager's Agreement).

This listing illustrates the great breadth and depth of the choices that exist for cities and their city managers. Of course the universe of available options and alternatives is actually quite larger than reflected in this, or any other list, as the options and alternatives are limited only by the desire and creativity of the parties.

As with the any legal documents or instruments, the parties are advised to consult legal counsel to assist with preparing and finalizing same. These sample options and alternatives are not a substitute for legal advice given directly to each of the parties by their respective legal counsel.

I. Term

Alternative (to Add to Paragraph 1.1) – Evergreen Clause:

Each year during the term hereof this Agreement shall automatically be extended for an additional year, unless the Council notifies the Manager in writing at least four (4) months prior to the anniversary of the effective date of this Agreement that it has voted to not extend this Agreement. The Council may decide to not extend this Agreement for an additional year as set forth in this Paragraph for any reason, with or without cause.

II. Employment

Alternative (to Replace Paragraph 2.8) – Hours of Work:

2.8 HOURS OF WORK. 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 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 temporary, outside professional employment which will not in any way interfere with the performance of, or the Manager's availability for the performance of, the 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.

**III. Compensation**

**Alternative Provisions for Salary**

*Automatic Salary Escalator Clause – Fixed Percentage Increase - Alternative (to Add to Paragraph 3.1):*

The Manager’s annual salary shall be automatically increased each year, on the anniversary of the effective date of this Agreement, by an additional ______ percent (____ %) of the then current salary of the Manager.

*Automatic Salary Escalator Clause – Tied to Staff Raises - Alternative (to Add to Paragraph 3.1):*

The Manager’s then current annual salary shall be automatically increased each year, on the anniversary of the effective date of this Agreement, by an amount equal to the greater of the highest percentage raise given to the City’s other employees or a percentage mutually agreeable to the Council and the Manager.

*Performance Based Salary Escalator Clause - Alternative (to Add to Paragraph 3.1):*

For each year of this Agreement, provided that ____________ [insert objectively measurable goals and/or standards that the Manager must achieve or meet], the Manager’s annual salary shall be automatically increased on the anniversary of the effective date of this Agreement, by an additional ______ ______ percent (____ %) of the then current salary of the Manager.

**Benefit Options**

*If benefits from among these options or other options not listed herein are agreed to by the parties, then they would be included in the Manager’s Agreement by inserting the appropriate section number, title and text in Article III of the sample Manager’s Agreement.*

*Annual Physical Examination - Benefit Option:*

**ANNUAL PHYSICAL EXAMINATION.** Once each year during the term of this Agreement, the Manager may undergo a physical examination performed by a licensed physician selected by the Manager. Upon such
examination, the physician shall submit a confidential statement to the Council verifying the Manager's fitness to perform the Manager's duties and copies of all such statements shall be maintained in the Manager's personnel file. The City shall pay all costs of the physical examination and the physician's statement shall remain confidential to the full extent of the Applicable Laws and Authorities.

**Automobile/Automobile Expense - Benefit Options:**

**AUTOMOBILE—ALLOWANCE.** The Council shall provide the Manager with an automobile allowance in the sum of ____________ Dollars ($________) per month, which payment is in lieu of mileage expense reimbursement, gasoline or other vehicle upkeep charges associated with travel to destinations within the City. This allowance shall be paid in addition to the annual salary set forth in Paragraph 3.1 of this Agreement. The Manager will be reimbursed by the City on a per mile basis for business travel in the Manager's personal automobile to destinations outside the City in accordance with City policy as for other administrative employees. [*NOTE: If this option is selected, the second sentence of Paragraph 3.7 of the sample City Manager’s Agreement must be modified to read as follows: “The City agrees to pay the actual and incidental costs incurred by the Manager for travel to destinations outside the City.”]*

**AUTOMOBILE—CITY VEHICLE.** The City shall provide the Manager with a late model, full-size automobile for the Manager's business and 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 with the Manager as a named insured. The City shall fully pay or reimburse the Manager for expenses incurred in the maintenance and use of said automobile and may, in its discretion, provide the Manager with a credit card owned by the City to which such reasonable automobile expenses may be charged.

**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 with the Manager as a named insured. The City shall fully pay or reimburse the Manager for expenses incurred in the maintenance and use of said automobile and may, in its discretion, provide the Manager with a credit card owned by the City to which such reasonable automobile expenses may be charged.

**AUTOMOBILE—CITY VEHICLE.** The City shall provide the Manager with a late model, full-size automobile for the Manager's business 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 with the Manager as a named insured. The City shall fully pay or reimburse the Manager for expenses incurred in the maintenance and use of said automobile and may, in its discretion, provide the Manager with a credit card owned by the City to which such reasonable automobile expenses may be charged.
AUTOMOBILE—REIMBURSEMENT. The Manager will be reimbursed by the City on a per mile basis for all business travel in the Manager's personal automobile in accordance with City policy as for other administrative employees on twelve-month contracts.

Civic Activities - Benefit Options (to Replace Paragraph 3.9):

CIVIC ACTIVITIES. The Manager is encouraged to participate in community and civic affairs including [list specific activities: chamber of commerce, certain civic clubs, etc.]. The expenses of participation in such activities shall be borne by the City.

CIVIC ACTIVITIES. The Manager is encouraged to participate in community and civic affairs. The City shall pay the membership dues to ________ (____) community or civic organizations selected by the Manager. In addition to membership dues, the other expenses of participation in such activities shall be borne by the City.

Consultant Activities - Benefit Options:

OUTSIDE CONSULTANT ACTIVITIES. Notwithstanding anything to the contrary in this Agreement, the Manager may serve as a consultant and/or undertake speaking engagements, writing, teaching or other professional duties and obligations for other than the City and be paid for such activities (referred to collectively herein as "Consulting Services") for up to ____ (____) days per year, provided that these Consulting Services do not conflict or interfere with the Manager's professional responsibilities to the City and that there is no expense to the City. Consulting Services provided by the Manager under the terms and conditions of this paragraph must be consistent with state and federal law.

OUTSIDE CONSULTANT ACTIVITIES. Notwithstanding anything to the contrary in this Agreement, the Manager may serve as a consultant and/or undertake speaking engagements, writing, teaching or other professional duties and obligations for other than the City and be paid for such activities (referred to collectively herein as "Consulting Services"), provided that these Consulting Services do not conflict or interfere with the Manager's professional responsibilities to the City and that there is no expense to the City. Consulting Services provided by the Manager under the terms and conditions of this paragraph must be consistent with state and federal law. The Manager is hereby granted ____ (____) days of Consulting Leave ("Consulting Days") for each year of this Agreement. The Manager's accrued but unused Consulting Days shall carry over from year-to-year during the term of this Agreement.

Expenses Benefit Options:

EXPENSES—ALLOWANCE. The City shall provide the Manager with a business expense allowance in the sum of $________ per month, for discretionary business expenses related to the City's business that may be incurred by the Manager but that are not directly reimbursed by the City, e.g., meal and event expenses for
gatherings with individual Council members, staff members, business contacts and/or other individuals with whom the City has a relationship.

EXPENSES—ANNUAL AUDIT. The Manager shall cooperate with the City’s external auditors so that the external auditors can perform a complete audit of the Manager’s expenses on a yearly basis and report the audit results to the Council.

Housing Benefit Options:

HOUSING—ALLOWANCE. The City shall pay to the Manager a housing allowance of ___________ Dollars ($____________) per year payable in ____________ (____________) equal installments.

HOUSING—ALLOWANCE—TEMPORARY. The City shall pay to the Manager a housing allowance of ___________ Dollars ($________) per month for the first ____ (___) months the Manager is employed by the City.

HOUSING. The City agrees to provide suitable housing to the Manager during the term of this Agreement, and agrees to pay for all utilities, repairs and maintenance, including lawn and garden care, and other housing costs.

HOUSING. The City agrees to provide suitable housing to the Manager during the term of this Agreement, and agrees to pay for all utilities, repairs and maintenance, including lawn and garden care, and other housing costs. The Manager agrees to pay the City ___________ Dollars ($________) per month as rent.

Insurance – Health - Benefit Options- Alternatives (to Replace Paragraph 3.5):

3.5 INSURANCE – HEALTH. The City agrees to pay the 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.

3.5 INSURANCE—HEALTH – MANAGER AND FAMILY. The City agrees to pay the premiums for health, hospitalization, vision, dental and comprehensive medical insurance for the Manager and the Manager’s dependants pursuant to the group health care plan provided by the City for its administrative employees. In the event that the Manager does not elect to receive dependant coverage for his family, the City shall pay the amount of the City’s Premium Savings (defined below) to the Manager as a dependent coverage cost stipend. The “City’s Premium Savings” are an amount equal to the difference in premium cost to provide
coverage at the highest available option for: (a) the Manager only, or (b) the Manager and the Manager's dependants.

3.5 **INSURANCE—HEALTH – MANAGER AND FAMILY - CAPPED.** The City agrees to pay the premiums for health, hospitalization, vision, dental and comprehensive medical insurance for the Manager and the Manager's dependants pursuant to the group health care plan provided by the City for its administrative employees; provided, however, that in no event shall the City's obligations to pay premiums exceed a total of ____________ Dollars ($__________) per month. The City shall provide a plan established under Section 125 of the Internal Revenue Code (the "Code") and allow the Manager to pay all health, hospitalization, vision, dental and comprehensive medical insurance premiums on a non-taxable basis through such plan to the extent permitted by the Code.

3.5 **INSURANCE—ALLOWANCE.** The City shall pay ____________ Dollars ($____________) per month toward the premium for insurance coverage as selected by the Manager for health, hospitalization, major medical, dental, life and/or disability insurance. Any costs for such insurance coverage that exceed the payment provided for herein shall be paid by the Manager. The City shall provide a plan established under Section 125 of the Internal Revenue Code (the "Code") and allow the Manager to pay all health, hospitalization, vision, dental and comprehensive medical insurance premiums on a non-taxable basis through such plan to the extent permitted by the Code.

3.5 **INSURANCE—ALLOWANCE – MANAGER AND FAMILY.** The City shall pay the Manager ____________ Dollars ($____________) per month for premiums for health, hospitalization, major medical, dental, life and/or disability insurance coverage selected by the Manager for the Manager and the Manager's dependants. Any costs for such insurance coverage that exceed the payment provided for herein shall be paid by the Manager. The City shall provide a plan established under Section 125 of the Internal Revenue Code (the "Code") and allow the Manager to pay all health, hospitalization, vision, dental and comprehensive medical insurance premiums on a non-taxable basis through such plan to the extent permitted by the Code.

Insurance – Life - Benefit Options:

**INSURANCE—LIFE.** The City shall pay the annual premium toward the purchase of a term life insurance policy or similar life insurance policy having an aggregate face amount of ____________ Dollars ($__________) per month. All life insurance policies provided hereunder shall be owned by the City on the life of the Manager, with the Manager having the sole right to determine the beneficiary under each of the life insurance policies.
**Insurance—Life.** The City shall pay the annual premium toward the purchase of a term life insurance policy or similar life insurance policy having an aggregate face amount of ______ (___) times the amount of the Manager’s then current annual salary. All life insurance policies provided hereunder shall be owned by the City on the life of the Manager, with the Manager having the sole right to determine the beneficiary under each of the life insurance policies.

---

**Insurance—Life.** The City shall pay the annual premium toward the purchase of a term life insurance policy or similar life insurance policy on the life of the Manager, provided that the City’s expense in funding any single annual premium shall not exceed ______ Dollars ($____). All life insurance policies provided hereunder shall be owned by the City on the life of the Manager, with the Manager having the sole right to determine the beneficiary under each of the life insurance policies.

---

**Insurance—Disability - Benefit Options:**

**Insurance—Disability.** The City shall pay the annual premiums for a disability income policy for the Manager, which policy shall provide disability income of ______ percent (____%) of the Manager’s then current annual salary to the Manager or the Manager’s designated beneficiary in the event the Manager becomes disabled or incapacitated during the term of this Agreement.

---

**Insurance—Disability.** The City shall pay the annual premiums for a disability income policy for the Manager on a policy that is mutually agreeable to the City and the Manager, the proceeds of which shall be payable to the Manager or the Manager’s designated beneficiary in the event the Manager becomes disabled or incapacitated during the term of this Agreement.

---

**Insurance—Disability.** The City shall pay the annual premiums for a disability income policy for the Manager on a policy that is mutually agreeable to the City and the Manager, provided that the City’s annual premium expense shall not exceed ______ Dollars ($____). The proceeds of such policy shall be payable to the Manager or the Manager’s designated beneficiary in the event the Manager becomes disabled or incapacitated during the term of this Agreement.

---

**Leave—Vacation, Sick/Personal and Holiday - Benefit Options (to Replace Paragraph 3.3):**

3.3 **Paid Leaves—Vacation, Sick/Personal and Holiday.** The Manager may take, at the Manager’s choice, ______ (___) hours of vacation per year during the term of this Agreement, 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 performance of the City Manager’s Duties. The Manager is hereby granted the same sick/personal leave benefits as authorized by the City for its administrative employees. The Manager shall observe the same legal holidays as provided by Council policies for administrative employees.
Leave—Vacation and Sick/Personal Leave Carryover and Sale Back - Benefit Options (to Add to Paragraph 3.3):

All accrued but unused vacation and sick/personal leave of the Manager shall carry over from year-to-year during the term of this Agreement.

________________________________________________________________________

At the sole option of the Manager, either at the end of each year of the term of this Agreement, at retirement, or when the Agreement is terminated, either voluntarily or involuntarily, the City shall pay the Manager for any accrued but unused vacation and sick/personal leave. 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.

________________________________________________________________________

On or before _____________ [month and day] of each year during the term of this Agreement, the City shall pay the Manager for all accrued but unused vacation and sick/personal leave, which have accrued during the previous twelve months ending on _____________ [month and day]. 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.

________________________________________________________________________

Upon termination of this Agreement, the City shall pay the Manager for any accrued but unused vacation and sick/personal leave in the form of a contribution to an Accumulated Leave Plan as defined in this Agreement. 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.

The Council shall establish for the Manager’s benefit an Accumulated Leave Plan under which the City shall contribute an amount equal to any vacation and sick personal leave as provided in this Agreement. These contributions shall be made to a City paid plan established under Section 401(a) of the Internal Revenue Code (the “Code”) and/or Section 457(b) of the Code, as is mutually agreeable to the Council and the Manager. These contributions shall not be made to any plan established under Section 457(f) of the Code. Each Plan shall provide that the contributions made to the Accumulated Leave Plan and all earnings thereon shall be fully vested in the Manager. The term “vested” as used herein, means that the portion of the Plan and earnings once vested in the Manager becomes the sole property of the Manager.

The 401(a) plan shall be established as an employer-paid plan with non-discretionary contributions by the City and the Manager shall have no right to receive such contributions in cash. The 401(a) plan and 457(b) plan shall each be established under a written plan document that meets the requirements of the Code and such documents are hereby incorporated herein by reference. The funds for the 401(a) plan and 457(b) plan shall each be invested in such investment vehicles as are allowable under the Code for the applicable type of plan.

Contributions shall first be made to the 457(b) plan after the Manager has determined the amount of salary that he will defer to the 457(b) plan. The City shall contribute an amount that, when added to the Manager’s salary deferral, does not exceed the contribution limit under the Code. If the contribution to the
Accumulated Leave Plan exceeds the contribution limit for the 457(b) plan, the remaining Plan contribution shall be made to the 401(a) plan. If the contribution to the Accumulated Leave Plan exceeds the contribution limit for the 401(a) plan, the remaining Plan contribution shall either be added to the Manager’s taxable income or temporarily deferred to the next calendar year, at the discretion of the Council.

**Note:** The use of plans established under Section 401(a) of the Internal Revenue Code in Texas public agencies and governmental subdivisions and the use of such plans for the purpose of deferring accumulated leave payments (see for example the alternative provisions for Paragraphs 3.3 and 3.6 above) involve certain state and federal issues on which not all professionals agree. Before implementing such a plan, specific professional advice should be obtained from the City’s legal counsel.

On or before _______________ [month and day] of each year during the term of this Agreement, the City shall pay the Manager for all accrued but unused vacation and sick/personal leave, which have accrued during the previous twelve months ending on _____________ [month and day]. 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. The payment shall be in the form of a contribution to an Accumulated Leave Plan as defined in this Agreement.

The Council shall establish for the Manager’s benefit an Accumulated Leave Plan under which the City shall contribute an amount equal to any vacation and sick personal leave as provided in this Agreement. These contributions shall be made to a City paid plan established under Section 401(a) of the Internal Revenue Code (the “Code”) and/or Section 457(b) of the Code, as is mutually agreeable to the Council and the Manager. These contributions shall not be made to any plan established under Section 457(f) of the Code. Each Plan shall provide that the contributions made to the Accumulated Leave Plan and all earnings thereon shall be fully vested in the Manager. The term "vested" as used herein, means that the portion of the Plan and earnings once vested in the Manager becomes the sole property of the Manager.

The 401(a) plan shall be established as an employer-paid plan with non-discretionary contributions by the City and the Manager shall have no right to receive such contributions in cash. The 401(a) plan and 457(b) plan shall each be established under a written plan document that meets the requirements of the Code and such documents are hereby incorporated herein by reference. The funds for the 401(a) plan and 457(b) plan shall each be invested in such investment vehicles as are allowable under the Code for the applicable type of plan.

Contributions shall first be made to the 457(b) plan after the Manager has determined the amount of salary that he will defer to the 457(b) plan. The City shall contribute an amount that, when added to the Manager’s salary deferral, does not exceed the contribution limit under the Code. If the contribution to the Accumulated Leave Plan exceeds the contribution limit for the 457(b) plan, the remaining Plan contribution shall be made to the 401(a) plan. If the contribution to the Accumulated Leave Plan exceeds the contribution limit for the 401(a) plan, the remaining Plan contribution shall either be added to the Manager’s taxable income or temporarily deferred to the next calendar year, at the discretion of the Council.

**Note:** The use of plans established under Section 401(a) of the Internal Revenue Code in Texas public agencies and governmental subdivisions and the use of such plans for the purpose of deferring accumulated leave payments (see for example the alternative provisions for Paragraphs 3.3 and 3.6 above)
involve certain state and federal issues on which not all professionals agree. Before implementing such a plan, specific professional advice should be obtained from the City's legal counsel.

Upon commencing employment the Manager shall, in addition to any balances to which the Manager is otherwise entitled, be credited with _____ hours of additional sick/personal leave and _____ hours of additional vacation leave.

Mobile Phone, Laptop Computer and Other Equipment - Benefit Options:

**MOBILE TELEPHONE—ALLOWANCE.** The City shall provide the Manager with a mobile telephone allowance in the sum of ________ ($______) per month. The Manager shall maintain a personal account for mobile telephone service and shall not open an account in the name of the City. The Manager shall have total responsibility for payment of such personal account and the City shall have no obligation or responsibility related to such personal account other than the monthly payment to the Manager of the mobile telephone allowance stated herein.

**MOBILE TELEPHONE.** The City shall provide the Manager with a mobile telephone for both professional and personal use. Any identifiable charges, i.e., those outside of the calling plan, as reflected on the mobile telephone bill provided to the Manager each month, directly attributable to personal calls by the Manager shall be promptly reimbursed by the Manager.

**PAGER, LAPTOP COMPUTER AND INTERNET SERVICE.** The City shall provide the Manager with a pager, a laptop computer and internet service (DSL, broadband or similar speed) for both professional and personal use, at the sole cost and expense of the City.

Moving/Relocation Expense - Benefit Options:

**MOVING/RELOCATION EXPENSE—ALLOWANCE.** In connection with the necessary relocation of the Manager and the Manager's family to the City, the City shall pay as a moving and relocation expense allowance the sum of ______ Dollars ($______). The moving and relocation expense allowance is paid in lieu of any other compensation or reimbursement for the Manager's cost and expense of moving the Manager's family and belongings.

**MOVING/RELOCATION EXPENSE—REIMBURSEMENT.** In connection with the necessary relocation of the Manager and the Manager's family to the City, the City shall reimburse the Manager for necessary and reasonable expenses incurred in moving and relocating the Manager's family and belongings. The Manager shall document all moving and relocation expenses with receipts, cancelled checks or credit card
statements, and the City shall reimburse the Manager for all such documented expenses within thirty (30) days of the City's receipt of such documented expenses.

MOVING/RELOCATION EXPENSE—REIMBURSEMENT - CAPPED. In connection with the necessary relocation of the Manager and the Manager’s family to the City, the City shall reimburse the Manager for necessary and reasonable expenses incurred in moving and relocating the Manager's family and belongings, provided that the amount reimbursed by the City shall not exceed $________________. The Manager shall document all moving and relocation expenses with receipts, cancelled checks or credit card statements, and the City shall reimburse the Manager for all such documented expenses within thirty (30) days of the City's receipt of such documented expenses.

RELOCATION/COMMUTING EXPENSE—TRAVEL, LODGING AND MEALS. The City shall pay all reasonable and necessary expenses for the Manager's travel to and from the City, as well as related lodging and meals, incurred between the signing date of this Agreement and the __ day of ____________, 20__.

Retirement Benefit - Benefit Options (to Add to Paragraph 3.6):

In addition the City agrees to reimburse the Manager for the Manager's contributions to the applicable state or local retirement system and for any federal taxes applicable to the Manager's contributions.

“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.”

Supplemental Compensation - Diverse Benefit Options:

Supplemental compensation for Managers can take many forms. On an increasing basis, supplemental compensation provisions are being used as a key part of the compensation package used to recruit and retain talented Managers.

Some samples of alternative supplemental compensation provisions are identified below. Please note that there are no options in these sample paragraphs for any other form of deferred compensation (other than the alternative provisions for Paragraphs 3.3 and 3.6 above). This is because the current federal laws regarding such plans are complex, may change from year to year and many times result in unexpected negative tax consequences. Due to the complexity of the laws and issues in this area, if you wish to add the samples provided herein or any other supplemental compensation provisions to an employment agreement you should seek the assistance of qualified legal, tax and/or employee benefit professionals who are experienced in working with retirement and deferred compensation plans of governmental employers.

Also, the use of plans established under Section 401(a) of the Internal Revenue Code in Texas public agencies and governmental subdivisions and the use of such plans for the purpose of deferring
accumulated leave payments (see for example the alternative provisions for Paragraphs 3.3 and 3.6 above) involve certain state and federal issues on which not all professionals agree. Before implementing such a plan, specific professional advice should be obtained from the City’s legal counsel.

“Compensation Enhancement.” This could take lots of different forms, but is commonly structured as a single annual payment (made in addition to regular payments of salary) in a pre-determined amount to or for the benefit of the Manager. For illustration purposes, consider the following sample:

**SUPPLEMENTAL COMPENSATION.** The Council shall establish for the Manager’s benefit a supplemental compensation program (“Plan”) under which the City shall, on or before the anniversary date of this Agreement, contribute $_______ each year during the term of this Agreement. These contributions shall be made to a Council paid plan established under Section 401(a) of the Internal Revenue Code (the “Code”) and/or Section 457(b) of the Code, as is mutually agreeable to the Council and the Manager. These contributions shall not be made to any plan established under Section 457(f) of the Code. Each Plan shall provide that the contributions made to the Plan and all earnings thereon shall be fully vested in the Manager. The term “vested” as used herein, means that the portion of the Plan and earnings once vested in the Manager becomes the sole property of the Manager.

The 401(a) plan shall be established as an employer-paid plan with non-discretionary contributions by the City and the Manager shall have no right to receive such contributions in cash. The 401(a) plan and the 457(b) plan shall each be established under a written plan document that meets the requirements of the Code and such documents are hereby incorporated herein by reference. The funds for the 401(a) plan and the 457(b) plan shall each be invested in such investment vehicles as are allowable under the Code for the applicable type of plan.

Contributions shall first be made to the 457(b) plan after the Manager has determined the amount of salary that he will defer to the 457(b) plan. The City shall contribute an amount that, when added to the Manager’s salary deferral, does not exceed the contribution limit under the Code. If the contribution to the Plan exceeds the contribution limit for the 457(b) plan, the remaining Plan contribution shall be made to the 401(a) plan. If the contribution to the Plan exceeds the contribution limit for the 401(a) plan, the remaining Plan contribution shall either be added to the Manager’s taxable income or temporarily deferred to the next calendar year, at the discretion of the Council.

Again the Council and the Manager have a great deal of flexibility in structuring these provisions which are designed to provide the Manager with a strong incentive to remain employed with the City. Frequently these provisions are structured to provide for vesting on a periodic and increasing basis. For illustration purposes, consider the following sample:
**SUPPLEMENTAL COMPENSATION.** The Council shall establish for the Manager's benefit a supplemental compensation program ("Plan") under which the City shall, on or before the anniversary date of this Agreement, contribute $__________ each year during the term of this Agreement. Each Plan shall provide that the contributions made to the Plan and all earnings thereon are vested in the Manager on a periodic and increasing basis according to the following schedule:

<table>
<thead>
<tr>
<th>Anniversary of Agreement</th>
<th>Vesting Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>1st</td>
<td>25%</td>
</tr>
<tr>
<td>2nd</td>
<td>50%</td>
</tr>
<tr>
<td>3rd</td>
<td>75%</td>
</tr>
<tr>
<td>4th</td>
<td>100%</td>
</tr>
</tbody>
</table>

The required contributions shall be made first to a City paid plan established under Section 401(a) of the Internal Revenue Code (the "Code") as is mutually agreeable to the Council and the Manager. These contributions shall not be made to any plan established under Section 457(b) or Section 457(f) of the Code. The term "vested" as used herein, means that the portion of the Plan and earnings once vested in the Manager becomes the sole property of the Manager.

The 401(a) plan shall be established as an employer-paid plan with non-discretionary contributions by the City and the Manager shall have no right to receive such contributions in cash. The 401(a) plan shall be established under a written plan document that meets the requirements of the Code and such document is hereby incorporated herein by reference. The funds for the 401(a) plan shall each be invested in such investment vehicles as are allowable under the Code for the applicable type of plan.

If the contribution to the Plan exceeds the contribution limit for the 401(a) plan, the remaining Plan contribution shall either be added to the Manager’s taxable income or temporarily deferred to the next calendar year, at the discretion of the Council.

"Performance Pay." Although many different options exist for structuring a performance pay incentive, it is fundamental for these provisions to provide a financial incentive for the Manager meeting a specific standard(s) or for accomplishing specified goals or objectives. To avoid future misunderstandings and disagreements, it is critical that the standard(s), goals or objectives be clearly described in the written agreement. For illustration purposes, consider the following sample:

**SUPPLEMENTAL COMPENSATION – PERFORMANCE PAY.** The Council shall establish for the Manager's benefit a supplemental compensation program ("Plan") under which the City shall, on or before the anniversary date of this Agreement, contribute $________________ each year during the term of this Agreement provided that________________ [insert objectively measurable goals and/or standards that the Manager must achieve or meet]. These contributions shall be made to a City paid plan established under Section 401(a) of the Internal
Revenue Code (the “Code”) and/or Section 457(b) of the Code, as is mutually agreeable to the Council and the Manager. These contributions shall not be made to any plan established under Section 457(f) of the Code. Each Plan shall provide that the contributions made to the Plan and all earnings thereon are fully vested in the Manager. The term “vested” as used herein, means that the portion of the Plan and earnings once vested in the Manager becomes the sole property of the Manager.

The 401(a) plan shall be established as an employer-paid plan with non-discretionary contributions by the City and the Manager shall have no right to receive such contributions in cash. The 401(a) plan and the 457(b) plan shall each be established under a written plan document that meets the requirements of the Code and such documents are hereby incorporated herein by reference. The funds for the 401(a) plan and the 457(b) plan shall each be invested in such investment vehicles as are allowable under the Code for the applicable type of plan.

Contributions shall first be made to the 457(b) plan after the Manager has determined the amount of salary that he will defer to the 457(b) plan. The City shall contribute an amount that, when added to the Manager’s salary deferral, does not exceed the contribution limit under the Code. If the contribution to the Plan exceeds the contribution limit for the 457(b) plan, the remaining Plan contribution shall be made to the 401(a) plan. If the contribution to the Plan exceeds the contribution limit for the 401(a) plan, the remaining Plan contribution shall either be added to the Manager’s taxable income or temporarily deferred to the next calendar year, at the discretion of the Council.

In many cases, supplemental compensation payments are made to a tax-deferred compensation plan established by the City. Due to the many forms that these supplemental compensation provisions can take, Councils and Managers should work closely with their respective legal counsel to negotiate appropriate terms and draft the contract language.

**IV. PROFESSIONAL GROWTH**

*Professional Dues and Subscriptions (to Replace Paragraph 4.1):*

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, regional, state and local associations, including but not limited to the Texas City Management Association, International City/County Management Association, [list all of the other specific Associations] and other organizations necessary and desirable for the Manager's continued professional participation, growth and advancement, and for the good of the City.

*Spouse Travel Benefit (Add as Paragraph 4.4).*
4.4 **Spouse Travel.** The City will pay or reimburse to the Manager the travel and subsistence expenses of the Manager’s spouse when the spouse accompanies the Manager to the annual conference for the International City/County Management Association, the Texas City Management Association, the Texas Municipal League, the National League of Cities, and other similar events with prior notification to the Mayor. 

“Such conferences and meetings should have a program or session(s) for the benefit of the spouse, and the spouse will be required to attend such session(s) and/or program(s) in order for the Manager to receive reimbursement of the travel expenses for spouse.”

**V. PERFORMANCE EVALUATION**

*Performance Evaluation (to Replace Paragraph 5.1):*

5.1 **EVALUATION PROCESS.** The Council shall review the Manager’s job performance at least once annually with the first review being in ___________ 20__, and subsequent annual reviews to occur during the month of _________ of each year thereafter unless the parties agree otherwise. 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 the Manager’s evaluation with the Council. 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.

*Performance Evaluation (to Replace Paragraph 5.3):*

**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, such modifications shall be adopted by the Council at least [insert appropriate minimum advance notice, e.g.: one year, 9 months, etc.] before being used to evaluate the Manager’s performance.

**VI. TERMINATION**

*Original “Good Cause” Termination language (to Replace Paragraph 6.2):*

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) Disability, not otherwise protected by law, that impairs performance of the required duties of the Manager;
(j) 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;
(k) Assault on an employee or citizen of the City;
(l) Knowingly falsifying records or documents related to the City's activities;
(m) Conscious misrepresentation of material facts to the Council or other City officials in the conduct of the City's business; or,
(n) Any other reason constituting "good cause" under Texas law.

(a) 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.

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

(c) 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.

**Unilateral Severance (to Add to Section VI as new Paragraph 6.3):**

**UNILATERAL SEVERANCE.** In addition to those termination events specified above in Paragraph 6.1, the Council may end the employment relationship and terminate this Agreement, 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: (aa) the Council has voted to pursue a Unilateral Severance pursuant to this Paragraph 6.3 of the Agreement, (bb) the effective date of the Unilateral Severance ("Severance Effective Date"), and (cc) 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 value of [specify the number of years (or 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 vacation and sick/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: (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; and (ii) professional out placement services with a firm selected by the Manager, in a total amount not to exceed $[insert appropriate limit to this benefit]. 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.

VII. GENERAL PROVISIONS

Miscellaneous Additional Paragraphs (to Add to Section VII):

NOTICE. Notice pursuant to this Agreement shall be given in writing and delivered by personal service or deposit in the custody of the United States Postal Service, postage prepaid, and addressed as follows:

If to CITY:__________________________________________________________

__________________________________________________________

__________________________________________________________

If to MANAGER:___________________________________________________

__________________________________________________________

Notice shall be deemed delivered and received as of the date of personal service or if mailed, three business days after the date of deposit of such written notice in the course of transmission in the United States Postal Service. Either party may, from time to time by written notice to the other party, designate a different address for notice purposes.

ATTORNEYS' FEES. In the event either of the parties hereto, brings an action (i.e. litigation or arbitration) against the other party concerning or relating to this Agreement, pursuant to Texas Local Government
Code Section 271.159 the losing party in that action agrees to pay the prevailing party reasonable attorneys’ fees and court costs, to be affixed by the Court or arbitrator.

**ASSIGNMENT.** Neither party may assign its rights, duties or obligations under this Agreement to any person or entity, in whole or in part, and any attempt to do so shall be void and deemed a material breach of this Agreement.

**HEADINGS AND CAPTIONS.** Headings and captions used in this Agreement are provided for convenience only and shall not be used to construe or interpret meaning or intent.

"**PERSON**". For purposes of this Agreement, “person” means any natural person, corporation, limited liability company, association, partnership, joint venture, proprietorship, governmental agency, trust, estate or other entity or corporation, whether acting in an individual, fiduciary or other capacity.

**WAIVER.** No waiver of any provision hereof or of any right or remedy hereunder shall be effective unless in writing and signed by the party against whom such waiver is sought to be enforced. No delay in exercising, no course in dealing with respect to, or no partial exercise of any right or remedy hereunder shall constitute a waiver of any other right or remedy, or future exercise thereof.