

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

This Agreement for Professional Services and Employment as City Manager (“Agreement”), is made and entered into effective as of the 1st day of April, 2014 (as amended pursuant to City Council approval on October 20, 2014) between the City of Llano, Texas, a Type A general-law municipal corporation (“City”), and Brenton Blake Lewis, (“Manager”), to establish and set forth the terms and conditions of the employment of the Manager as the City Manager of the City.

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

WHEREAS, when appropriately structured, the Council and 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; and,

WHEREAS, the Council and Manager believe it is important to thoughtfully consider terms that will be consistent with both the letter and the spirit of State law, and to the extent applicable, the City’s ordinances 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; and,

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

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; and,

WHEREAS, the Council desires to continue to secure and retain the services of the Manager, to provide inducements for the Manager to continue 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; and,

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

WHEREAS, the Manager has agreed to continue 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 continuing 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 the City's Ordinances, Personnel Policies, 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 continue the duties and employment of the Manager shall continue on the 1st day of April, 2014 ("Continuation Date").

Section 2. Term. The Term of this Agreement shall be and remain in full force and effect for a period of fifty-four (54) months from the Continuation Date provided for herein, or until otherwise terminated by the Manager or the Council as herein provided (the "Term"). Beginning on October 1, 2016 and each October 1st thereafter ("Extension Date"), unless this Agreement is otherwise terminated as provided herein, this Agreement shall automatically be extended for a twelve (12) month period such that the remaining period of the Term of this Agreement on said annual anniversary of the Extension Date shall be thirty-six (36) months. In the event City

Council desires that this Agreement not be automatically extended for an additional twelve (12) month period on the anniversary of the Extension Date, then the City Council shall give the Manager written notice, at least thirty (30) days prior to the annual anniversary of the Extension Date, that this Agreement will not be extended for an additional twelve (12) month period, and this Agreement shall expire and terminate twenty-four (24) months after such anniversary of the Extension Date, unless otherwise terminated as provided in this Agreement. The City Council's decision to not extend this Agreement for an additional twelve (12) month period shall not constitute "Termination" of the City Manager pursuant to Section 11 of this Agreement.

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's ordinances, personnel policies, and the provisions set forth in this Agreement.

Section 3. Salary. City agrees to pay the Manager an annual base salary of \$92,700.00, payable in periodic installments at the same time as other employees of the City are paid. City further agrees to review the contract document terms and conditions, base salary and other benefits of the Manager at least annually, on or before the 15th day of September of each year. This Agreement shall be automatically amended to reflect any salary adjustments that are provided or required by the City's compensation policy. Consideration shall be given at least on an annual basis to increase compensation at least the average granted to other employees or to be calculated using the same formula as the other employees of the Employer.

Section 4. Retirement and Disability 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 vacation leave, holidays, and other benefits then accrued or credited to the Manager.

Section 5. Insurance. The Manager shall be covered by the same health, dental, vision, life, disability, and workers compensation plans as all other employees.

Section 6. 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.

Section 7. 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 8. 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 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.

The City will also provide a City-owned cell phone to the Manager for use in carrying out the Manager's duties. The City will pay for or reimburse the Manager for usage and/or coverage plan charges related to the cell phone provided to the Manager. Charges related to the personal use of the City-owned cell phone shall be the responsibility of the City Manager.

Section 9. Indemnification. To the fullest extent permitted by law, the 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 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 10. 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 any way 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 11. Termination, Severance Pay, Reductions, Resignation.

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 the remainder of the Term of this Agreement, full salary and benefits, plus the value of all vacation leave, holidays, retirement, and other benefits accrued by, or credited to, the Manager prior to the termination; provided that, if the Manager is terminated for "Good Cause," then, in that event, the City shall have no obligation to pay the severance payments designated in this Section.

"Good Cause." For purposes of this Agreement, the term "good cause" is defined as follows:

- a) Failure of the City Manager to comply with any provision of 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; provide, 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 Council directives;
- d) Failure to comply with all 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, citizen of the City, or any other person;
- l) Knowingly falsifying records or documents related to the City's activities;
- m) Misrepresentation of material facts to the Council or other City officials in the conduct of the City's business;
- n) Any other reason constituting "good cause" under Texas law; or
- o) Any willful, knowing, or negligent act or omission to the detriment of the City or reflecting unfavorably upon the City.

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 thirty (30) days' notice in advance unless the Council agrees otherwise. If the Manager terminates this Agreement by voluntary resignation the City shall have no obligation to pay the severance payments designated in this Section.

Section 12. Notices. All notices and demands related to this Agreement must be made in writing and must be delivered by either party hereto to the other by United States Certified Mail, or by a reliable commercial courier at the following address:

City: City of Llano
301 W. Main
Llano, TX 78643

Manager: Brenton Blake Lewis
129 CR 118
Llano, Tx 78643

Alternatively, notices required pursuant to this Agreement may be personally served in the same manner as is applicable to civil judicial practice. Written 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 via certified mail or with a commercial courier.

Section 13. 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 14. 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 Llano 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 above date 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.

H. Attorney's Fees. If any action is brought to enforce, construe or determine the validity of any term or provision of this Agreement (whether at the trial court level or any appeal therefrom), the prevailing party shall be entitled to reasonable attorney's fees and costs of the action.

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

CITY OF LLANO, TEXAS



Myra King
Mayor

ATTEST:

APPROVED AS TO FORM:

Jeanie Melam
City Secretary

Carly Grey
City Attorney

AGREED AND ACCEPTED this the 29th day of October, 2014.

Brenton Blake Lewis
Brenton Blake Lewis
City Manager

STATE OF TEXAS]
]
COUNTY OF Llano]

The foregoing instrument was acknowledged before me this 29th day of October, 2014 by Brenton Blake Lewis, for the purposes stated herein.



Toni Milam

Notary Public, State of Texas
Printed Name: *Toni Milam*