

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

This Agreement is made and entered into this 28<sup>th</sup> day of September 2012, by and between the City of Bryan, Texas, a municipal corporation, hereinafter referred to as the "City," and Jerry Kean Register, hereinafter referred to as "Employee."

**WHEREAS**, the City Council of the City ("Council") and Employee believe employee agreements negotiated between city councils and city managers can be mutually beneficial to the city organization, the city manager, and the community they serve; and,

**WHEREAS**, Part I, Section 4 of the City Charter states in part, "The City of Bryan shall operate under the council-manager form of government."; and,

**WHEREAS**, Part I, Section 8(b)(1) of the City Charter states in part, "The City Council shall appoint a manager whose term of office shall be governed by the will and pleasure of the City Council." And further states in part, "The City Council may enter into an employment contract with the city manager that prescribes the conditions of employment as the City Council determines appropriate. The employment contract of the city manager may include a definite term that does not exceed five years, but which is renewable"; and,

**WHEREAS**, the Council desires to exercise the authority to enter into an employment agreement with the Employee; and,

**WHEREAS**, the Employee desires to enter into an employment agreement with the City and the Council; and,

**WHEREAS**, except as otherwise provided herein, the employee shall have and be eligible for the same benefits as provided to all non-civil service employees of the City.

**NOW, THEREFORE**, in consideration of Employee accepting employment conditions with the City, and other good and valuable consideration, including the mutual covenants herein contained, the Council, acting on behalf of the City, and Employee hereby contract, covenant, and agree as follows:

**Section 1 – Duties and Authority**

The City hereby agrees to employ Employee as City Manager of the City to perform the duties and functions specified in the City Charter, the City's Code of Ordinances, this Agreement, and such other legally permissible and proper duties and functions as the Council shall, from time to time, assign to Employee consistent with the intent of this Agreement.

**Section 2 – Term**

A. The initial term of this agreement shall be five years beginning September 1, 2012 and ending September 1, 2017. However, the term of this Agreement may be

terminated earlier by either party subject to the provisions set forth in Sections 12 and 13 of this Agreement.

B. Prior to the expiration of the initial term of this Agreement, City and Employee may mutually agree to renew and extend this Agreement.

C. Employee 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 to invoke Section 13 of this Agreement. Conversely, nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of the Employee to terminate this Agreement at any time subject only to applicable provisions of the City Charter, Code of Ordinances, City Personnel & Administrative Policies & Procedures, and the provisions set forth within Section 12 of this Agreement.

### **Section 3 – Hours of Work**

The Council and the Employee recognize that the Employee must devote considerable time outside normal office hours on business for the City, thereby requiring the Employee to be allowed to establish an appropriate work schedule. Employee must be reasonably available to the Council, individual councilmembers, citizens, and employees.

### **Section 4 – Compensation**

- A. Base Salary: City agrees to pay Employee an annual base salary of \$230,000.00, payable in installments that are consistent with practices for other employees of the City.
- B. Any increase to Employee's base salary shall depend on the results of Annual Performance Evaluations (pursuant to section 11), which the Council shall be required to provide the Employee during the Annual Review Period; provided however, the Council is not required to increase Employee' Base Salary after such Annual Performance Evaluation

### **Section 5 – Monthly Vehicle Allowance**

The City agrees to pay the Employee, during the term of this Agreement, the sum of \$8,400.00 per year, payable in equal monthly installments, as a vehicle allowance. The Employee will maintain a valid Texas driver's license during the term of this Agreement and shall acquire and maintain a vehicle in good working order. The Employee shall be responsible for paying liability, property damage, and comprehensive insurance coverage with liability policy limits of at least \$100,000.00 per person and \$300,000.00 per occurrence upon such vehicle and shall further be responsible for all expenses attendant to the purchase, operation, maintenance, repair, and regular replacement of said vehicle. In the event Employee is no longer employed by the City, Employee shall no longer be entitled to a monthly vehicle allowance.

### **Section 6 – Vacation and Sick Leave**

A. From the date of this Agreement, Employee will accrue vacation at the rate of 20 days per year, which will be credited upon the effective date of this Agreement and will then accrue each year after that. Employee will accrue sick leave at the rate of 20 days per year. Upon resignation or termination, City agrees to pay Employee's accrued vacation and sick leave ("City Manager Sick and Vacation Pay") pursuant to Section 14 below.

B. Because of Employee's continuous employment with the City since 2000, Employee has currently accrued sick leave ("Prior Accrued Sick Leave"). Employee is entitled to his Prior Accrued Sick Leave, and in the event the Employee's employment is terminated, either voluntarily or involuntarily, Employer agrees to pay Employee's Prior Accrued Sick Leave per the existing City Policy upon the date of Employee's resignation or termination even if Employee is not entitled to Severance Pay under Section 14 below.

C. Because of Employee's continuous employment with the City since 2000, Employee has currently accrued vacation leave. Pursuant to existing City Policy, Employee would be entitled to the equivalent dollar value of such accrued unused vacation leave were he to leave employment. City hereby agrees to pay Employee, within seven (7) days of the date of execution of this Agreement, the equivalent dollar value of such accrued unused vacation leave as if his employment was terminated without good cause.

#### **Section 7 – Health, Disability, and Life Insurance Benefits**

The Employee will be treated as all other City employees with regard to health, disability, and life insurance benefits. Such City-wide benefits are reviewed annually or more or less frequently and changed, revised, or modified as necessary and appropriate.

#### **Section 8 – Retirement Contributions**

- A. The Employee will be treated as all other City employees with regard to enrollment and contributions made to the Texas Municipal Retirement System (TMRS). TMRS is reviewed annually or more or less frequently and changed, revised, or modified and necessary and appropriate.
- B. In addition to TMRS, the City agrees to execute all necessary agreements provided by ICMA Retirement Corporation (ICMA-RC) or other qualified retirement plan of Employee's choice, and, in addition to the base salary paid by the City to Employee, City agrees to pay annually the lesser of (1) \$5,000.00 or (2) the amount currently authorized under Federal Internal Revenue Regulations into the designated plan on the Employee's behalf. The contributions shall be made monthly with Employee's regular pay. Upon termination of employment, whether for cause, without cause or by resignation, accumulation in this fund is the sole property of Employee.

## **Section 9 – General Business Expense**

- A. City agrees to budget for and to pay for professional dues and subscriptions of the Employee necessary for continuation and full participation in national, regional, state, and local associations, and organizations necessary and desirable for the Employee's continued professional participation, growth, and advancement, and for the good of the City.
- B. City agrees to budget for and to pay for travel and subsistence expenses of Employee for professional and official travel, meetings, and occasions to adequately continue the professional development of Employee and to pursue necessary official functions for City, including but not limited to those associated with City Management as well as those in the electric utility industry such as American Public Power Association, Texas Public Power Association, Texas Electric Cooperatives, Inc. and such other national, regional, state, and local governmental groups, associations, and committees in which Employee serves as a member or in which Employee participates.
- C. The City acknowledges the value of having Employee participate and be directly involved in local civic clubs or organizations. Accordingly, City shall pay for the reasonable membership fees and/or dues to enable Employee to become an active member in local civic clubs and organizations.

## **Section 10 – Outside Activities**

The employment provided for by this agreement shall be Employee's sole employment, unless otherwise approved by Council.

## **Section 11 – Performance Evaluation**

- A. Annually, the Council shall provide a formal performance evaluation of Employee within 30 days of the annual anniversary of this Agreement (the "Annual Review Period"). The process, form, criteria, and format for the annual evaluation shall be mutually agreed upon by City and Employee. The process shall include the opportunity for both parties to prepare a written evaluation, meet and discuss the evaluation, and present a written summary of the evaluation results. The results of said evaluation shall be placed in Employee's City personnel file within thirty (30) days of completion.
- B. Annually, the Council and Employee shall define goals and performance objectives that are mutually determined necessary as part of the planning for the fiscal year. Said goals shall be reduced in writing with a copy provided to Employee. Said goals shall generally be measurable and attainable within the time limitations as specified and as the annual operating and capital budgets and appropriations provide. If a majority of the Council at any time feels the Employee is not meeting these objectives, the Council as a whole will meet with Employee and detail the areas where improvement is needed. Employee cannot be held responsible for areas not under Employee's control.

- C. The Council shall evaluate Employee's performance based upon the established measurable goals, as well as, his effectiveness in handling the duties and responsibilities of Employee's position as City Manager, generally, in the opinion of the Council.

### **Section 12 – Resignation**

In the event that Employee voluntarily resigns his position with the City, Employee shall provide a minimum of thirty (30) days' notice unless the parties agree otherwise. In such event, Employee shall be treated as all other City employees with similar longevity with regards to employment benefits, including Employee's Prior Accrued Sick Leave, upon resignation. However, Employee shall be paid the dollar equivalent of Employee's accrued City Manager Sick and Vacation Pay.

### **Section 13 – Removal of Employee**

- A. If for any reason the Council desires to remove Employee without cause from the position of city manager, City shall pay Employee Severance Pay as set forth in Section 14. A desire to remove Employee shall occur:
1. when the majority of the governing body votes to remove the Employee from the city manager's position at a duly authorized public meeting (i.e. open meeting);
  2. if the City reduces the base salary, compensation, or any other financial benefit of the Employee, unless the reduction is applied in no greater percentage than the average reduction of all Council Appointees and department heads;
  3. if the Council, citizens or legislature acts to amend any provisions of the City Charter pertaining to the role, powers, duty, authority, responsibilities of Employee's position unless mutually agreed upon; or
  4. if the Council removes the supervision of employees of Bryan Texas Utilities or the management of any other city department from Employee's duties and authority unless mutually agreed upon; or
  5. if Employee is terminated for any reason other than "good cause" as defined below.
- B. If for any reason the Council desires to remove Employee with good cause from the position of city manager, Employee shall not receive Severance Pay as set forth in Section 14. For purposes of this Agreement, "good cause" is defined as follows:
1. Any willful, knowing, grossly negligent, or negligent breach, disregard or habitual neglect of any provisions 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 Employee under this Agreement or under the City Charter, City Ordinances, and/or federal and state law;
  2. Any willful, knowing, grossly negligent, or negligent misapplication or misuse, direct or indirect, by Employee of public funds or property, real or personal, owned by or entrusted to the City, any agency or corporation thereof;
  3. Knowingly falsifying records or documents related to the City's activities;
  4. Employee's plea of guilty or no contest, or conviction of a felony;
  5. Employee's inability to perform his duties as a result of a disability as defined under the Americans with Disabilities Act and after the City's full compliance with that Act and the Family Medical Leave Act; or
  6. Employee's death.

## **Section 14 – Severance Pay**

- A. Severance shall be paid to Employee by City when employment is terminated without cause. Severance Pay shall include the following:
1. Employee's current Base Salary and the dollar value equivalent of Retirement Contributions for the greater of (1) the remaining term of the Agreement (as amended or extended) or two (2) years;
  2. The dollar equivalent of Employee's accrued City Manager Sick and Vacation Pay;
  3. Employee's COBRA health insurance premiums for one (1) year;
  4. The conversion costs of any existing life or disability insurance policies covering Employee; and
  5. The dollar equivalent of Employee's total Prior Accrued Sick Leave per the existing City Policy upon the date of Employee's termination.
  6. The City is not obligated to pay the monthly vehicle allowance provided for in Section 5 of this Agreement.
- B. If Employee resigns or is terminated for good cause, City is not obligated to pay Severance Pay to Employee under this Agreement. In such event, Employee shall be paid Employee's Prior Accrued Sick Leave in accordance with the then existing City of Bryan Personnel Policies and Employee shall be paid the dollar equivalent of Employee's total accrued City Manager Sick and Vacation Pay.
- C. If the contract ends by the expiration of its term, City is not obligated to pay Severance Pay to Employee under this Agreement. In such event, Employee shall be entitled will be treated as all other City employees with similar longevity with regards to employment benefits, including Employee's Prior Accrued Sick Leave. However, Employee shall be paid the dollar equivalent of Employee's accrued City Manager Sick and Vacation Pay.
- D. If the City and Employee mutually agree, Employee may be transferred from the City Manager position to another position within the City or Bryan Texas Utilities. In such event, Employee and the City shall mutually agree on Employee's salary and benefits.

## **Section 15 -- Other Terms and Conditions of Employment**

The City, only upon agreement with Employee, shall fix any such other terms and conditions of employment, as it may determine from time to time, relating to the performance of the Employee, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement, the City Charter, the City's Code of Ordinances, or any other applicable law.

## **Section 16 – Notices**

Notice pursuant to this Agreement shall be given by depositing in the custody of the United States Postal Service, postage prepaid, certified mail, return receipt requested, addressed as follows:

- A. City of Bryan: Mayor, City of Bryan, P.O. Box 1000, Bryan, Texas 77805
- B. Employee: Kean Register, **Home address deleted by WTAW News** (or such future address as Employee shall designate in writing to City)

## **Section 17 – Indemnification**

To the fullest extent permitted by law and in accordance with the City of Bryan Self Insurance and Risk Management Program as established by the program ordinance, the City shall defend, save harmless, and indemnify Employee 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 Employee's duties as city manager or resulting from the exercise of judgment or discretion in connection with the performance of program duties or responsibilities, unless the act or omission involved willful or wanton conduct. Legal representation, provided by City for Employee, shall extend until a final determination of the legal action including any appeals brought by either party and shall continue beyond Employee's employment with the City as long as any applicable limitations period and/or any litigation is pending. Further, City agrees to pay Employee reasonable consulting fees and travel expenses when Employee serves as a witness, advisor or consultant to City regarding pending litigation or any other process or proceeding in with Employee's attendance, appearance or response is required or compelled, and to provide legal representation to Employee with respect to any such appearance, attendance, or response. Any settlement of any claim must be made with prior approval of the City in order for indemnification, as provide in this Section, to be available.

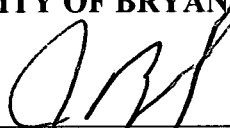
## **Section 18 – General Provisions**

- A. Integration. This Agreement sets forth and established the entire understanding between the City and Employee relating to the employment of the Employee by the City. Any prior discussions or representations by or between the parties are merged into and rendered null and void by this Agreement. The parties by mutual written agreement may amend any provision of this Agreement during the life of the Agreement. Such amendments shall be incorporated and made a part of this Agreement.
- B. 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 the Agreement.
- C. 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 Brazos County, Texas.
- D. Binding Effect. This Agreement shall be binding on the City and Employee as well as their heirs, assigns, executors, personal representatives and successors in interest.

- E. Effective Date. This Agreement shall become effective on the date first written above of this Agreement.
- F. Severability. The invalidity or partial invalidity of any portion of this Agreement will not affect the validity of any other provision. In the event that any provision of this Agreement is held to be invalid, the remaining provisions shall be deemed to be in full force and effect as if they have been executed by both parties without the invalid provision.
- G. Amendment. This Agreement shall not be modified or amended except by a written instrument executed by Employee and the duly authorized representatives of the Council.
- H. 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 Employee have executed this Agreement effective as of September 1, 2012.

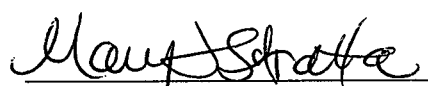
**CITY OF BRYAN**

  
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Jason P. Bienski, Mayor

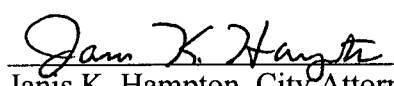
**EMPLOYEE (City Manager)**

  
\_\_\_\_\_  
Jerry Kean Register

**ATTEST:**

  
\_\_\_\_\_  
Mary Lynne Stratta, City Secretary  
Date: 9-28-12

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Janis K. Hampton, City Attorney