



HENDERSON CITY COUNCIL AGENDA ITEM

REGULAR MEETING

Date: April 14, 2009

NB-73

SUBJECT	Employment Contract with Mary Kay Peck, City Manager
PETITIONER	Mayor and City Council
RECOMMENDATION	RECOMMENDATION: Consider the employment status of Mary Kay Peck, City Manager, and take one or more of the following actions including, but not limited to: (1) accept written resignation of Mary Kay Peck; (2) authorize execution of a severance agreement and release; (3) direct issuance of 30-day written notice to terminate Mary Kay Peck "not for cause" in accordance with her employment contract; (4) place Mary Kay Peck on administrative leave; AND/OR (5) terminate Mary Kay Peck, for cause, in accordance with her employment contract.

FISCAL IMPACT:

☐ No Impact

☐ Budget funds available

☐ Augmentation required

Funding Source, Amount, and Account Number(s) to be charged:

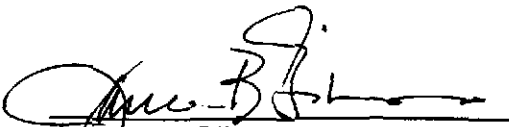
BACKGROUND / DISCUSSION / ALTERNATIVES:


On October 16, 2007, City Council approved a three-year employment agreement with Mary Kay Peck to serve as the City Manager for the City of Henderson. Under the terms of her employment agreement, Ms. Peck's employment may be terminated by action of the City Council.

This agenda item replaces Item NB-74 continued by City Council at its meeting on March 17, 2009.

RECOMMENDED MOTION:

I move Council: (1) accept written resignation of Mary Kay Peck; (2) authorize execution of a severance agreement and release; (3) direct issuance of 30-day written notice to terminate Mary Kay Peck "not for cause" in accordance with her employment contract; (4) place Mary Kay Peck on administrative leave; And/Or (5) terminate Mary Kay Peck, for cause, in accordance with her employment contract.


James B. Gibson
Mayor


Monica Martinez Simmons, MMC
City Clerk

AGENDA ITEM SUPPLEMENT INCLUDE WITH EACH AGENDA ITEM

SUBJECT	Employment Contract – Mary Kay Peck
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Supporting Documentation: List all materials to be included as backup with this agenda item (e.g., contracts, agreements, correspondence, exhibits, applications, etc.).

DOCUMENT SIGNATURES

If backup includes documents requiring original signatures, indicate who will be responsible for routing the documents for signature after Council approval.

☐ Contact:

☐ City Clerk

Note: If the City Clerk's office is requested to route the document, the original document must accompany the agenda item.

PRESENTATION ITEMS

Presentation scripts must be included prior to the council meeting. Copies of photos taken during the presentation are requested for historical purposes.

Resource Requirements at Council Meeting:

☐ TV/VCR

☐ Slide Projector

☐ Software Presentation

☐ Overhead Projector/Screen

☐ Other:

Note: It is recommended that presentation resources be tested prior to the Council meeting by the presenter.

SUGGESTED KEYWORDS FOR DOCUMENT IMAGE SEARCHES

Employment Contract – Mary Kay Peck



EMPLOYMENT AGREEMENT

This Employment Agreement ("Agreement"), entered into effective October 16, 2007, is between the City of Henderson, having its principal place of business at 240 Water Street, Henderson, Nevada ("COH"), and Mary Kay Peck, ("Peck") an individual residing at the address set forth below her signature at the end of this Agreement.

RECITALS

1. Peck has been employed by the COH since February 1995, and is currently serving as the Assistant City Manager.
2. COH desires to continue to employ Peck, recognize her prior contributions to the COH, motivate Peck to continue her employment with COH and increase her knowledge and experience in order to assume even greater responsibilities.

AGREEMENT

ACCORDINGLY, the parties agree as follows:

1. **Period of Employment**
 - a. **Basic Term.** COH shall employ Peck as City Manager with duties and responsibilities as described in Article III, Sections 3.020, 3.140 of the City Charter, for a period of three years from the effective date of this Agreement, consistent with Article I, Section 1.010 of the City Charter (Legislative intent) unless Peck's employment is terminated sooner in accordance with Article III, Section 3.030 of the City Charter.
 - b. **Annual Renewal.** At the expiration of each anniversary year of the three (3) year term, this Agreement shall automatically extend for an additional three-year period unless the Council duly convened following required Notice in writing to the contrary at least 90

days prior to the anniversary expiration date, of the intention by the Council to terminate the employment relationship.

2. Position, Duties, Responsibilities

a. **Position.** Peck is hereby employed by COH as City Manager and shall discharge appropriate responsibilities as generally set forth in Article III, Sections 3.020 and 3.140 of the City Charter, as well as such other duties as may reasonably be assigned by the COH Council. Peck shall at all times perform her duties and discharge her responsibilities under this Agreement diligently and conscientiously to the best of her ability, consistent with applicable law,. Peck shall report directly to the Mayor and City Council.

b. **Other Activities.** Except with the prior written consent of the COH, Peck will not (i) accept any other employment, or (ii) engage, directly or indirectly, in any other business activity (whether or not pursued for pecuniary advantage) that is or may be in conflict with, or that might place Peck in a position in conflict with COH. However, absent a conflict of interests, and upon reasonable written notice to the Mayor, Peck may teach, consult and accept speaking engagements on a fee basis for her own account.

c. **General Restrictions on Use.** During he Period of Employment, Peck shall use Proprietary Information, and shall disclose Confidential Information, only for the benefit of COH and as is necessary to carry out her responsibilities under this Agreement. Following termination, Peck shall neither, directly or indirectly, use any Proprietary Information nor disclose any Confidential Information, except as expressly and specifically authorized in writing by COH. The publication of any Proprietary Information through literature or speeches must be approved in advance in writing by COH.

3. Compensation.

In consideration of the services to be rendered under this Agreement, Executive shall be entitled to the following:

a. **Salary.** COH shall pay Peck as compensation for services as City Manager, during her first six months of employment, a base salary at the annual rate of \$225,000.000. At the end of the first six month period of employment, the Council shall conduct a performance evaluation. Peck shall be eligible for a salary increase at that time if approved by the Council. Thereafter, Peck shall be given annual performance evaluations beginning on the first anniversary of this Agreement. Peck's salary shall be adjusted from time to time by the Council upon such annual performance evaluation. Salary shall be payable in accordance with the standard payroll procedures of COH.

b. **Benefits.** Peck shall be eligible to participate in all COH benefit plans, and receive perquisites of employment at least equal to those provided to other similarly situated administrative or executive employees, except it is expressly agreed by the parties that there shall be no maximum to the amount of sick leave or annual leave accrued by Peck.

4. Administrative Leave

Peck shall be allowed eight (8) days of paid administrative leave to be utilized in accordance with City of Henderson Administrative Policy 001.

5. Termination of Employment

a. **Termination by Death.** Peck's employment shall terminate automatically upon her death. COH shall pay to Peck's beneficiaries or estate, as appropriate, any compensation then due and owing, and shall continue to pay Peck's salary and benefits, through

the second full month after her death. Thereafter, all obligations of COH under this Agreement shall cease. Nothing in this section shall affect any entitlement of Peck's heirs to the benefits of any life insurance plan or other applicable benefits.

b. **Termination by Disability.** If Peck is prevented from performing the essential functions of the position, or without accommodation, by reason of physical or mental incapacity for a period of more than ninety (90) work days in the aggregate during any twelve-month period, then, to the extent permitted by law, COH may terminate Peck's employment. In that event COH shall pay to Peck all compensation to which she is entitled through the last day of the month in which the 90th day of incapacity occurs. Thereafter, all of the obligations of COH under this Agreement shall cease. Nothing in this Section shall affect Peck's rights under any disability plan in which she is a participant.

c. **Termination By COH Not For Cause.** At any time, COH, by appropriate Council action, may terminate Peck's employment without cause for any reason not prohibited by law, by providing Peck thirty (30) days' advance written notice, and further provided that Peck shall, in addition to all compensation due and owing through the last day actually worked, receive the following:

(i) COH shall pay Peck a severance payment equal to the balance of three (3) year term of this Agreement at her then current Base Compensation rate; in addition to all sick leave and annual leave accrued.. The severance payment will be made in the form of salary continuation for that period (the "Severance Period"), payable on the normal payroll schedule followed by COH.

(ii) The amount of any payment provided for in this Section 5.c. shall not be reduced, offset or subject to recovery by COH by reason of any compensation earned by Peck as the result of employment by another employer during the Severance Period so long as Peck is not in violation of material provisions of this Agreement.

6 **Termination By COH For Cause.** At any time, and without prior notice, COH, acting through the Council, may terminate Peck's employment For Cause (as defined below). COH shall pay Peck all compensation then due and owing; thereafter, except for Peck's right to mediation and/or binding arbitration, COH's obligations under this Agreement shall cease. Termination for "Cause" shall mean termination of Peck's employment because of (i) conviction by a court of competent jurisdiction of misappropriation or embezzlement of COH property or funds; (ii) conviction of any felony involving moral turpitude; (iii) intentional material breach of this Agreement; (iv) intentional and continued failure to substantially perform her duties under this Agreement, subject to Section 6(b) of this Agreement.

7. **Termination Obligations**

a. **Return of COH's Property.** Peck hereby acknowledges and agrees that all personal property, including, without limitation, all books, manuals, records, reports, notes, contracts, lists, blueprints, and other documents, or materials, or copies thereof, and equipment furnished to or prepared by Peck in the course of or incident to her employment, belong to COH and shall be promptly returned upon termination of Peck's employment.

b. **Cooperation in Pending Work.** Following any termination of Peck's employment, she shall fully cooperate with COH in all matters relating to the winding up of pending work on behalf of COH and the orderly transfer of duties to her successor. Peck shall

also cooperate in the defense of any action brought by a third party against COH that relates in any way to Peck's acts or omissions while employed by COH. If Peck's cooperation in the defense of any such action requires more than ten (10) hours of her time, Peck and COH shall agree on appropriate remuneration for her time and expenses.

8. Annual evaluation

Peck shall be given an annual performance evaluation in October of each year, and shall be eligible for a salary increase at that time as approved by the COH. Such evaluation shall be based upon performance standards developed jointly by the Henderson Mayor and City Council and Peck.

9. Bonuses

Subject to the results of the annual evaluation set forth in paragraph 8 herein, Peck shall be eligible for a bonus as approved by the COH Council.

10.. Notices

All notices or other communications required or permitted hereunder shall be made in writing and shall be deemed to have been duly given if delivered by hand or mailed, postage prepaid, by certified or registered mail, return receipt requested, and addressed to COH and to Peck. Peck's address is set forth on the signature page to this Agreement.

Peck and COH shall be obligated to notify the other of any change in address. Notice of change of address shall be effective only when made in accordance with this Section.

11. Vehicle Allowance

Peck shall be paid in addition to all compensation herein, a vehicle allowance of Seven Hundred and Fifty Dollars (\$750.00) per month during the term of this Agreement. Said

amount may be adjusted based on the price of energy through mutual consent of the parties.

12 Cost of Living Adjustment

The City Manager shall be entitled to automatic cost of living salary increases in the amount of 5% of the salary set forth in sub paragraph (a) herein commencing on the annual anniversary dates of the Effective Date.

13. Entire Agreement

This Agreement is intended to be the final, complete, and exclusive statement of the terms of Peck's employment by COH. This Agreement supersedes all other prior and contemporaneous agreements and statements pertaining in any manner to the employment of Peck; and it may not be contradicted by evidence of any prior or contemporaneous statements or agreements. To the extent that the practices, policies, or procedures of COH, now or in the future, apply to Peck and are inconsistent with the terms of this Agreement, the provisions of this Agreement shall control.

14. Amendments, Waivers

This Agreement may not be modified, amended, or terminated except by an instrument in writing, signed by Peck and by a duly authorized representative of COH other than Peck. No failure to exercise and no delay in exercising any right, remedy, or power under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, or power under this Agreement preclude any other or further exercise thereof, or the exercise of any other right, remedy, or power provided herein or by law or in equity.

15. Severability; Enforcement

If any provision of this Agreement, or the application thereof to any person, place, or circumstance, shall be held by a court of competent jurisdiction to be invalid, unenforceable, or void, the remainder of this Agreement and such provisions as applied to the parties hereto, or other persons, places, and circumstances shall remain in full force and effect.

16. Governing Law

The validity, interpretation, enforceability, and performance of this Agreement shall be governed by and construed in accordance with the law of the State of Nevada.

17. Arbitration

Any claim or controversy between Peck and COH arising under or in connection with this Agreement shall be settled by arbitration in accordance with the then current Employment Dispute Resolution Rules of the American Arbitration Association and shall be the exclusive remedy for all disputes including but not limited to Peck's compensation.. COH and Peck agree that arbitration shall be held in or near Clark County, Nevada, and the arbitrator shall have authority to award or grant legal or equitable remedies. The decision of the Arbitrator shall be final and binding. .

This Agreement to arbitrate survives termination of Peck's employment.

In any dispute arising under or in connection with this Agreement, the prevailing party shall be entitled to recover all costs and reasonable attorney's fees.

18. General Expenses

COH recognizes that certain expenses of a non-personal and generally job affiliated nature are incurred by Peck and hereby agrees to pay said general expenses in an amount not to exceed Two Thousand Dollars (\$2,000.00) per month (Twenty Four Thousand Dollars (\$24,000.00) per year).

19. Retirement

In addition to the COH contribution to Peck's retirement account, Peck shall be eligible for participation in the Nevada Public Employees Retirement System (PERS) as part of the Employees Benefit and Executive Compensation Plan. In addition to those benefits, employee Peck shall have an additional six (6) months PERS credit purchased for her after completion of each year of service.

20. Acknowledgment of Parties

The parties acknowledge (a) that they have consulted with or have had the opportunity to consult with independent counsel of their own choice concerning this Agreement, and (b) that they have read and understand the Agreement, are fully aware of its legal effect, and have entered into it freely based on their own judgment and not on any representations or promises other than those contained in this Agreement.

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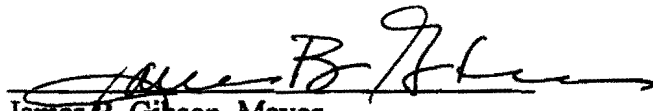
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21. **Date of Agreement**


IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day
and year first above written.


Mary Kay Peck
Address: 933 Pyrite
Henderson, Nevada 89015-3059

City of Henderson, Nevada

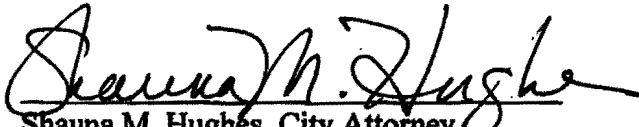

James B. Gibson, Mayor

ATTEST:


Monica Simmons, City Clerk

COUNCIL ACTION
OCT 16 2007

APPROVED AS TO FORM:


Shauna M. Hughes, City Attorney