

CITY MANAGER AGREEMENT
City of Mineral Wells

THE STATE OF TEXAS §
 § KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF PALO PINTO §

THIS CITY MANAGER AGREEMENT ("Agreement") is made and entered into effective the 22nd day of March 2019, by and between the City of Mineral Wells, Texas, a Texas municipal corporation (the "City") and Randy Criswell (the "Manager").

WITNESSETH:

WHEREAS, the City Council of the City (the "Council") and the Manager believe that an employment agreement negotiated between the Council, on behalf of the City, and the Manager can be mutually beneficial to the City, the Manager, and the community they serve;

WHEREAS, when appropriately structured, the Council and the Manager believe an employment agreement can strengthen the Council-Manager relationship by enhancing the excellence and continuity of the management of the City for the benefit of its citizens;

WHEREAS, the Council, on behalf of the City, desires to employ the services of the Manager, as the city manager of the City ("City Manager"), pursuant to the terms, conditions and provisions of this Agreement;

WHEREAS, the Manager has agreed to accept employment as the City Manager, subject to the terms, conditions and provisions of this Agreement.

NOW, THEREFORE, the City and the Manager, for and in consideration of the terms, conditions and provisions hereinafter established have agreed, and do hereby agree as follows:

I. Term

1.1 **TERM.** The term of this Agreement shall be for a term of three years beginning on May 6, 2019, (the "Commencement Date") and ending on May 6, 2022, provided, however, that the term of this Agreement shall be subject to earlier termination by a Unilateral Severance (as defined and set forth in Paragraph 6.3 below) at the pleasure of the Council.

1.2 **EXTENSION.** The City may, by action of the Council, and with the consent and approval of the Manager, extend the term of this Agreement.

II. Employment

2.1 **CHIEF EXECUTIVE OFFICER.** The Manager is the chief executive officer of the City and shall faithfully perform the duties of the City Manager as set forth in the City Manager job description, City Charter and City ordinances and, as may be lawfully assigned by the Council (collectively the "City Manager's Duties"). Further, the Manager shall comply with (collectively "Applicable Laws and Authorities"): state and federal law; the City's Charter; all City policies, rules, regulations and ordinances as they exist or may hereinafter be amended; and, all lawful Council directives. All duties assigned to the Manager by the Council shall be appropriate to and consistent with the professional role and responsibility of the City Manager position.

2.2 **DUTIES.** The Council does hereby employ Manager as City Manager to perform the City Manager's Duties in accordance with and pursuant to the City's Charter and all Applicable Laws and Authorities and each of the following duties to the full extent not prohibited by or in material conflict with any existing provisions of the City's Charter or Applicable Laws and Authorities:

- a. Employ, on behalf of the City, all other employees of the City.
- b. Direct, assign, reassign and evaluate all employees of the City.
- c. Organize, reorganize and arrange the staff of the City.
- d. Develop and establish internal regulations, rules, and procedures which the Manager deems necessary for the efficient and effective operation of the City.
- e. Accept all resignations of employees of the City, except the Manager's resignation which must be accepted by the Council.

The Manager shall perform the City Manager's Duties with reasonable care, diligence, skill and expertise.

2.3 **REASSIGNMENT.** The Manager cannot be reassigned from the position of City Manager to another position without the Manager's prior express written consent.

2.4 **COUNCIL MEETINGS.** Except to the extent prohibited by or in material conflict with Applicable Laws and Authorities, the Manager or the Manager's designee shall attend, and shall be permitted to attend, all meetings of the Council, both public and closed, with the exception of those closed meetings devoted to the consideration of any action or lack of action on this Agreement, or any amendment thereto, the Manager's evaluation, or for purposes of resolving conflicts between individual Council members.

2.5 **CRITICISMS, COMPLAINTS, AND SUGGESTIONS.** The Council, individually and collectively, shall refer in a timely manner all substantive criticisms, complaints, and suggestions called to the Council's attention to the Manager for study and/or appropriate action, and the Manager shall refer the matter(s) to the appropriate City employee or shall investigate such matter(s) and inform the Council of the results of such efforts.

2.6 **INDEMNIFICATION.** To the extent it may be permitted to do by applicable law, including, but not limited to Texas Civil Practice & Remedies Code Chapter 102, the City does hereby agree to defend, hold harmless, and indemnify Manager from any and all demands, claims, suits, actions, judgments, expenses and attorneys' fees incurred in any legal proceedings brought against Manager in the Manager's individual or official capacity as an employee and as City Manager, providing the incident(s), which is (are) the basis of any such demand, claim, suits, actions, judgments, expenses and attorneys' fees, arose or does arise in the future from an act or omission of Manager, as an employee of the City, acting within the course and scope of the Manager's employment with the City; excluding, however, any such demand, claim, suits, actions, judgments, expenses and attorneys' fees for those claims or any causes of action where it is determined that the Manager committed official misconduct, or committed a willful or wrongful act or omission, or an act or omission constituting gross negligence, or acted in bad faith; and excluding any costs, fees, expenses or damages that would be recoverable or payable under an insurance contract, held either by the City or by the Manager. The selection of the Manager's legal counsel shall be with the mutual agreement of the Manager and the City if such legal counsel is not also City's legal counsel. A legal defense may be provided through insurance coverage, in which case the Manager's right to agree to legal counsel provided for him will depend on the terms of the applicable insurance contract. To the extent this Paragraph 2.6 exceeds the authority provided and limitations imposed by Texas Civil Practice & Remedies Code, Chapter 102, it shall be construed and modified accordingly. The provisions of this Paragraph 2.6 shall survive the termination, expiration or other end of this Agreement and/or the Manager's employment with the City.

2.7 **APPROPRIATION.** The Council has appropriated, set aside and encumbered, and does hereby appropriate, set aside, and encumber, available and otherwise unappropriated funds of the City in an amount sufficient to fund and pay all financial obligations of the City pursuant to this Agreement.

2.8 **HOURS OF WORK.** The Manager acknowledges the proper performance of the City Manager's Duties 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 City 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.

III. Compensation

3.1 **SALARY.** The City shall provide the Manager with an annual salary in the sum of One Hundred Seventy Thousand Dollars and No Cents (\$170,000). This annual salary rate shall be paid to the Manager in equal installments on the schedule as other City employees and shall be paid net of any applicable withholding or deductions required by the Applicable Laws and Authorities.

3.2 **SALARY ADJUSTMENTS.** At any time during the term of this Agreement, the Council may, in its discretion, review and adjust the salary of the Manager, but in no event shall the Manager be paid less than the salary set forth in Paragraph 3.1 of this Agreement, except by mutual agreement of the two parties. Such adjustments, if any, shall be made pursuant to lawful Council resolutions. In such event, the parties agree to provide their best efforts and reasonable cooperation to execute a new agreement incorporating the adjusted salary.

3.3 **PAID LEAVES – VACATION, SICK/PERSONAL AND HOLIDAY.** The Manager is hereby granted vacation leave at the accrual rate of a 24 year employee as authorized by Council policies for administrative employees. Therefore, the Manager accrues 20 days of vacation leave per calendar year accrued monthly at the same rate specified in the City's policy for administrative employees as authorized by Council. The Manager may take leave in a single period or at different times, at the Manager's choice. Maximum vacation leave accruals and forfeiture are based upon the policies for administrative employees as authorized by Council. The vacation leave taken by the Manager will be taken at such time or times as will least interfere with the performance of the City Manager's Duties. Upon execution of this contract, the Manager is hereby granted 30 days of sick leave. Thereafter, the Manager's monthly sick leave accrual, maximum cumulative sick leave accrual, and forfeiture are based upon the policies for administrative employees as authorized by Council. The Manager shall observe the same legal holidays as provided by the City for its administrative employees.

3.4 **BENEFITS - GENERAL.** Unless expressly provided otherwise in this Agreement, in addition to those benefits specifically set forth herein, the Manager shall be entitled to the same benefits that are enjoyed by any other administrative employees of the City pursuant to all Applicable Laws and Authorities.

3.5 **INSURANCE – HEALTH.** The City agrees to pay the premiums for health, hospitalization, vision, dental and comprehensive medical insurance for the Manager pursuant to the group health care plan provided by the City for its administrative employees.

3.6 **RETIREMENT BENEFIT.** The City agrees to enroll the Manager into the applicable state or local retirement system and to make at least the same level of contributions for the Manager or on the Manager's behalf as the City does for its other administrative employees consistent with all Applicable Laws and Authorities.

3.7 **EXPENSES.** The City shall pay or reimburse the Manager for reasonable expenses incurred by the Manager in the continuing performance of the Manager's duties under this Agreement. The City agrees to pay the actual and incidental costs incurred by the Manager for travel outside City limits. Such actual or incidental costs may include, but are not limited to, gasoline, hotels and accommodations, meals, rental car, and other expenses incurred in the performance of the business of the City. The Manager shall comply with all procedures and documentation requirements in accordance with Applicable Laws and Authorities.

3.8 **BONDS.** The City shall bear the full cost of any fidelity or other bonds required of the Manager under any law or ordinance.

3.9 **CIVIC ACTIVITIES.** The Manager is encouraged to participate in community and civic organizations and activities. The cost of such activities shall be borne by the City.

3.10 **RELOCATION.** The City desires and the Manager agrees to relocate the Manager's residence within the city limits of Mineral Wells. The City will pay \$5,000 towards Manager's residential relocation within five

business days of the execution of this Contract.

IV. PROFESSIONAL GROWTH

4.1 **PROFESSIONAL DUES AND SUBSCRIPTIONS.** Subject to budget appropriations, the City agrees to pay for professional dues and subscriptions of the Manager necessary for continuation and full participation in national, state, regional, and local associations and organizations as necessary and/or desirable for the good of the City through the Manager's continued professional participation, growth and advancement.

4.2 **PROFESSIONAL DEVELOPMENT TRAVEL.** Subject to budget appropriations, the City agrees to pay for travel and subsistence expenses of the Manager for professional and official travel and meetings to adequately continue the professional development of the Manager and to pursue necessary official functions for the City, including but not limited to the ICMA Annual Conference, the Texas Municipal League, the Texas City Management Association, and such other national, regional, state and local governmental groups and committees in which the Manager is a member.

4.3 **PROFESSIONAL CONTINUING EDUCATION.** Subject to budget appropriation, the City also agrees to pay for travel and subsistence expenses of Manager for short courses, institutes, and seminars that are necessary and/or desirable for the good of the City through the Manager's professional development.

V. PERFORMANCE EVALUATION

5.1 **EVALUATION PROCESS.** The Council shall review the Manager's job performance at least once annually with the first review being in March 2020, and subsequent annual reviews to occur during the month of March 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 with the Council and/or respond to the Manager's evaluation.

5.2 **CONFIDENTIALITY.** Unless the Manager expressly requests otherwise in writing, except to the extent prohibited by or in material conflict with Applicable Laws and Authorities, the evaluation of the Manager shall at all times be conducted in closed session of the Council and shall be considered confidential to the maximum and full extent permitted by law. Nothing herein shall prohibit the Council or the Manager from sharing the content of the Manager's evaluation with their respective legal counsel.

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, and such modifications would require new or different performance expectations, then the Manager shall be provided a reasonable period of time to demonstrate such expected performance before being evaluated.

VI. TERMINATION

6.1 **TERMINATION EVENTS.** This Agreement shall terminate upon any of the following:

- a. Mutual agreement of the Council and Manager in writing and signed by them;
- b. Retirement or death or disability of the Manager. Disability is defined as a condition lasting longer than 90 consecutive calendar days or six months of intermittent leave and which

prevents the manager from performing the duties and functions of the position as specified in this Agreement as assessed by a majority of the Council;

- c. Termination of Manager's Employment for "good cause" (as defined in Paragraph 6.2 below);
- d. A Unilateral Severance (as defined and set forth in Paragraph 6.3 below); or
- e. Expiration of the term of this Agreement; or
- f. Resignation of the Manager. In the event of resignation, the Manager shall submit thirty days written notice to the Mayor and Council. Upon receipt of such written notice, the Council may elect to accelerate the Manager's resignation and waive in whole or part, the notice period.

6.2 **"GOOD CAUSE"**. For purposes of this Agreement the term "good cause" is defined as follows:

- (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.

6.3 **UNILATERAL SEVERANCE**. As one of the termination events specified above in Paragraph 6.1, the Council may end the employment relationship and terminate this Agreement, at the pleasure of the Council, whether with or without good cause. 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 specified in Paragraph 6.4 of this Agreement. There shall be no limitations on the City making all deductions and withholdings required by law.

6.4 **SEVERANCE AMOUNT**. The "Severance Amount" means an amount equal to the value of one year of the Manager's then current salary. At the discretion of the City, the Severance Amount may be paid in a lump sum payment or in regular installments according to the City's payroll schedule and policies. All amounts paid under this Paragraph will continue to be subject to deductions and withholdings required by law, plus applicable deductions to ensure continuity of health care benefits, where the Manager would be otherwise eligible to elect benefit continuity, and appropriate contribution(s) to TMRS. Any accrued, but unused, vacation or sick leave benefits will be paid according to the City's policies applicable to other administrative employees.

6.5 **VACATION AND SICK LEAVE.** Upon the occurrence of a Termination Event, the City will pay the Manager for any accrued and unused vacation leave. The City will not pay the Manager for any accrued and unused sick leave. This Section 6.5 is in accordance with the City's policy for administrative employees as authorized by Council.

VII. GENERAL PROVISIONS

7.1 **COMPLETE AGREEMENT.** This Agreement sets forth and establishes the entire understanding between the City and the Manager relating to the employment of the Manager 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 signed agreement may amend any provision of this Agreement during the term of this Agreement; such amendments shall be incorporated and made a part of this Agreement.

7.2 **BINDING EFFECT.** This Agreement shall be binding on the City and the Manager as well as their heirs, assigns, executors, personal representatives and successors in interest.

7.3 **SAVINGS CLAUSE.** If any term or provision of this Agreement, as applied to any party or to any circumstance, is declared by a court of competent jurisdiction hereof to be illegal, unenforceable or void in any situation and in any jurisdiction, such determination shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending provision in any other situation or in any other jurisdiction. The parties agree that the court or arbitrator making such determination shall have the power to reduce the scope, duration, area or applicability of the term or provision, to delete specific words or phrases or to replace any illegal, unenforceable or void term or provision with a term or provision that is valid and enforceable and that comes closest to expressing the intention of the invalid or unenforceable term or provision.

7.4 **CONFLICTS.** In the event of any conflict between the terms, conditions and provisions of this Agreement and the Applicable Laws and Authorities, then, unless otherwise prohibited by law, the terms of this Agreement shall take precedence over the contrary provisions of the Applicable Laws and Authorities during the term of this Agreement.

7.5 **CONTROLLING LAW.** This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Texas and shall be performable in Palo Pinto County, Texas, unless otherwise provided bylaw.

CITY OF MINERAL WELLS, TEXAS

By: Margie Rose
Margie Rose, Interim City Manager

Executed this the 21 day of March, 2019.

CITY MANAGER:

Randy Criswell
Randy Criswell

Executed this the 21 day of March, 2019.