

CITY MANAGER EMPLOYMENT AGREEMENT

THE STATE OF TEXAS §
 §
COUNTY OF HAYS §

THIS City Manager Agreement ("Agreement") is made and entered into effective the 1st day of January, 2017, by and between the City of Kyle, Texas, a Texas municipal corporation (the "City") and J. Scott Sellers (the "Manager"), collectively referred to as the "Parties".

WITNESSETH:

WHEREAS, the City Council of the City (the "Council") is given the power and authority under the City's Charter to appoint, supervise, and remove the city manager ("Manager"); and,

WHEREAS, 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 and is in the best interests of the public welfare; and,

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 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, the Manager has agreed to continue employment as the City Manager, subject to the terms, conditions and provisions of this Agreement;

NOW, THEREFORE, the City Council, on behalf of 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 beginning on January 1, 2017, (the "Commencement Date") and ending on December 31, 2019, provided, however, that the term of this Agreement shall be subject to earlier termination pursuant to Section 6.1.

1.2 OPTION PERIODS. The parties shall have the option to renew or extend this Agreement beyond its current term. Discussions concerning renewal will be commenced by the parties no later than 30 days prior to the expiration date 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 prescribed in the job description, as set forth in the City Charter, if any, 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 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 except the city attorney and the municipal court judge.
- b. Direct, assign, reassign and evaluate all of the employees of the City except the municipal court judge. Per Charter Section 7.10, the City Attorney shall report to the City Manager for administrative purposes.
- c. Organize, reorganize and arrange the staff of the City other than the municipal court judge. Per Charter Section 7.10, the City Attorney shall report to the City Manager for administrative purposes.
- 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 for the city attorney's, municipal court judge's and the Manager's resignation, which must be accepted by the Council.
- f. 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 to consider any issues regarding the Manager's actions or performance, or for purposes of resolving conflicts between individual Council members. By majority vote, the Council may permit the Manager to attend said otherwise-excepted meetings.

2.5 INDEMNIFICATION. To the extent it may be permitted 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.

2.6 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.

2.7 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. During the term of this Agreement, the Manager will not directly or indirectly render any services of a business, commercial, or professional nature to any other person or organization, whether or not for compensation, without the prior written consent of the Council which may be permitted if the Council determines that such services will not interfere with the Manager performing the City Manager's Duties hereunder. The Manager shall at all times comply with all applicable laws, rules, regulations, policies and codes of ethics.

III. COMPENSATION

3.1 BASE SALARY. The City shall provide the Manager with an annual salary as of January 1, 2017 the sum of One hundred and ninety-six thousand, five hundred and three dollars and twenty cents (\$196,503.20) (Manager's Base Salary). This annual salary shall be paid to the Manager in equal installments on the schedule as other City employees are paid after and shall be paid net of any applicable withholding or deductions required by the Applicable Laws and Authorities.

3.2 ANNUAL SALARY ADJUSTMENT. The Manager shall annually receive the same percentage increase budgeted for all non-sworn city employees, or sworn employees (whichever is greater) in the Manager's Base Salary provided for in Paragraph 3.1 of this Agreement.

3.3 OTHER 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 Paragraphs 3.1 or 3.2 of this Agreement, except by mutual agreement of the Parties. Such adjustments, if any, shall be made pursuant to lawful Council resolutions and with consideration to market compensation for city managers in similar cities in the vicinity of the City.

3.4 PAID LEAVES – VACATION, SICK/PERSONAL AND HOLIDAY. The Manager may take, at the Manager's choice, the same number of hours of vacation authorized for other administrative employees of the City, 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 the performance of the City Manager's Duties. The Manager is hereby granted the same sick/personal leave benefits as authorized by Council policies for administrative employees. The Manager shall observe the same legal holidays as provided by the City for its administrative employees.

3.5 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 full-time employees of the City pursuant to all Applicable Laws and Authorities.

3.6 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 qualified dependents pursuant to the group health care plan provided by the City for its full-time employees. The City also agrees to continue providing these benefits at no cost to the Manager and the Manager's qualified dependents upon his retirement if Manager continues employment with the City as its City Manager through at least March 2025 and retires from the City on or after March 2025. The health benefits to the Manager and the Manager's qualified dependents will cease upon the Manager obtaining other municipal employment with health care or until Manager reaches the age of Medicare eligibility.

3.7 RETIREMENT BENEFIT. Manager is enrolled in the Texas Municipal Retirement System. The City agrees to execute all necessary agreements provided by the Texas Municipal Retirement System (TMRS) for the City's participation in said retirement plan, and in addition to the base salary paid by the City to Manager, the City agrees to pay the Manager's full contribution to TMRS, not to exceed twenty one (21%) percent of Manager's base salary into the system on Manager's behalf, in equal proportionate amounts each pay period, and to transfer ownership to succeeding employers upon Manager's resignation or discharge. In addition, the City will contribute five thousand dollars (\$5,000.00) each year to the Manager's 457 Plan and such contribution shall be paid in equal installments similar to payroll.

3.8 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. 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 City policy, Applicable Laws and Authorities.

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

3.10 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.

3.11 CAR ALLOWANCE. The City shall provide a car allowance stipend of eight hundred dollars (\$800.00) per month to reimburse the Manager for the use of a personal vehicle.

3.12 TELECOMMUNICATIONS. The City shall provide the Manager with a mobile phone allowance of one hundred dollars (\$100.00) per month, a tablet, and/or a laptop computer. In addition to use for official city business, such items may be used for incidental personal use. At

the conclusion of Manager's employment with City, Manager agrees to return any equipment provided for his use.

3.13 LIMITATIONS. The Manager's compensation is determined by the terms set forth within this Agreement and may be modified by adjustments to City staff's compensation taken by the Council or the Manager, such as cost-of-living or market-based adjustments, or other changes to the compensation provided to City staff.

IV. PROFESSIONAL GROWTH

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, state, regional, and local associations and organizations as necessary and/or desirable for the benefit of the City through the Manager's continued professional participation, growth and advancement.

4.2 PROFESSIONAL DEVELOPMENT TRAVEL. The City agrees to budget for and 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. The City agrees to budget and pay for travel and subsistence expenses of Manager for short courses, institutes, and seminars that are necessary and/or desirable for the benefit 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, which evaluation shall be completed no later than October 31st of each year unless the parties agree otherwise. The annual performance review and evaluation shall be in accordance with criteria and format developed jointly by the Council and the Manager. The Mayor shall present the annual performance evaluation to the Manager and the Council shall provide the Manager a reasonable and adequate opportunity to discuss with the Council and/or respond to the Manager's evaluation. In addition to categorical evaluation criterion that may be part of the performance evaluation required under this paragraph, the Council shall provide a summative performance rating of 5 = Excellent (almost always exceeds the performance standard); 4 = Above average (generally exceeds the performance standard); 3 =

Average (generally meets the performance standard); 2 = Below average (usually does not meet the performance standard); or 1 = Poor (rarely meets the performance standard). For purposes of making a determination under paragraph 3.2 of this Agreement, if the Council fails to provide the Manager with the summative performance rating required under this paragraph, the Manager shall be deemed to have achieved a summative rating for the evaluation period of 4 = Above average (generally exceeds the performance standard).

5.2 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.

5.3 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.

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 of the Manager in which case the Manager shall provide the City six (6) months notice of his intent to retire.
- c. Voluntary resignation of in which case the Manager shall provide the City two (2) months notice of his intent to resign;
- d. Death of the Manager;
- e. If the Manager becomes permanently disabled because of sickness, physical or mental disability, so that the Manager will be unable to complete any of his duties under this Agreement with a reasonable accommodation as permitted by the Americans with Disabilities Act, the City has the option, consistent with applicable law, to terminate this Agreement upon 60 calendar days written notice of termination to the Manager. If so terminated, Manager shall be eligible for long term disability benefits provided to other City employees. Such termination will be without prejudice to any right or remedy to which the City or Manager may be entitled either at law, in equity, or under this Agreement.

f. Termination of Manager's Employment for "good cause" without notice or severance (as defined in Paragraph 6.2 below);

g. A Unilateral Severance (as defined and set forth in Section 6.3 below); or,

h. Expiration of the term of this Agreement, provided the City gives Manager at least thirty (30) days notice prior to the expiration of the Term that City does not intend to renew this contract or extend the Term. If City does not give such thirty (30) day notice, the contract would automatically renew on the date of the end of the Term for an additional one year Term.

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, 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:

(a) the Council has voted and there are five (5) affirmative votes to pursue a Unilateral Severance pursuant to this Paragraph 6.3 of the Agreement,

(b) the effective date of the Unilateral Severance ("Severance Effective Date"), and

(c) 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.

6.3.1 SEVERANCE AMOUNT. "Severance Amount" means the total amount of:

(a) an amount equal to the value of twelve (12) months of the Manager's then-current Base 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 Base Salary by 2080 hours.

6.3.2 SEVERANCE BENEFITS. "Severance Benefits" means, at the City's expense: continued health insurance benefit pursuant to Paragraph 3.6 of the Agreement, for a period of twelve 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

6.3.3 CURRENT OBLIGATIONS. 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 must waive and release Manager's rights to continued employment with the City and any other claims and the parties waive and release the right to an arbitration hearing on any and all issues, claims or causes of action. In the event of a Unilateral Severance, the parties agree not to make disparaging comments or statements about each other.

6.3.4 LIMITATIONS. Paragraph 6.3 applies to each year of this Agreement and does not apply to any extension or future modification of this Agreement unless reauthorized by the Council or to the Manager's continued employment under paragraph 1.2 of this Agreement.

6.4 1. RESIGNATION BY MANAGER. The City will pay Manager a lump sum cash payment for all salary earned through the last date that Manager works, or his resignation date, which is later, accrued but unused vacation and sick/personal leave days (the same as general employees), and other benefits that were accrued but unused as of the last day of active employment.

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 JURISDICTION/ARBITRATION. The parties agree that any and all disputes related to Manager's employment with the City, including any related to this Agreement, shall be resolved by Arbitration under the rules and auspices of the American Arbitration Association one person arbitration rules. The parties stipulate that any arbitration shall take place in Hays County, Texas.

7.4 SAVINGS CLAUSE. If any term or provision of this Agreement, as applied to any party or to any circumstance, is declared by a court or arbitrator 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.

7.5 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.

7.6 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 Hays County, Texas, unless otherwise provided by law.

EXECUTED THIS the _____ day of January, 2017.

CITY OF KYLE, TEXAS

By: _____
R. Todd Webster, Mayor

ATTEST:

APPROVED AS TO FORM:

Jennifer Vetrano, City Secretary

Frank J. Garza, City Attorney

J. Scott Sellers, City Manager