

CITY OF KILLEEN

CITY MANAGER AGREEMENT

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

THIS CITY MANAGER AGREEMENT ("Agreement") is made and entered into effective the 3rd day of December, 2019, by and between the City of Killeen, Texas, a Texas municipal corporation (the "City") and James Kent Cagle (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. This agreement shall remain in full force and effect from December 3, 2019, until terminated by the City or the Manager as provided in Sections 7.1, 7.2 or 7.3 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, 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, either directly or indirectly through the appropriate Department Head.
- b. Prepare the annual budget, submit it to Council and be responsible for its administration after adoption.
- c. Prepare and submit to Council a complete, end-of-year report on the finances and administrative activities of the city for the preceding year.
- d. Keep the Council advised of the financial condition and future needs of the City and make recommendations based upon such condition and needs.
- e. Direct, assign, reassign and evaluate all of the employees of the City, either directly or indirectly through the appropriate Department Head.
- f. Organize, reorganize and arrange the staff of the City.
- g. Develop and establish internal regulations, rules, and procedures which the Manager deems necessary for the efficient and effective operation of the City.
- h. Accept all resignations of employees of the City, either directly or indirectly through the appropriate Department Head, except the Manager's resignation, which must be accepted by the Council.
- i. Perform all duties with reasonable care, diligence, skill and expertise, and in accordance with Council and community priorities.

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 regarding city operations 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; provided that, with the prior consent of the Council, the Manager may accept outside professional employment which does not interfere with the Manager performing the City Manager's Duties hereunder. The term "outside professional employment" means professional services provided to third parties for which the Manager is compensated and which are performed on the Manager's time off.

To the extent that it does not interfere unnecessarily with the City Manager's Duties, the Council encourages the Manager to accept invitations to speaking engagements, writing or other opportunities to communicate with the community, to make use of and share data and information with relevant persons and groups, and shall encourage the participation of the Manager in pertinent seminars, groups, associations and organizations, as well as in informational meetings with those individuals whose particular skills, expertise, or backgrounds would serve to improve the capacity of the Manager to perform the City Manager's Duties.

III. COMPENSATION AND BENEFITS

3.1 SALARY. The City shall provide the Manager with an annual salary in the sum of Two Hundred and Ten Thousand Dollars (\$210,000.00). 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 may take, at the Manager's choice, the same number of vacation hours authorized for other administrative employees of the City with ten years' service, the leave to be in a single period or at different times. However, the Manager shall begin employment with forty vacation hours available for his use in accordance with this Agreement. 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.

3.4 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, dental and comprehensive medical insurance for the Manager, pursuant to the group health care plan provided by the City for its administrative employees, or the cash equivalent of such premiums.

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 AUTOMOBILE ALLOWANCE. The Council shall provide the Manager with an annual automobile allowance in the sum of Seven Thousand Two Hundred Dollars (\$7,200.00), which is in lieu of mileage expense reimbursement, gasoline or other vehicle upkeep charges associated with travel to destinations within Bell County. This allowance shall be paid in addition to the annual salary set forth in Paragraph 3.1 of this Agreement. The Manager will be reimbursed by the City on a per mile basis for business travel in the Manager's personal automobile to destinations outside Bell County in accordance with the City policy as for other administrative employees.

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 to destinations outside Bell County. 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.

3.9 CELL PHONE AND DATA PLAN. The City agrees to provide a cellular phone with data plan to Manager, and to pay directly for such plan.

3.10 EXPENSES—ANNUAL AUDIT. The Manager shall cooperate with the City's external auditors so that the external auditors can perform a complete audit of the Manager's expenses and report the audit results to the Council, when requested by the Council.

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

3.12 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.

IV. MOVING AND RELOCATION EXPENSES

4.1 RESIDENCY. Manager agrees to establish residence within the corporate boundaries of Killeen by January 31, 2020, and thereafter to maintain residence within the corporate boundaries of Killeen.

4.2 MOVING EXPENSES AND INTERIM HOUSING. The City shall pay directly to Manager a sum of Five Thousand Dollars (\$5,000) for the expenses of moving the Manager and his personal property from Leander, Texas, to Killeen, Texas, and for interim housing expenses in Killeen.

V. PROFESSIONAL GROWTH

5.1 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 good of the City through the Manager's continued professional participation, growth and advancement.

5.2 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.

5.3 PROFESSIONAL CONTINUING EDUCATION. The City also agrees to budget for and 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.

VI. PERFORMANCE EVALUATION

6.1 EVALUATION PROCESS. The Council shall review the Manager's job performance at least once annually. 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. The annual performance reviews and

evaluations shall be reasonably related to the Manager's written job description and shall be based, in whole or in part, on goals for the Manager's performance that are jointly developed and agreed upon by the Council and the Manager. In addition to the written annual performance evaluation, the Council shall informally review the Manager's performance on a quarterly basis.

6.2 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.

6.3 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.

VII. TERMINATION

7.1 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, resignation or death of the Manager;
- c. Termination of Manager's Employment for "good cause" (as defined in Paragraph 7.2 below), in compliance with any Charter-required written charges and public hearing;
- d. A Unilateral Severance (as defined and set forth in Section 7.3 below), which is not a removal subject to any Charter-required written charges and public hearing; or,

7.2 "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 dishonesty, fraud, deceit, misrepresentation or deliberate violence, conviction of a 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.
- d. 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; provided, 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;
- e. Insubordination or failure to comply with lawful Council directives;
- f. Mental and/or physical disability not otherwise protected by law that impairs performance of the required duties of the manager, and for which no reasonable accommodations can be made.
- g. Knowingly falsifying records or documents related to the City's activities;
- h. Conscious misrepresentation of material facts to the Council or other City officials in the conduct of the City's business; or
- i. Any other reason constituting "good cause" under Texas law.

7.3 UNILATERAL SEVERANCE. As one of the termination events specified above in Paragraph 7.1, the Council may end the employment relationship and terminate this Agreement, at the pleasure of the Council, whether with or 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 to pursue a Unilateral Severance pursuant to this Paragraph 7.3 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.

The "*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 identified in section 3.1 of this agreement, 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, to the same extent that such unused vacation and sick/personal leave days are paid to other administrative employees who leave employment with the City; plus (c) any other benefit(s) that would be paid to any other administrative employee leaving employment with the city. The "*Severance Benefits*" means, at the City's expense, continued health insurance benefit pursuant to Paragraph 3.5 of the Agreement, for a period of twelve (12) months or until the Manager obtains other full time employment and coverage through a group health insurance plan from the Manager's new employer, whichever occurs first. 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 waives and releases the Manager's rights to continued employment with the City and the parties waive and release the right to an arbitration or mediation hearing on the issue of good cause. In the event of a Unilateral Severance, the parties agree not to make disparaging comments or statements about each other.

VIII. GENERAL PROVISIONS

8.1 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.

8.2 NOTICE. Notice pursuant to this Agreement shall be given in writing and delivered by personal service or deposit in the custody of the United States Postal Service, postage prepaid, and addressed as follows:

If to CITY: Mayor
 101 N. College St.
 P.O. Box 1329
 Killeen, TX 76540

With copy to: City Attorney
 101 N. College St.

P.O. Box 1329
Killeen, TX 76540

If to MANAGER: Mr. James Kent Cagle
To his current residence address then on file

Notice shall be deemed delivered and received as of the date of personal service or if mailed, three business days after the date of deposit with the United States Postal Service. Either party may, from time to time by written notice to the other party, designate a different address for notice purposes.

8.3 ATTORNEYS' FEES. In the event either of the parties hereto brings an action (i.e., litigation or arbitration) against the other party concerning or relating to this Agreement, the losing party in that action agrees to pay the prevailing party reasonable attorneys' fees and court costs, to be affixed by the Court or arbitrator.

8.4 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.

8.5 ASSIGNMENT. Neither party may assign its rights, duties or obligations under this Agreement to any person or entity, in whole or in part, and any attempt to do so shall be void and deemed a material breach of this Agreement.

8.6 HEADINGS AND CAPTIONS. Headings and captions used in this Agreement are provided for convenience only and shall not be used to construe or interpret meaning or intent.

8.7 "PERSON." For purposes of this Agreement, "person" means any natural person, corporation, limited liability company, association, partnership, joint venture, proprietorship, governmental agency, trust, estate or other entity or corporation, whether acting in an individual, fiduciary or other capacity.

8.8 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.

8.9 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.

8.10 WAIVER. No waiver of any provision hereof or of any right or remedy hereunder shall be effective unless in writing and signed by the party against whom such waiver is sought to be enforced. No delay in exercising, no course in dealing with respect to, or no partial exercise of any right or remedy hereunder shall constitute a waiver of any other right or remedy, or future exercise thereof.

8.11 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 Bell County, Texas, unless otherwise provided by law.

CITY OF KILLEEN, TEXAS

By: _____
Jose Segarra
Mayor

Executed this the ____ day of _____, 2019.

CITY MANAGER:

James Kent Cagle

Executed this the ____ day of _____, 2019.