

**ORDINANCE NO. 2018-07**

**AN ORDINANCE OF THE CITY COUNCIL AUTHORIZING THE TRANSFER OF LOTS 5 THROUGH 10, BLOCK 13, RICHARDS ADDITION (2ND FILING) TO MINERAL WELLS CENTER OF LIFE, IN ACCORDANCE WITH SECTION 253.011 AND SECTION 272.001 OF THE TEXAS LOCAL GOVERNMENT CODE; AND AUTHORIZING THE CITY MANAGER TO EXECUTE ALL DOCUMENTS NECESSARY TO TRANSFER OWNERSHIP; PROVIDING FOR SEVERABILITY AND EFFECTIVE DATE.**

**WHEREAS**, the City of Mineral Wells is the owner of certain real property located in the City of Mineral Wells, Palo Pinto County, Texas; and

**WHEREAS**, the City Council finds it to be in the public interest to transfer said property to Mineral Wells Center of Life, a 501(c)(3) nonprofit corporation, which will primarily use the property to construct affordable single-family housing; and

**WHEREAS**, the City has determined that said property is surplus property, and due to its proximity to property owned by Mineral Wells Center of Life, would best serve the needs of the citizens of Mineral Wells if utilized for affordable single-family housing; and

**WHEREAS**, Texas Local Government Code Section 253.011 authorizes a municipality with a population less than 1.9 million to transfer real property to a nonprofit organization, without complying with the notice and bidding requirements of Local Government Code Section 272.001(a) or other law, conditioned on the execution of a reverter agreement wherein the nonprofit organization promises to use the property in a manner that “primarily promotes a public purpose”.

**WHEREAS**, the City Council finds that said conveyance is made pursuant to Texas Local Government Code Section 253.011 and Section 272.001;

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MINERAL WELLS, TEXAS:**

SECTION ONE. The City Manager is hereby authorized to execute, respectively, on behalf of the City of Mineral Wells (“City”), an agreement between the City and Mineral Wells Center of Life concerning the transfer of specific lots described in Section Two herein, from the City of Mineral Wells to Mineral Wells Center of Life. Said agreement is to be in substantially the form as Exhibit “A” attached herein and incorporated by reference for all legal purposes.

SECTION TWO. The real property to be conveyed by the City of Mineral Wells is as follows:

Being all of the following:

Lots Five, Six, Seven, Eight, Nine and Ten (5, 6, 7, 8, 9, 10) of Block Thirteen (13) of the Richards Addition (2ND Filing) to the City of Mineral Wells, Palo Pinto County, Texas, recorded in the Deed Records of Palo Pinto County, Texas.

SECTION THREE. The City Manager is hereby authorized to sign all legal documentation necessary to convey the City-owned property described above to Mineral Wells Center of Life, pursuant to Texas Local Government Code Section 253.011 and Section 272.001.

SECTION FOUR. The public purpose is the development of low and moderate-income housing for the citizens of Mineral Wells, Texas, as further described in the agreement attached hereto as Exhibit "A".

SECTION FIVE. Severability. If any provision, section, subsection, sentence, clause or the application of the same to any person or set of circumstances for any reason is held to be unconstitutional, void, or invalid or for any reason unenforceable, the validity of the remaining portions of this Ordinance or the application thereby shall remain in effect, it being the intent of the City Council of the City of Mineral Wells, Texas in adopting this Ordinance, that no portion thereof or provision contained herein shall become inoperative or fail by any reasons of unconstitutionality of any other portion or provision.

SECTION SIX. Effective Date. This Ordinance shall become effective on the day of its adoption.

**PASSED AND APPROVED** this the \_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
Mike Allen, Mayor

ATTEST:

\_\_\_\_\_  
Peggy Clifton, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Mack Reinwand, City Attorney

**Exhibit "A"**

**THE STATE OF TEXAS           §**  
**§**  
**COUNTY OF PALO PINTO       §**

**AGREEMENT BETWEEN CITY OF MINERAL WELLS, TEXAS  
AND  
MINERAL WELLS CENTER OF LIFE**

This Agreement made by and between the CITY OF MINERAL WELLS, TEXAS, a home rule municipal corporation, herein called "City", and MINERAL WELLS CENTER OF LIFE, a 501(c)(3) nonprofit corporation, hereinafter called "CL";

**WITNESSETH**

**I. PURPOSE**

The purpose of this Agreement is to state the terms and conditions by which the City shall convey real property for the purpose of developing single family housing affordable to low income households.

**II. CONVEYANCE OF REAL PROPERTY**

The City agrees to convey specific real property within the City of Mineral Wells, Palo Pinto County, Texas, for the purpose of improving the lots conveyed and increasing the conditions and value of the surrounding subdivision. The specific property to be conveyed by the City is described in Exhibit "A", attached hereto and incorporated by reference (the "Property"). The Property is conveyed and executed under the explicit authorization of the City Council of the City of Mineral Wells, Texas, and pursuant to authority granted by Texas Local Government Code, Section 253.011 and Section 272.001.

**III. TERM OF CONTRACT**

The term of this Agreement shall begin upon its execution (the "Effective Date") and end five years after the Effective Date unless the housing project is not completed with the construction of affordable housing on the Property and an extension of time is granted by the City Council. If the housing project on the Property is completed by the construction of affordable housing on the Property during the Term of this Agreement, the purpose of this Agreement shall be fulfilled and City and CL shall be released and have no further rights and obligations pursuant to this Agreement.

**IV. INDEMNITY**

CL SHALL INDEMNIFY, HOLD HARMLESS, AND DEFEND THE CITY AND ALL OF THE CITY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS,

DAMAGES, PERSONAL INJURIES, LOSSES, PROPERTY DAMAGE AND EXPENSES OF ANY CHARACTER WHATSOEVER, INCLUDING ATTORNEY'S FEES, BROUGHT FOR, OR ON ACCOUNT OF, ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON(S) OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF CL OR ANY OF ITS OFFICERS, EMPLOYEES, AGENTS, REPRESENTATIVES, OR SUBCONTRACTORS, IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS AGREEMENT. CL WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST THE CITY OR ANY OF CITY'S OFFICERS, AGENTS, OR EMPLOYEES, INCLUDING ATTORNEY'S FEES.

CL SHALL INDEMNIFY, HOLD HARMLESS, AND DEFEND THE CITY AND ALL OF THE CITY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, LOSSES, PROPERTY DAMAGE, AND EXPENSES OF ANY CHARACTER WHATSOEVER, INCLUDING ATTORNEY'S FEES, BROUGHT FOR, OR ON ACCOUNT OF, ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF THE CITY OR ANY OF ITS OFFICERS, AGENTS, OR EMPLOYEES, WHETHER SUCH ACT OR OMISSION WAS THE SOLE PROXIMATE CAUSE OF THE INJURY, DAMAGE, OR A PROXIMATE CAUSE JOINTLY AND CONCURRENTLY WITH THE NEGLIGENCE OF CL OR ITS OFFICERS, EMPLOYEES, AGENTS, CONTRACTORS, OR SUBCONTRACTORS, IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS AGREEMENT, AND CL WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST THE CITY OR ANY OF CITY'S OFFICERS, AGENTS, OR EMPLOYEES, INCLUDING ATTORNEY'S FEES.

CL AGREES THAT IT WILL INDEMNIFY AND SAVE THE CITY HARMLESS FROM ALL CLAIMS GROWING OUT OF ANY DEMANDS OF SUBCONTRACTORS, LABORERS, WORKMEN, MECHANICS, MATERIALMEN, AND SUPPLIERS OF MACHINERY AND PARTS THEREOF, EQUIPMENT, POWER TOOLS, ALL SUPPLIES, INCLUDING COMMISSARY INCURRED IN THE FURTHERANCE OF THE PERFORMANCE OF THIS AGREEMENT. WHEN CITY SO DESIRES, CL SHALL FURNISH SATISFACTORY EVIDENCE THAT ALL OBLIGATIONS OF THE NATURE HEREINABOVE DESIGNATED HAVE BEEN PAID, DISCHARGED OR WAIVED.

## **V. INDEPENDENT CONTRACTOR**

It is expressly understood and agreed that CL shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant, or employee of the City. The CL shall have exclusive control of and the exclusive right to control the details for the services and work performed hereunder, and all persons performing the same, including being solely responsible for the acts and omissions of its officers, agents, employees, contractors, and subcontractors. The doctrine of respondeat superior shall not apply as between City and CL, its officers, agents, employees, contractors, and subcontractors. Nothing herein shall be construed as creating a partnership or joint enterprise between City and CL. No person performing any work

hereunder shall be considered an officer, agent, servant, or employee of the City. Further, it is specifically understood and agreed that nothing in this Agreement is intended or shall be construed as creating a "Community of Pecuniary Interest" or "An Equal Right of Control" which would give rise to vicarious liability. CL shall be an independent contractor under this Agreement and shall assume all of the rights, obligations, and liabilities applicable to it as such independent contractor hereunder. City does not have the power to direct the order in which the work is done. City shall not have the right to control the means, methods, or details of CL's work. CL shall assume exclusive responsibility for the work. CL is entirely free to do the work in its own way.

## **VI. APPLICABLE LAWS, ORDINANCES**

CL shall comply with all applicable laws, ordinances and codes of the United States, State of Texas and the City. CL hereby agrees as follows:

- A. CL will comply with Title VI of the Civil Rights Act of 1964 (Public Law 88-352), which provides that no person in the United States shall on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity.
- B. CL will comply with Title VIII of the Civil Rights Act of 1968 (Public Law 90-284), which provides that it is the policy of the United States to provide for fair housing throughout the United States. It prohibits particular discriminatory acts regarding housing if the discrimination is based on race, color, religion, sex, national origin, family status, or mental and physical disability.
- C. CL will construct housing that is valued at no more than 95% of Mineral Well's median purchase price as specified in Section 203(b) of HUD's FHA single family mortgage insurance program. Housing must also pass HUD's Housing Quality Standards.
- D. CL shall obtain and maintain documentation evidencing that housing constructed on the Property meets the eligibility criteria of this Agreement.
- E. No officer, employee or board member of CL shall have a financial interest, direct or indirect, in this Agreement or the monies transferred hereunder, or be financially interested, directly or indirectly, in the sale to CL of any land, materials, supplies or services purchased with any funds transferred hereunder, except on behalf of CL as an officer, employee, member, or program participant.
- F. CL shall make available to the City, as determined by the City, information and/or data which document compliance, in all phases of its work, with the above paragraphs A through E. CL shall fully cooperate with City when City monitors the services and work performed under this Agreement, which the City may do at any time during the term of this Agreement. CL shall maintain accounts and records adequate to identify and account for all cost pertaining to the Agreement. These records will be made available to the City for audit purposes and will be retained for two (2) years after the expiration of this Agreement unless permission to destroy them is granted by the City.

## **VII. PROJECT REPORTS**

Yearly status reports are to be prepared by CL and submitted in a timely fashion to the City. A final performance report shall be prepared and submitted promptly after project completion. An

inventory of Center of Life acquired assets shall be submitted to the City in regard to the Property in a form suitable to the City, on an annual basis and at the end of the Agreement.

### **VIII. SOVEREIGN IMMUNITY**

By executing this contract, the City is not waiving its right of sovereign immunity. The City is retaining its immunity from suit. The City is not granting consent to be sued by legislative resolution or action. THERE IS NO WAIVER OF SOVEREIGN IMMUNITY.

### **IX. DEFAULT PROVISION**

In the event that either CL or the City fails to perform or is unable to perform substantially its obligations under the terms of this Agreement, the nondefaulting party shall notify the defaulting party in writing of such default. Within five (5) days after receipt of such notification, CL and City shall meet to discuss the default, the reasons thereof and the methods to cure default. If the defaulting party has not substantially cured the default within ten (10) days after receipt of such notification, or the City and CL have not agreed within such time upon a solution to the default, the nondefaulting party may, at its option, pursue any remedies at law or in equity. In any event, this Agreement may be terminated by mutual consent of CL and City in writing.

### **X. RELEASE**

CL HEREBY RELEASES, RELINQUISHES, ACQUITS, AND FOREVER DISCHARGES CITY, CITY'S EMPLOYEES, AND OFFICERS, FROM ANY AND ALL DEMANDS, CLAIMS, OR CAUSES OF ACTION OF ANY KIND WHATSOEVER WHICH CL HAS OR MIGHT HAVE IN THE FUTURE, INCLUDING BUT NOT LIMITED TO BREACH OF CONTRACT, QUANTUM MERUIT, CLAIMS UNDER THE DUE PROCESS AND TAKINGS CLAUSES OF THE TEXAS AND UNITED STATES CONSTITUTIONS, TORT CLAIMS, OR CITY'S NEGLIGENCE.

### **XI. THIRD-PARTY BENEFICIARY**

The City's approval of this Agreement does not create a third party beneficiary. There is no third party beneficiary to this Agreement. No person or entity who is not a party to this Agreement shall have any third party beneficiary or other rights hereunder.

### **XII. ASSIGNMENT**

CL has the right to assign this Agreement, in whole or in part, and including any obligation, right, title, or interest of CL under this Agreement to any person or entity that is or will become an owner of any portion of the Property ("Assignee") without the City consent, but with notice to the City, so long as the public purposes of this Agreement are completed in accordance with the terms of this Agreement. Each assignment shall be in writing executed by the Owner and the Assignee and shall obligate the Assignee to be bound by this Agreement.

### **XII. AUTOMATIC REVERSION**

CL and City explicitly agree that this conveyance complies with the conditions of Texas Local Government Code, Section 253.011 and Section 272.001. If, for any reason, CL at any time fails to use the Property during the Term of this Agreement for the public purpose in the manner for which it was conveyed, the Property shall automatically revert to the City.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the Effective Date being this the \_\_\_\_ day of \_\_\_\_\_, 2018.

*[remainder of page intentionally blank; signature page to follow]*

**CITY OF MINERAL WELLS, TEXAS**

\_\_\_\_\_  
Mike Allen, Mayor

ATTEST:

\_\_\_\_\_  
Peggy Clifton, City Clerk

**MINERAL WELLS CENTER OF LIFE**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

THE STATE OF TEXAS  
COUNTY OF PALO PINTO

BEFORE ME, the undersigned authority, on this day personally appeared \_\_\_\_\_ an officer of MINERAL WELLS CENTER OF LIFE, known to me to be the person and official whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same as the act and deed of said nonprofit corporation, for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the \_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
Notary Public, State of Texas

**EXHIBIT "A"**

Being all Lots Five, Six, Seven, Eight, Nine and Ten (5, 6, 7, 8, 9, 10) of Block Thirteen (13) of the Richards Addition (2ND Filing) to the City of Mineral Wells, Palo Pinto County, Texas, recorded in the Deed Records of Palo Pinto County, Texas.

**NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY AND ALL OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOU SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.**

**DEED WITHOUT WARRANTY WITH REVERTER**

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

The undersigned, **CITY OF MINERAL WELLS, TEXAS**, a Texas Home Rule Municipal Corporation, hereinafter referred to a "Grantor", whether one or more, for and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration from Grantee herein named to use the property in a manner that primarily promotes a public purpose of the City of Mineral Wells, specifically development of affordable housing for the citizens of Mineral Wells, Texas, in accordance with Section 253.011 of the Texas Local Government Code, does GRANT, BARGAIN, SELL and CONVEY to **MINERAL WELLS CENTER OF LIFE**, a 501(c)(3) nonprofit corporation, 200 SW 5th Street, Mineral Wells, TX 76067, herein referred to as "Grantee", whether one or more, the real property (the "Property") described as follows:

**Being all Lots Five, Six, Seven, Eight, Nine and Ten (5, 6, 7, 8, 9, 10) of Block Thirteen (13) of the Richards Addition (2ND Filing) to the City of Mineral Wells, Palo Pinto County, Texas, recorded in the Deed Records of Palo Pinto County, Texas.**

This Deed without Warrant with Reverter and the conveyance above are executed by Grantor and accepted by Grantee subject to any and all restrictions, easements, mineral reservations, and other matters of records, to the extent they are validly existing and applicable to the Property (collectively, "Permitted Exceptions")

**BY EXECUTING THIS DEED WITHOUT WARRANTY WITH REVERTER, THE GRANTOR AND THE GRANTEE AGREE THAT GRANTEE IS TAKING THE PROPERTY "AS IS" WITH ANY AND ALL LATENT AND PATENT DEFECTS AND THERE IS NO WARRANTY, EXPRESS OR IMPLIED, BEING MADE BY THE CITY OF MINERAL WELLS, TEXAS THAT THE PROPERTY IS FIT FOR A PARTICULAR PURPOSE. THE GRANTEE ACKNOWLEDGES THAT GRANTEE IS NOT RELYING UPON ANY REPRESENTATION MADE BY THE CITY OF MINERAL WELLS WITH RESPECT TO THE CONDITION OF THE PROPERTY, BUT IS RELYING UPON GRANTEE'S EXAMINATION OF THE PROPERTY. GRANTEE ALSO RECOGNIZES BY AGREEING TO PURCHASE THE PROPERTY "AS IS" THAT GRANTEE AGREES TO MAKE GRANTEE'S OWN APPRAISAL OF THE PROPERTY AND TO ACCEPT THE RISK THAT GRANTEE MAY BE WRONG. THE GRANTOR GIVES NO ASSURANCES, EXPRESS OR IMPLIED, CONCERNING THE VALUE OR CONDITION OF THE PROPERTY SOLD. IN NO EVENT SHALL A GRANTEE HAVE A RIGHT TO RECOVER CONSEQUENTIAL DAMAGES. THEREFORE, THE**

**GRANTEE WILL TAKE THE PROPERTY UNDER THE EXPRESS UNDERSTANDING THE PROPERTY IS ACCEPTED "AS IS" AND WITH ALL FAULT. PROVISIONS OF THIS PARAGRAPH SURVIVE THE CLOSING.**

REVERTER: In accordance with Section 253.011 of the Texas Local Government Code, the ownership of the above-referenced property automatically reverts back to the Grantor in the event the Grantee at any time fails to use the property to promote the public purpose of developing affordable housing by constructing affordable housing thereon within five (5) years from the execution date of this Deed without Warranty with Reverter.

TO HAVE AND TO HOLD all of Grantor's right, title and interest in and to the above described property and premises unto the Grantee, and Grantee's heirs, administrators, executors, successors and/or assigns forever subject to the provisions of this Deed without Warranty with Reverter.

EXECUTED this \_\_\_\_\_ day \_\_\_\_\_ of 2018.

**CITY OF MINERAL WELLS, TEXAS**

\_\_\_\_\_  
Mike Allen, Mayor

ATTEST:

\_\_\_\_\_  
Peggy Clifton, City Clerk

**MINERAL WELLS CENTER OF LIFE**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

THE STATE OF TEXAS  
COUNTY OF PALO PINTO

BEFORE ME, the undersigned authority, on this day personally appeared \_\_\_\_\_ an officer of MINERAL WELLS CENTER OF LIFE, known to me to be the person and official whose name is subscribed to the foregoing instrument, and

acknowledged to me that he executed the same as the act and deed of said nonprofit corporation, for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the \_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
Notary Public, State of Texas