

# City of Minot

## EMPLOYMENT AGREEMENT

The Agreement is made between the City of Minot, a municipal corporation and political subdivision of the State of North Dakota, hereinafter called "the City" and Harold Stewart II, hereinafter referred to as Stewart, both of whom agree as follows:

1. **Position.** The City hereby employs Stewart as its City Manager. Stewart agrees to serve as City Manager in accordance with the City's City Manager job description, which is attached and incorporated into this Agreement by reference as Exhibit 1.
2. **Term.** This Agreement shall remain in full force and effect, for a term of five (5) years, from December 29, 2023 until December 28, 2028, unless terminated earlier by the City or Stewart provided in Paragraph 15 of this Agreement. This Agreement shall automatically renew on its anniversary date for a one-year term unless notice is given at least six (6) months before the expiration date. In the event the Agreement is not renewed, all compensation, benefits, and requirements of the Agreement shall remain in effect until the expiration of the term.
3. **Duties and Authority.**
  - a. Stewart is the chief administrative officer of the City and shall faithfully perform the duties as prescribed in the job description, as set forth in Section 2-47 of the City's Code of Ordinances (which may hereafter be amended), and as may be lawfully assigned by the City. Stewart shall comply with all lawful City Council directives, state and federal law, City policies, rules and ordinances as they exist or may hereafter be amended.
  - b. Specifically, it shall be the duty of Stewart to appoint or remove, on behalf of the City, all other City employees consistent with the policies of the City Council and the City's Code of Ordinances.
  - c. It shall also be the duty of Stewart to direct, reassign, and evaluate all City employees consistent with City policies, City ordinances, state laws, and federal laws.
  - d. It shall also be the duty of Stewart to organize, reorganize, and arrange the staff of the City and to develop and establish internal regulations, rules, and procedures which Stewart deems necessary for the efficient and effective operation of the City, consistent with lawful directives from the City Council, City policies, City ordinances, state law, and federal law.
  - e. It shall also be the duty of Stewart to accept all resignations of employees of the City consistent with City policies, City ordinances, state law, and federal law, except when that employee's resignation must be accepted by the City Council.
  - f. Stewart shall perform the duties of the office of City Manager with reasonable care, diligence, skill, and expertise.
  - g. All duties assigned to Stewart by the City Council shall be appropriate to and consistent with the professional role and responsibility of the City Manager position.
  - h. Stewart cannot be reassigned from the position of City Manager to another position without Stewart's express written consent.
  - i. Stewart shall attend, and shall be permitted to attend, all meeting of the governing body, both public and closed, with the exception of those closed meetings devoted to the

subject of this Agreement, or to any amendment thereto, or to a subject that is a matter personally involving Stewart.

j. The City Council shall, individually and collectively, refer in a timely manner all substantive criticisms, complaints and suggestions called to their attention to Stewart for study and/or appropriate action.

**4. Compensation.**

- a. **Salary and Salary Step Increases.** City agrees to pay Stewart an annual base salary of \$182,000 payable in installments at the same time that other management employees of the City are paid. The City shall increase Stewart's base salary by step increment, consistent with step increment increases provided to civil service employees of the City. The base salary step increment for Stewart shall be approved by the City Council as a part of his annual evaluations and the annual budget approval.
- b. **Supervisory Employee.** Stewart acknowledges that he is the chief administrative officer of the City, and that this position is a supervisory position for purposes of the federal Fair Labor Standards Act. Consequently, Stewart shall not be entitled to overtime pay without regard to how many hours he may work within a given period of time.
- c. **Paycheck Withholdings.** Stewart recognizes that under compulsion of law the City is obligated to withhold certain sums from his gross pay which may not be specifically mentioned herein, such as, for example, Medicare taxes. Stewart agrees that such withholdings made under compulsion of law shall not be considered a diminution of their gross pay, and shall be treated as though personally paid to him, for purposes of measuring the City's performance under this contract.
- d. **Social Security.** The City agrees to pay on Stewart's behalf, the same rate of Social Security paid by Stewart as set annually by federal regulation.

**5. Health, Disability, and Life Insurance.**

- a. **Health Insurance.** The City will enroll and maintain Stewart and/or his family in its health insurance plan to the same extent as it does its civil service employees.
- b. **Long-Term Disability Benefits.** The City will provide Stewart the same long-term disability benefits as it provides to its civil service employees.
- c. **Life Insurance.** The City will provide Stewart the same life insurance benefits as it provides to its civil service employees.

**6. Annual, Sick, and Military Leave; Personal Day; Holidays.**

- a. **Annual Leave.** The City Manager shall receive the same leave/paid time off benefits as all City Employees, to be calculated at the same rate as an employee with 15 years of service.

**7. Automobile.**

- a. **Mileage.** The City will pay Stewart \$450.00 per month to compensate him for using his personal vehicle for in-town travel (within 30 miles of the Minot, North Dakota corporate limits) for City business. Stewart shall be responsible for paying for liability, property damage, and comprehensive insurance coverage upon such personal vehicle and shall further be responsible for all expenses attendant to said personal vehicle. The City will provide transportation or a City vehicle for necessary out-of-town travel.

**8. Expenses.**

- a. **Incidental Expenses.** The City will annually appropriate in the annual budget an amount for Stewart's incidental expenses that may include professional memberships and conference attendance.
- i. **Service Club Membership.** The City shall furnish dues for Stewart's membership in one local service club.
- ii. **Customary and Reasonable Expenses as Established by the City Council by Resolution.** The City recognizes that certain expenses of a non-personal but job related nature are incurred by Stewart and agrees to reimburse said general expenses subject to annual budget constraints, Federal, State, and City ethics policies, Federal, State, and City purchasing policies, and the other terms and conditions of this subparagraph. Such expenses may include Stewart's business meals within town where City business is being discussed or conducted; social events of various organizations when representing the City; travel, lodging, and meals out of town while on City business; and usual and customary subscriptions to professional magazines and journals. The City Auditor/Finance Director is authorized to disburse such moneys upon receipt of duly executed expense or petty cash vouchers, receipts, statements, or personal affidavits. Should there be any concern regarding whether an expense is customary and reasonable, the City Auditor/Finance Director shall report to the City Council on whether such an expense is customary and reasonable and the City Council shall make the final determination. Until such time as the City Council weighs in on whether the expense is customary and reasonable, and thus an approved expense, Stewart shall remain personally responsible for covering any such expense should it be incurred in advance of the City Council's determination.
- iii. **Communication Devices.** Recognizing the importance of constant communication and maximum productivity, the City shall provide Stewart for business and personal use, a laptop computer, software, a mobile phone/personal digital assistant and other communication devices as approved by the City Council for Stewart to perform their duties and to maintain communication with City's staff and officials as well as other individuals who are doing business with the City. Upon termination of Stewart's employment, the equipment described herein shall immediately be returned to the City, and any mobile phone numbers, email addresses, or other contact information associated with any communication device shall remain the property of the City. Stewart acknowledges and understands that these devices are property of the City, and that all information contained on the devices is subject to disclosure to the public in accordance with North Dakota's Open Records statute. Should a request for public information be received relating to information stored on these communication devices, Stewart hereby agrees that the City's IT Department may immediately access the devices either in person or remotely, to procure the requested information. City shall have the right at all times to access and archive the contents of Stewart's devices provided by the City. With the exception of deleting solicitations, advertisements, and other correspondence generally

understood to be "junk mail", Stewart shall preserve all records on the City communication devices as required by law, be they of a personal or business nature, and not delete the same except in accordance with the law. Stewart understands that the intentional destruction of public records is a crime, and intentionally destroying public records may subject Stewart to immediate termination with cause. Routine management of data, including the removal of files or emails no longer required by law to be preserved, or necessary to job performance may be managed by Stewart. Upon receipt of any directive of the City to preserve data, Stewart will comply and deleted nothing from these devices.

9. **Primary Residence.** Stewart agrees to establish residence within Minot, North Dakota within two (2) months of employment, and hereafter to maintain their residence within Minot, North Dakota for the term of this Agreement.
10. **Permission Required to Leave the City.** Stewart shall not leave Minot, North Dakota for more than forty-eight (48) hours without permission therefor from the mayor, or in the absence of the Mayor, the President of the City Council, or in the absence of the Mayor and President of the City Council, the Vice-President of the City Council. Proof of permission must be granted in writing with a copy provided to the City's Human Resources Director and City Auditor/Finance Director. In the absence from the City of the City Manager the City Auditor/Finance Director shall perform all duties of the City Manager, and Stewart agrees to fully apprise the City Auditor/Finance Director of all pending matters of concern prior to leaving the City. Minot City Ordinance Sec. 2-51, 2-53.
11. **Outside Activities.** The employment provided for by this Agreement shall be Stewart's primary employment. Stewart may hold another job while working for the City, but secondary employment must not interfere with job performance and must be done outside of normal working hours. The City Council shall be made aware of secondary employment by Stewart to confirm that a conflict of interest does not exist.
12. **Ethical Commitments.** Stewart will at all times uphold the tenets of the ICMA Code of Ethics, a copy of which is attached hereto and incorporated herein. Specifically, Stewart shall not endorse candidates, make financial contributions, sign or circulate petitions, or participate in fundraising activities for individuals seeking or holding elected office, nor seek or accept any personal enrichment or profit derived from confidential information or misuse of public time. The City shall support Stewart in keeping these commitments by refraining from any order, direction, or request that would require Stewart to violate the ICMA Code of Ethics. Specifically, neither the City Council nor any individual member thereof shall request Stewart to endorse any candidate, make any financial contribution, sign or circulate any petition, or participate in any fundraising activity for individuals seeking or holding elected office, nor to handle any matter of personnel on a basis other than fairness, impartiality, and merit.
13. **Annual Performance Review.**

- a. **Form.** The City shall annually review the performance of Stewart. Evaluations of Stewart for 2024, 2026, and 2027 shall be completed by the City Council. Evaluations of Stewart for 2025 and 2027 shall be 360 evaluations. On years where 360 evaluations are required, evaluations must be completed by the City Council, and all direct reports and Community Stakeholders must also be given the opportunity to submit an evaluation of Stewart. Community Stakeholders are to be determined by the City Council on the years the 360 evaluations are held – but at minimum must afford Minot State University, the Minot Air Force Base, area economic development organizations, and regional healthcare systems the opportunity to complete evaluations of Stewart. Annual and 360 evaluations shall be conducted using the form attached to this Contract as Exhibit 3. The evaluations shall be conducted according to the following schedule:
  - i. 2024 annual evaluation shall be distributed to the City Council on or before January 2, 2024 and completed by City Council and submitted to the HR Director by 4:30pm on January 22, 2024.
  - ii. 2025 360 evaluation shall be distributed to the City Council and all direct reports to the City Manager on or before January 2, 2025, and completed by City Council and submitted to the HR Director by 4:30pm on January 22, 2025.
  - iii. 2026 annual evaluation shall be distributed to the City Council on or before January 2, 2026, and completed by City Council and submitted to the HR Director by 4:30pm on January 22, 2026.
  - iv. 2027 360 annual evaluation shall be distributed to the City Council on or before January 4, 2027, and completed by City Council and submitted to the HR Director by 4:30pm on January 22, 2027.
  - v. 2028 evaluation shall be distributed to the City Council and all direct reports to the City Manager on or before January 3, 2028, and completed by City Council and submitted to the HR Director by 4:30pm on January 24, 2028.

**14. Retirement.** The City agrees to pay an amount equivalent to 8.26% of Stewart's annual salary toward a retirement plan or program of Stewart's choice. Alternatively, Stewart shall be allowed to participate in NDPERS and, should Stewart elect to participate in NDPERS, the City agrees to pay the full employer contribution rate, as determined by the State of North Dakota.

**15. Termination.** Termination shall occur when:

- a. **Stewart Termination.** Stewart may terminate this Agreement upon written notice being given at least sixty (60) days prior to the intended date of termination. Minot City Ordinance Sec. 2-49.
- b. **City Termination.** The City may terminate this Agreement at any time, with or without cause, at a properly posted and duly authorized public meeting. Termination shall be considered effective the date the City Council votes to terminate Stewart's employment.
- c. **Mutual Agreement to Terminate.** The parties can mutually agree to terminate this Agreement. Termination shall be considered effective the date the parties mutually agree.
- d. **City, Citizen, or Legislative Action.** If the City, citizens, or legislature acts successfully amend, by legislative action or initiated measure, any provisions of the City's Code of Ordinances or the North Dakota Century Code which requires the City to cease operating

under a city manager plan, such action, shall constitute termination. Termination shall be considered effective the date the ordinance or statutory amendment becomes effective.

**16. Severance.**

- a. If this Agreement is terminated pursuant to Paragraph 15(a) or (c), Stewart shall be compensated for accrued, unused annual leave (up to 300 hours); and incurred and reimbursable expenses under Paragraph 8(b)(ii). The City will observe all financial obligations under this Agreement through the date of termination.
- b. If this Agreement is terminated pursuant to Paragraph 15(b), with cause, Stewart shall be compensated for accrued, unused annual leave (up to 300 hours); and incurred and reimbursable expenses under Paragraph 8(b)(ii). The City will observe all financial obligations under this Agreement through the date of termination.
  - i. For purposes of this Agreement, cause shall include conviction of a crime; documented poor performance, as determined by a majority of the City Council; violation of City policy, as determined by a majority of the City Council; commission of an act for his or her own personal financial gain at the expense of the City, as determined by a majority of the City Council; or violation of any federal, state, or City procurement, labor, or human rights laws and policies, as determined by a majority of the City Council.
- c. If this Agreement is terminated pursuant to Paragraph 15(b), without cause, or pursuant to 15(d), Stewart shall be compensated 6 months' salary at the then current rate of pay, which shall be paid in lump sum or in continuation of salary at the existing biweekly basis at Stewart's option; accrued, unused annual leave (up to 300 hours); and incurred and reimbursable expenses under Paragraph 8(b)(ii). The City will observe all financial obligations under this Agreement through the date of termination.
- d. **Post-Severance Benefits.** Following termination, City shall continue to provide the following benefits:
  - i. Access to health insurance pursuant to the Consolidated Omnibus Budget Reconciliation Act ("COBRA");
- e. **Acceptance of Severance.** Stewart's acceptance of the Severance Pay and benefits as provided in this Agreement shall release the City from any and all claims or causes of action that Stewart may have against the City arising out of this Agreement, including any breach of contract claim. Prior to the City's release of any funds relating to Severance Pay, Stewart shall execute a Separation of Employment and General Release Agreement in the form of the document attached as Exhibit 2.

**17. Notices.** Notice pursuant to this Agreement shall be given by personal service or by depositing in the custody of the United States Postal Service, postage prepaid, return receipt requested, and addressed as follows:

a. **If to City:**

City of Minot  
c/o Mayor  
PO Box 5006  
Minot, ND 58702

b. **If to Stewart:**

Harold Stewart

1822 8th St SW  
Minot, ND 58701

Notice shall be deemed given as of the date of personal service or as the date of deposit of such written notice with the United States Postal Service.

18. **Integration.** This Agreement sets forth and establishes the entire understanding between Stewart and the City relating to Stewart's employment with the City. Any prior discussions or representations by or between the City and Stewart are merged into and rendered null and void by this Agreement. The City and Stewart may by mutual written agreement amend any provision of this Agreement during the life of the Agreement. Such amendments shall be incorporated and made a part of this Agreement.
19. **Indemnification and Defense.** To the extent permitted under state and local law, Stewart shall have the same rights and privileges to defense and indemnification as other City employees.
20. **Severability.** The invalidity or partial invalidity of any portion of this Agreement will not affect the validity of any other provision. In the event that any provision of this Agreement is held to be invalid, the remaining provisions shall be deemed to be in full force and effect as if they have been executed by both the City and Stewart subsequent to the expungement or judicial modification of the invalid provision.
21. **Counterparts.** This Agreement may be executed in one or more facsimile, electronic or original counterparts, each of which shall be deemed an original and both of which together shall constitute the same instrument.
22. **Jurisdiction.** This Agreement shall be governed by the laws of the State of North Dakota, and the Ward County District Court shall have exclusive jurisdiction of any disputes arising under this Agreement.

**IN WITNESS WHEREOF**, the Parties hereto have executed this Employment Agreement effective as of the Effective Date.

**EMPLOYEE**

By:

Harold Stewart, City Manager

Date: 6-19-23

**CITY OF MINOT**

By:

Thomas Ross, Mayor

Date: 6-19-23

Attest: Mikayla McWilliams  
Mikayla McWilliams, City Clerk

Date: 10-19-2023

**Exhibit 1**  
**City Manager Job Description**

**I. NATURE OF WORK**

This is a highly responsible executive-level position involving planning, directing and coordinating the work of city departments, services and functional units on behalf of the City Council. Work is performed under the policy direction and oversight of the City Council, and the employee is accountable to the City Council. In addition to the essential functions of work, specified below, the employee must be able to perform other related duties, as assigned.

**II. ESSENTIAL FUNCTIONS OF WORK**

**A. Policy Development & Oversight**

- 1) Work closely with the City Council to articulate and accomplish strategic goals and objectives.
- 2) Inform and advise the City Council on relevant administrative, financial, legal and organizational parameters that affect the accomplishment of municipal goals and objectives.
- 3) Provide administrative and technical support to the City Council, through the following: supervising the preparation of agendas and reports for the City Council (and the public); analyzing policy issues; formulating plans to improve the effectiveness and efficiency of city operations and services; and offering recommendations to improve City Council functioning and effectiveness.
- 4) Faithfully execute City Council policies and maintain overall responsibility for accomplishment of goals and objectives (set by the City Council).

**B. Oversee Management of Fiscal, Capital, & Human Resources**

- 1) Assist the City Council in developing budget goals.
- 2) Within parameters set by the Council, direct the preparation of the annual operational budget, along with multi-year physical capital and human capital budgets.

- 3) Oversee budgetary execution and control, and recommend or approve any necessary budgetary adjustments.
- 4) In coordination with the finance director, provide periodic reports on the city's financial status and financial forecasts. Identify any anticipated problem areas, and suggest potential remedial actions.
- 5) In coordination with leadership team members and the human resources director, provide periodic reports on: current and projected staffing needs; employee satisfaction, engagement, and retention; and staff training and development programs.

**C. Oversight of Operational Performance**

- 1) Maintain ultimate administrative responsibility for the effective and efficient operation of the city government.
- 2) Assure compliance with applicable city, state, and federal rules, regulations, laws and ordinances.
- 3) Monitor the overall effectiveness and efficiency of city programs, activities and staff, using sound, data-based measurement and quality assurance practices. Work to improve their efficiency and effectiveness.
- 4) Provide overall direction, coordination, and leadership of department head and functional work teams, dividing up responsibilities and prioritizing resources.
- 5) Appoint department heads and other (designated) high-level personnel, with the advice and consent of the City Council. Provide appropriate leadership, supervision and support to this leadership team.

**D. Intergovernmental & Public Relations**

- 1) Represent the city before local, county, regional, state and federal governmental entities and elected officials.
- 2) Foster the development of collaborative relationships with other governmental entities and key community institutions and organizations, both public and private (e.g., Minot State University, Minot Air Force Base, area economic development organizations,

regional healthcare systems, etc.).

3) Assure a high level of customer service to the residents of Minot, with timely and responsive attention to requests, complaints, questions, disputes and concerns.

### **III. REQUIREMENTS OF WORK**

- A. The fundamental ability to bring about the provision of governmental services in an effective and efficient manner, with accountability and transparency of process.
- B. Strong commitment to the underlying core values of the city, and its statements of mission and goals.
- C. Extensive knowledge of the principles, theories and practices of modern executive and administrative planning and management.
- D. Thorough knowledge of federal, state and local laws, regulations and policies applicable to structure, functions, programs and practices in providing public services through city government.
- E. Thorough knowledge of modern principles, practices, methods and techniques in evaluating program, staff, financial and facility needs of a medium-sized city.
- F. The ability to understand, conceptualize, and analyze complex situations, giving adequate weight to competing interests, priorities, and values. Excellent problem-solving skills are required.
- G. A high level of interpersonal awareness and skill, resulting in the following: the ability to interact effectively with members of the City Council, city staff, representatives of other governmental organizations, and the general public; lead effective teams; successfully manage conflict; and foster healthy and functional organizational dynamics and culture.
- H. Ability to plan, organize, coordinate, prioritize, assign and evaluate the work of department heads and relevant support staff.
- I. Commitment to collegial and collaborative leadership and management approaches.
- J. Ability to communicate complex ideas effectively, both orally and in writing.
- K. Ability to understand socio-economic and cultural aspects of an increasingly diverse urban

population, with the goal of effectively satisfying community needs and aspirations.

#### **IV. MINIMUM TRAINING AND EXPERIENCE**

Possession of a master's degree in public administration, management, business administration, or related field, and broad and diversified managerial experience in planning and directing major programs of public or private organizations; or any equivalent combination of training and experience.

#### **V. PHYSICAL & OTHER REQUIREMENTS**

The employee must be capable of "light work", with adequate communicative, sensory and mobility ability to function in primarily a typical office work environment (with occasional work in off-site settings and adverse environmental conditions). Non-physical demands include: the ability to effectively interact with a broad range of people; cope with time pressures, multiple simultaneous tasks and demands, and irregular work schedules; occasionally travel outside the city; respond to emergency situations; and work closely with others as part of a team. The employee must have, or be able to obtain, a North Dakota drivers license.

**Exhibit 2**  
**Separation of Employment Agreement and General Release Agreement**

This Separation of Employment and General Release Agreement ("Agreement") is made by and between the City of Minot ("the City") and Harold Stewart II

**WHEREAS**, the City employed Stewart as its City Manager;

**WHEREAS**, [INSERT SPECIFICS]

**NOW THEREFORE**, in consideration of the mutual covenants herein contained and the mutual benefits to be derived therefrom, the sufficiency of which consideration is hereby acknowledged by the undersigned, the City and Stewart agree and state:

1. **Termination of Employment.** Stewart's employment shall terminate on \_\_\_\_\_, which shall be considered Stewart's final date of employment.
2. **No Admission of Liability.** This Agreement is not an admission by Stewart or the City of any wrongful conduct whatsoever. Both parties deny and disclaim any liability to or wrongful conduct against the other or any third party.
3. **Payment and Benefits.** Stewart shall receive his regular paycheck for the pay period ending \_\_\_\_\_, 20\_\_\_\_\_, on or before \_\_\_\_\_, 20\_\_\_\_\_. Stewart shall receive on or before \_\_\_\_\_, 20\_\_\_\_\_, an additional payment to compensate for his accrued annual leave, subject to customary payroll deductions. As consideration for this Agreement and the release of all obligations due and owing Stewart the City shall:
  - a. Pay Stewart an amount equal to \_\_\_\_\_ (\_\_\_\_\_) months of his current salary;
4. **Surrender and Vacatin of the City's Property.** Upon execution of this Agreement, Stewart shall vacate City Property and deliver all of the City's property in their possession to the City Finance Director, who shall inventory the same. Stewart agrees and understands that all of the City property must be returned intact, with all documents, emails, text messages, and other information and records intact, and not to destroy any records or information that may be located in or on City property.
5. **Non-Disclosure of Confidential or Closed Information Obtained by Stewart.** Stewart agrees that during the term of his employment as City Manager he received certain confidential records and information as defined by N.D.C.C. § 44-04-17.1(3) and certain closed records and information as defined by N.D.C.C. §§ 44-04-17.1(1) and (2). Stewart agrees that he will keep this information strictly confidential. In the event that City determines a breach of this confidentiality occurred, City reserves the right to have the matter addressed by a court of competent jurisdiction. Should City be required to do so, City reserves the right to request recovery of all attendant attorneys' fees, costs, sanctions, and other damages arising from or related to any breach of confidentiality by Stewart, which Stewart expressly agrees to pay.
6. **Stewart's Release and Waiver of Claims.** In consideration of the payments described herein and the other promises, agreements, and covenants made herein, the receipt and sufficiency of which

are acknowledged, Stewart hereby releases and forever discharges City and its respective partners, agents, attorneys, employees, representatives, directors, officers, managers, members, participants, affiliated entities, sureties, self-insurance pool, predecessors, successors, and assigns from and against Stewart's claims and any and all claims, damages, injuries or other causes of action that Stewart has asserted or reasonably could have asserted or that arise from, or in any way relate to the Employment Agreement, Stewart's employment as City Manager for City, and/or the Termination, and the facts and circumstances surrounding the Employment Agreement, Stewart's employment as City Manager for City, and/or the Termination. Stewart's Release specifically includes, but is not limited to, all claims, damages, costs, and any legal or equitable relief of any kind, including but not limited to attorneys' fees and costs, arising under any and all federal, state, and local statutory and common laws (whether such claims sound in breach of contract, tort, employment law, constitutional law, and/or equity), claims based upon wrongful termination, due process, breach of contract, defamation, or retaliation, and/or any claims that are known or unknown, whether conceivable or inconceivable, or which in the future may arise related to the Employment Agreement Stewart's employment as City Manager for City, and/or the Termination, including without limitation, any and all claims sounding in breach of contract, tort, including but not limited to damages for lost employment, out of pocket costs, lost earnings, lost earning capacity, profit sharing, retirement plans, benefits, or any claims made or which could have been made. Stewart specifically releases and forever discharges City, its elected and/or appointed officials, and its individual employees or representatives from any injuries he sustained or may in the future sustain or that he has claimed were caused or worsened as a result of City's conduct relating to the Employment Agreement, Stewart's employment as City Manager for City, and/or the Termination, or the facts and circumstances surrounding the Employment Agreement, Stewart's employment as City Manager for City and/or the Termination, or which in the future may arise or worsen. Stewart further agrees that he expressly waives any and all rights under N.D.C.C. § 9-13-02, which reads as follows:

"Extension to known claims. A general release does not extend to claims which the creditor does not know or suspect to exist in the creditor's favor at the time of executing the release, which if known by the creditor, must have materially affected the creditor's settlement with the debtor."

Stewart's Release shall not include claims arising out of a breach of this Agreement, and a claim of breach of this Agreement is not subject to the terms of, or otherwise released in, this Agreement.

7. **References.** If it is necessary for the City to provide a reference to a prospective employer, Stewart agrees that he will direct the prospective employer to contact the Human Resources Director.
8. **Representations and Warranties.** The undersigned parties hereby represent and warrant the following to the other:
  - a. Stewart represents and warrants that they are legally and mentally competent to sign this Agreement; they are the sole owner of any claims against the City; they have the requisite capacity and authority to make this Agreement, and no portion of any existing or potential claims has been sold, assigned or pledged to any third party; and they presently possess the exclusive right to receive all of the consideration paid in exchange for this Agreement.
  - b. Stewart expressly reserves the right to file a claim for unemployment benefits.

- c. Stewart further agrees to indemnify and hold the City harmless from any and all loss, costs, damages or expenses, including reasonable attorney fees incurred by the City, arising out of any claim concerning the separation of employment that may hereafter be made by Stewart or any other party.
- d. This Agreement sets forth the entire agreement between the entire agreement between the parties and supersedes any and all prior agreements or understandings between the parties pertaining to the subject matter herein. No waiver of a breach of any provision of this Agreement shall be construed to be waiver of any breach of any other provision of this Agreement or of any succeeding breach of the same provision. No delay in acting with regard to any breach of any provision of this Agreement shall be construed to be a waiver of such breach. If any provision in this Agreement is found to be unenforceable, all other provisions will remain fully enforceable.
- e. No promise or inducement has been made or offered, except as herein expressly set forth, and this Agreement is executed without reliance upon any statement or representation by any of the released parties or their representatives.
- f. The language of all parts of this Agreement shall, in all cases, be construed as a whole, according to its fair meaning, and not strictly for or against either party.
- g. This Agreement and any amendments hereto may be executed in multiple counterparts by the parties. Each counterpart shall be deemed an original, but all counterparts together shall constitute one and the same instrument.

9. **Jurisdiction.** This Agreement shall be governed by the laws of the State of North Dakota, and the Ward County District Court shall have exclusive jurisdiction of any disputes arising under this Agreement.

10. **Binding Effect.** This Agreement shall be binding upon and shall accrue to the benefit of the parties hereto, their respective personal representatives, successors in interest and assigns.

11. **Review and Revocation.** The parties acknowledge that Stewart may revoke their acceptance and execution of this Agreement at any time within seven (7) days of the date of their execution of it. Any revocation shall be in writing and shall be effective upon timely receipt by the City's Attorney. If the revocation is submitted by mail, the revocation must be postmarked before the expiration of the seven (7) day revocation period, and must be sent by overnight mail or other method so that it is received at the above address no later than the next business day immediately following the expiration of the seven (7) day period. Further, Stewart represents that, before accepting and executing this Agreement, they were given a review period of twenty-one (21) days in which to consider it. Stewart further represents that they (a) took advantage of as much of this period as required to carefully read and consider this Agreement before signing it; (b) carefully read the full Agreement and the Release included herein; (c) fully understands it; and (d) is entering into it voluntarily. Stewart represents that Employer encouraged them to discuss this Agreement with an attorney of choice before signing it. This Agreement shall not become effective or enforceable until the seven-day revocation period has expired without Stewart having revoked acceptance of it.

**IN WITNESS WHEREOF**, the Parties hereto have executed this Employment Agreement effective as of the Effective Date.

**EMPLOYEE**

By: \_\_\_\_\_  
Harold Stewart, City Manager

Date: \_\_\_\_\_

**CITY OF MINOT**

By: \_\_\_\_\_  
\_\_\_\_\_, Mayor

Date: \_\_\_\_\_

Attest: \_\_\_\_\_  
\_\_\_\_\_, City Clerk

Date: \_\_\_\_\_

**Exhibit 3**  
**Evaluation Form**

Completed by (optional): \_\_\_\_\_

Date: \_\_\_\_\_

**Instructions**

Using the following rating scale, please circle the number, in each question below, that best reflects your rating of the City Manager's performance during the past year.

<b>Rating Scale</b>	
1	<b>Unacceptable</b>
2	<b>Needs improvement</b>
3	<b>Meets standard</b>
4	<b>Exceeds standard</b>
5	<b>Outstanding</b>
6	<b>Have not experienced or observed</b>

<b>Valuing Behaviors</b>	
1.) Seeks input from all team members	1 2 3 4 5 6
<b>Comments:</b>	
2.) Measures results instead of individual styles	1 2 3 4 5 6
<b>Comments:</b>	
3.) Maintains a balance between "people" issues and "business" issues	1 2 3 4 5 6

<b>Comments:</b>	
4.) Shows genuine concern for team members	1 2 3 4 5 6
<b>Comments:</b>	
5.) Keeps the focus on fixing problems rather than finding someone to blame	1 2 3 4 5 6
<b>Comments:</b>	
6.) Treats people fairly, without showing favoritism	1 2 3 4 5 6
<b>Comments:</b>	
7.) Cares about me	1 2 3 4 5 6
<b>Comments:</b>	
8.) Protects confidentiality	1 2 3 4 5 6
<b>Comments:</b>	
9.) Recognizes and rewards my individual contributions in a manner meaningful to me	1 2 3 4 5 6
<b>Comments:</b>	
<b><u>Interdependent Behaviors</u></b>	
10.) Supports a team environment by recognizing and rewarding collaboration, cooperation and activities contributing to others' success	1 2 3 4 5 6
<b>Comments:</b>	
11.) Recognizes and rewards team-supportive actions and behaviors	1 2 3 4 5 6
<b>Comments:</b>	

12.) Doesn't criticize those who are not present	1 2 3 4 5 6
<b>Comments:</b>	
13.) Considers the impact of actions and decisions on other departments before implementing	1 2 3 4 5 6
<b>Comments:</b>	
14.) Recognizes and supports the work of other departments	1 2 3 4 5 6
<b>Comments:</b>	
<b>Communication Behaviors</b>	
15.) Encourages others to express different ideas and perspectives	1 2 3 4 5 6
<b>Comments:</b>	
16.) Is open to other perspectives and is willing to change his or her position when presented with compelling information	1 2 3 4 5 6
<b>Comments:</b>	
17.) Is open to negative and/or constructive feedback	1 2 3 4 5 6
<b>Comments:</b>	
18.) Keeps me informed on the status of my work and updates in the organization	1 2 3 4 5 6
<b>Comments:</b>	
19.) Effectively deals with conflict	1 2 3 4 5 6
<b>Comments:</b>	

20.) Lets me know how I am doing. Gives open and constructive feedback.	1 2 3 4 5 6
<b>Comments:</b>	
21.) Involves me in decision-making when appropriate	1 2 3 4 5 6
<b>Comments:</b>	
22.) Sets a clear direction for our City, Team, Department etc.	1 2 3 4 5 6
<b>Comments:</b>	
<b><u>Valuing Diversity Behaviors</u></b>	
23.) Ensures that City activities are inclusive	1 2 3 4 5 6
<b>Comments:</b>	
24.) Seeks input/feedback from diverse individuals and groups, including internal and external customers	1 2 3 4 5 6
<b>Comments:</b>	
25.) Treats everyone with respect and fairness	1 2 3 4 5 6
<b>Comments:</b>	
<b><u>Leadership Behaviors</u></b>	
26.) Encourages and embraces change by challenging the status quo	1 2 3 4 5 6
<b>Comments:</b>	
27.) Provides cross-functional development opportunities for team members	1 2 3 4 5 6
<b>Comments:</b>	

28.) Encourages and supports my involvement in training and development activities and events	1 2 3 4 5 6
<b>Comments:</b>	
29.) Encourages and supports my involvement in community activities and events	1 2 3 4 5 6
<b>Comments:</b>	
30.) Encourages and supports my involvement in company activities and events	1 2 3 4 5 6
<b>Comments:</b>	
31.) Uses actions and behaviors that are consistent with his or her words	1 2 3 4 5 6
<b>Comments:</b>	
32.) Is trustworthy	1 2 3 4 5 6
<b>Comments:</b>	
33.) Is a role model for continuous improvement	1 2 3 4 5 6
<b>Comments:</b>	
34.) Uses a coaching management style, rather than an authoritarian boss management style	1 2 3 4 5 6
<b>Comments:</b>	
35.) Supports me and helps me achieve results	1 2 3 4 5 6
<b>Comments:</b>	
36.) Supports a customer service approach for both internal and external customers	1 2 3 4 5 6
<b>Comments:</b>	

37.) Deals with issues that need to be addressed	1 2 3 4 5 6
<b>Comments:</b>	
38.) Provides a clear sense of purpose and direction, roles and responsibilities, for me individually and for our group/team members	1 2 3 4 5 6
<b>Comments:</b>	

### **General Feedback**

**Optional:** Type or print your answers; add additional pages if needed. Please be as specific as possible by including examples.

1. List and briefly describe examples of the behavior, activities, feedback or coaching Mr. Stewart has provided that makes your job, work environment or more enjoyable and meaningful to you.
2. What activities, behavior, feedback or coaching would you like your manager to stop doing? Please explain.
3. Please provide comments that you feel will be meaningful for your manager to sustain or improve his or her effectiveness.