

CITY OF STANTON
Amended and Restated Agreement for
Interim City Manager Services

1. PARTIES AND DATE.

1.1. This Amended and Restated Agreement is made pursuant to Section 2.08.010 of the City of Stanton Municipal Code and shall be effective on the 25th day of September, 2018 by and between the City of Stanton, a municipal organization organized under the laws of the State of California with its principal place of business at 7800 Katella Ave., California 90680 ("City") and Robert W. Hall, an individual ("Retired Annuitant"). City and Retired Annuitant are sometimes individually referred to herein as "Party" and collectively as "Parties."

1.2 City's Representative. The City hereby designates the Assistant City Manager to act as City's representative for the performance of this Agreement ("City's Representative"). City's Representative shall have the power to act on behalf of the City for all purposes under this Agreement and other agreements between City and Retired Annuitant.

2. RECITALS.

2.1 The City desires and needs the services of a qualified person to provide services as the Interim City Manager, as directed, during the pendency of its search for a permanent City Manager; and

2.2 The City Council of the City has determined that the public interest, convenience, and necessity require the execution of this Agreement.

3. TERMS.

3.1 **General Scope of Services.** Retired Annuitant agrees to furnish to the City all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately provide management services ("Services") as Interim City Manager. The Services are more particularly described in Exhibit "A" attached hereto and incorporated herein by reference. All Services shall be subject to, and performed in accordance with, this Agreement, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules and regulations.

3.2 **Period of Performance.** The Term of this Agreement shall extend from the effective date in Section 1.1 of this Agreement to March 31, 2019, unless earlier terminated as provided herein.

3.3 Termination of Agreement.

3.3.1 Grounds for Termination. A party may, by written notice to the other Party, terminate this Agreement at any time, with or without cause by giving written notice of the termination, basis of termination, and effective date to the other party.

3.3.2 Effect of Termination. If this Agreement is terminated as provided herein,



City may require Retired Annuitant to provide all finished or unfinished Documents and Data and other information of any kind prepared by Retired Annuitant in connection with the performance of Services under this Agreement. Retired Annuitant shall be required to provide such document and other information within fifteen (15) days of the request.

3.3.3 Additional Services. In the event this Agreement is terminated, City may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.

3.4 Retired Annuitant. Retired Annuitant is hired in conformance with CalPERS regulation governing the use of retired annuitants. Retired Annuitant has specialized skills to perform the duties of Interim City Manager. Retired Annuitant shall not work more than 960 hours in a fiscal year. No employee benefits shall be available to Retired Annuitant in connection with the performance of this Agreement. Except for Retired Annuitant's compensation, as set forth in this Agreement or as required by law, City shall not pay salaries, wages, benefits, or other compensation to Retired Annuitant for performing services hereunder.

3.4.1 Safety. Retired Annuitant shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Retired Annuitant shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed.

3.4.2 Coordination of Services. Retired Annuitant agrees to work closely with City staff in the performance of Services and shall be available to City's staff, Retired Annuitants and other staff at all reasonable times.

3.4.3 Standard of Care; Performance of Employees. Retired Annuitant shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Retired Annuitant represents and maintains that he/she is skilled in the profession necessary to perform the Services. Retired Annuitant represents that he/she has all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services and that such licenses and approvals shall be maintained throughout the term of this Agreement. As provided for in the indemnification provisions of this Agreement, Retired Annuitant shall perform, at his/her own cost and expense and without reimbursement from the City, any services necessary to correct errors or omissions which are caused by the Retired Annuitant's failure to comply with the standard of care provided for herein.

3.4.4 Laws and Regulations. Retired Annuitant shall keep himself/herself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of Services. Retired Annuitant shall be liable for all violations of such laws and regulations in connection with Services. If the Retired Annuitant performs any work knowing it to be contrary to such laws, rules and regulations and without giving written notice to the City, Retired Annuitant shall be solely responsible for all costs arising therefrom. Retired Annuitant shall defend, indemnify and hold City, its officials, directors, officers, employees and agents free and harmless, pursuant to the indemnification provisions of this



Agreement, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

3.4.5 Conflicts of Interest Avoidance and Disclosure. Retired Annuitant agrees to act in the best interest of the City at all times in the conduct of its duties under this agreement. During the period of performance, Retired Annuitant covenants not to engage in any business or transaction or maintain a financial interest which conflicts, or reasonably might be perceived to conflict, with the proper discharge of Retired Annuitant's duties under this Agreement. This applies to the Retired Annuitant's conduct of duties arising out of this Agreement, as well as duties Retired Annuitant may perform beyond the scope of this Agreement in the service of Retired Annuitant's other clients.

3.4.5.1 Remedial Action. If the City Attorney determines that an irreconcilable conflict of interest exists, the City will have the right to immediately terminate this Agreement. If Retired Annuitant becomes aware of an actual or perceived conflict of interest, Retired Annuitant shall immediately inform the City's Representative and the City Attorney.

3.4.6 Representative of City. Retired Annuitant may act as a representative of City in such a manner as may be required to carry out Retired Annuitant's duties under this Agreement.

3.5 Fees and Payments.

3.5.1 Compensation. Retired Annuitant shall receive compensation for all Services rendered under this Agreement in the form of an hourly fee.

3.5.1.1 Hourly Fee. Retired Annuitant shall receive \$94.75 per hour of work performed under this Agreement, minus any applicable payroll taxes required by state and federal law, payable in accordance with the City's established protocols and procedures used for City employees, with total hours worked under this Agreement not to exceed 960 in Fiscal Year 2018/2019, in accordance with Government Code section 21221. Retired Annuitant shall be responsible for ensuring that he/she does not exceed the 960 hour per fiscal year limit. Retired Annuitant is expected to work approximately twenty (20) to thirty (30) hours a week, including attendance at all City Council meetings.

3.5.1.2 General Expenses. Retired Annuitant shall not be expected to incur expenses in the performance of his/her duties pursuant to this Agreement. Retired Annuitant may not invoice the City for travel to and from home to the City, or work of a personal nature, even if performed while at the City and during regular business hours of the City. Notwithstanding the foregoing, if Retired Annuitant incurs an extraordinary expense related to the performance of his/her obligations pursuant to this Agreement and wishes to seek reimbursement from the City for such expense incurred, he/she shall do so by submitting a request



for reimbursement to the Assistant City Manager for approval. Any such request must be accompanied by a brief description of the expense and copies of receipts substantiating the Retired Annuitant shall be entitled to reimbursement for any costs or expenses incurred in the performance of Retired Annuitant's duties under this Agreement, so long as the expenses are necessary to the operations of the City and relevant to the Agreement's Scope of Services.

3.5.2 Payment of Compensation. Retired Annuitant shall submit to the City timesheets detailing the hours worked during each pay period, in accordance with the City's established schedule. The Assistant City Manager shall review each timesheet and provide it to Administrative Services for processing.

3.6 Accounting Records. Retired Annuitant shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Retired Annuitant shall allow a representative of City during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Retired Annuitant shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of three (3) years from the date of final payment under this Agreement.

3.7 Ownership of Materials and Confidentiality.

3.7.1 Documents & Data; Licensing of Intellectual Property. This Agreement creates a non-exclusive and perpetual license for City to copy, use, modify, reuse, or sublicense any and all copyrights, designs, and other intellectual property embodied in plans, specifications, studies, drawings, estimates, and other documents or works of authorship fixed in any tangible medium of expression, including but not limited to, physical drawings or data magnetically or otherwise recorded on computer diskettes, which are prepared or caused to be prepared by Retired Annuitant under this Agreement ("Documents & Data"). Retired Annuitant represents and warrants that Retired Annuitant has the legal right to license any and all Documents & Data. City shall not be limited in any way in its use of the Documents and Data at any time, provided that any such use not within the purposes intended by this Agreement shall be at City's sole risk.

3.7.2 Confidentiality. All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information, and other Documents and Data either created by or provided to Retired Annuitant in connection with the performance of this Agreement shall be held confidential by Retired Annuitant. Such materials shall not, without the prior written consent of City, be used by Retired Annuitant for any purposes other than the performance of the Services. Nor shall such materials be disclosed to any person or entity not connected with the performance of the Services or the Project. Nothing furnished to Retired Annuitant which is otherwise known to Retired Annuitant or is generally known, or has become known, to the related industry shall be deemed confidential. Retired Annuitant shall not use City's name or insignia, photographs of the Project, or any publicity pertaining to the Services or the Project in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of City.



3.7.3 **Confidential Information.** The City shall refrain from releasing Retired Annuitant's proprietary information ("Proprietary Information") unless the City's legal counsel determines that the release of the Proprietary Information is required by the California Public Records Act or other applicable state or federal law, or order of a court of competent jurisdiction, in which case the City shall notify Retired Annuitant of its intention to release Proprietary Information. Retired Annuitant shall have five (5) working days after receipt of the Release Notice to give City written notice of Retired Annuitant's objection to the City's release of Proprietary Information. Retired Annuitant shall indemnify, defend and hold harmless the City, and its officers, directors, employees, and agents from and against all liability, loss, cost or expense (including attorney's fees) arising out of a legal action brought to compel the release of Proprietary Information. City shall not release the Proprietary Information after receipt of the Objection Notice unless either: (1) Retired Annuitant fails to fully indemnify, defend (with City's choice of legal counsel), and hold City harmless from any legal action brought to compel such release; and/or (2) a final and non-appealable order by a court of competent jurisdiction requires that City release such information.

3.8 Cooperation; Further Acts. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement.

3.9 Attorneys' Fees. If either party commences an action against the other party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing party in such litigation shall be entitled to have and recover from the losing party reasonable attorney's fees and all other costs of such action.

3.10 Entire Agreement. This Agreement contains the entire Agreement of the parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. This Agreement may only be modified by a writing signed by both parties.

3.11 Governing Law. This Agreement shall be governed by the laws of the State of California. Venue shall be in Orange County.

3.12 Time of Essence. Time is of the essence for each and every provision of this Agreement.

3.13 City's Right to Employ Other Retired Annuitants. City reserves right to employ other Retired Annuitants related to the contemplated management consulting services.

3.14 Successors and Assigns. Subject to Sections 3.16 and 3.18 of this Agreement below, this Agreement shall be binding on the successors and assigns of the parties.

3.15 Assignment or Transfer. Retired Annuitant shall not assign, hypothecate, or transfer, either directly or by operation of law, this Agreement or any interest herein without the prior written consent of the City. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.

3.16 Construction; References; Captions. Since the Parties or their agents have



participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days or period for performance shall be deemed calendar days and not work days. All references to City include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

3.17 Amendment; Modification. No supplement, modification, or amendment of this Agreement shall be binding unless approved by the City Council, executed in writing, and signed by authorized representatives of both Parties.

3.18 Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel, or otherwise.

3.19 No Third Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

3.20 Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

3.21 Authority to Enter Agreement. Retired Annuitant has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party.

3.22 Subcontracting - Prohibited. Retired Annuitant shall not subcontract any portion of the work required by this Agreement.

[Signatures on following page]



ORIGINAL

AGREEMENT EXECUTION PAGE

IN WITNESS WHEREOF, City and Retired Annuitant have signed and executed this Agreement and the Agreement is held to be in force on the date provided in Section 1.1. of this Agreement.

City of Stanton

Robert W. Hall

By: *Dave Shawver*
Dave Shawver
Mayor

By: *[Signature]*
Name: Robert Hall

Title: _____

Acting with the approval of the City Council of the City of Stanton resolved at the Council Meeting held on the 25th day of September, 2018 in accordance with Title 2, Chapter 2.08 of the Stanton Municipal Code.

Attest:

By: *[Signature]*
Patricia A. Vazquez
City Clerk



Approved as to Form:

Best Best & Krieger LLP

By: *[Signature]*
Matthew E. Richardson
City Attorney



EXHIBIT "A"

SCOPE OF SERVICES

Retired Annuitant shall serve as Interim City Manager of the City. Retired Annuitant shall execute the functions and duties of the City Manager's Office as enacted in Title 2, Chapter 2.08 of the City of Stanton Municipal Code. Code provisions relevant to the Interim City Manager functions and duties are restated and incorporated into this Agreement as follows:

2.08.050 Powers and duties.

The city manager shall be the administrative head of the city government under the direction and control of the city council, except as otherwise provided in this chapter. He shall be responsible for the efficient administration of all the affairs of the city which are under his control. In addition to his general powers as administrative head, and not as a limitation thereon, it shall be his duty, and he shall have the power:

- A. To see that all laws and ordinances of the city are duly enforced, and that all franchises, permits and privileges granted by the city are faithfully observed;
- B. To give directions to all heads of departments, subordinate officers and employees of the city, except the city attorney; to transfer employees from one department to another; provided, however, that nothing contained in this section shall be construed to supersede the authority of the city council under other ordinances;
- C. To appoint, promote, demote, and remove the officers and employees of the city, except the city attorney, subject to the personnel system of the city;
- D. To exercise supervision over all departments of the city government and over all appointive officers and employees thereof, except the city attorney;
- E. To attend all meetings of the city council unless excused therefrom by the council, except when his removal is under consideration by the council;
- F. To recommend to the city council for adoption, such measures and ordinances as he deems necessary or expedient;
- G. To keep the city council, at all times, fully advised as to the financial conditions and needs of the city;
- H. To prepare and submit to the city council the annual budget;
- I. To direct and supervise the purchase and acquisition in any lawful manner, of all property, equipment, services, materials, and supplies for the city and for all departments and divisions thereof, provided the purchase or acquisition thereof has been approved by the city council. No expenditure shall be submitted or recommended to the city council except on report or approval of the city manager;
- J. To make investigations into the affairs of the city, and any department or division thereof, and any contract, or the proper performance of any obligations running to the city;
- K. To investigate all complaints in relation to matters concerning the administration of the city government, and in regard to the service maintained by public utilities in the city, and to see that all franchises, permits and privileges granted by the city are faithfully performed and observed;



L. To exercise general supervision over all public buildings, public parks, and other public property which are under the control and jurisdiction of the city council and not specifically delegated to a particular board or officer;

M. To devote his entire time to the duties of his office and the interests of the city;

N. To perform such other duties and exercise such other powers as may be delegated to him from time to time by ordinance or resolution of the city council.

2.08.060 Powers subject to any civil service provisions and personnel system.

The exercise of the powers and duties of the city manager set forth in this chapter shall be subject to this chapter and to any rules and regulations heretofore or hereafter adopted as to classification of employees, the appointment, transfer, promotion, demotion, removal, suspension, dismissal, and reinstatement of such employees and the procedures outlined therein governing the same.

2.08.070 Orders and directions.

Individual members of the city council shall deal with the administrative services of the city only through the city manager, except for the purpose of inquiry, and no individual member of the city council shall give orders to any subordinates of the city manager. Except at a council meeting, by motion, no member of the city council shall demand the appointment or removal of any person by the city manager. There is retained to the city council the sole power of being the policy making and legislative body of the city, and the duties and powers of the city manager are expressly confined to the administrative services of the city under ordinances, resolutions, or motion of the council, or under state law. The city manager may attend any and all meetings of any commissions or boards heretofore or hereafter created by the city council, upon his own volition, or upon direction of the city council. At any such meetings at which the city manager attends, he shall be heard by such commissions and boards as to all matters upon which he wishes to address them.

2.08.080 Cooperation of other city officials.

It shall be the duty of all subordinate officers, and the city clerk, the city treasurer, and the city attorney, to cooperate with and assist the city manager in administering the affairs of the city most efficiently, economically and harmoniously, so far as may be consistent with their duties as prescribed by law and ordinances of the city.

2.08.090 Political action.

The city manager is prohibited from engaging in any local political activity, either soliciting funds or actively supporting any official or candidate for any municipal office.

2.08.100 Removal.

The removal of the city manager shall be only on a majority vote of the whole council.