

AT-WILL INTERIM CITY MANAGER

EMPLOYMENT AGREEMENT

This AT-WILL INTERIM CITY MANAGER EMPLOYMENT AGREEMENT (“Agreement”) is effective on the 11th day of March 2015, and is made by and between the CITY OF BELL (“City”), a charter city and municipal corporation and JEROME GROOMES (“Employee”), an individual. The City and Employee may be referred to individually as a “Party” or collectively as “the Parties.”

RECITALS

WHEREAS, City Council of the City of Bell (“City Council”) desires to hire Employee as a temporary, at-will employee for a definite period of time to serve in the position of Interim City Manager for the City of Bell, California, which is a position that requires specialized skills and expert professional or technical services, and Employee desires to perform and assume responsibility for the provisions of professional services to the City as Interim City Manager to temporarily fill the position; and

WHEREAS, the parties wish to have Employee perform the services of Interim City Manager, while the City conducts its recruitment for a permanent City Manager, and will terminate such services upon the City Council’s recruitment of a permanent City Manager; and

WHEREAS, the City anticipates the City Manager position will be filled with a permanent replacement within a year;

WHEREAS, Government Code Section 21221(h) permits retired annuitants under the California Public Employees’ Retirement System (“CalPERS”) to be employed without reinstatement from retirement upon appointment by a public agency to fill a vacant position on an interim basis during the recruitment to permanently fill the vacant position;

WHEREAS, as a CalPERS retired annuitant under Government Code Section 21221(h), Employee possesses extensive experience as a city manager and the skill set to perform the required duties of Interim City Manager, desires to perform the duties of and assume responsibility for the position of Interim City Manager, and acknowledges that such employment is at-will and of a limited duration for a definite period of time, as described below;

WHEREAS, the City Council wishes to establish the terms and conditions of Employee’s services to the City through this Agreement; and

WHEREAS, Assembly Bill 1344 of the California Legislature 2011-12 Regular Session was signed into law October 9, 2011 and made effective January 1, 2012 as a means to provide greater transparency in local government and institute certain limitations on local government executive compensation, including but not limited to prohibiting an employment contract for a local agency executive from providing an automatic renewal of a contract that provides for an automatic compensation increase in excess of a cost-of-living adjustment or a maximum cash settlement in excess of certain limits (California Government Code sections 3511.1 and 3511.2)

and requiring a contract executed or renewed between a local agency and an officer or employee of the local agency to include a provision that requires an officer or employee of a local agency who is convicted of a crime involving an abuse of his or her office or position to provide reimbursement to the local agency (California Government Code sections 53243 - 53243.4).

NOW, THEREFORE, in consideration of the mutual covenants contained herein, City and Employee hereby agree as follows:

A G R E E M E N T

1.0 EMPLOYMENT & DUTIES

1.1 Duties. City hereby employs Employee as interim city manager for the City to perform the functions and duties of the City Manager, as specified by the City Charter, City Municipal Code, and in the Government Code of the State of California, and to perform such other legally permissible and proper duties and functions as the City Council shall, from time-to-time, direct or assign. Employee shall devote his best efforts and full-time attention to performance of these duties.

1.2 Work Schedule. Employee shall work Monday through Friday, from 8 a.m. to 4 p.m. The work schedule may be modified at the direction of the City Council to accommodate the needs of the City. It is recognized that Employee is expected to engage in the hours of work that are necessary to fulfill the obligations of the position, must be available at all times, and shall be available for attendance at City Council and other meetings during other hours as may be necessary. Employee acknowledges that proper performance of the duties of the Employee will require the Employee to generally observe normal business hours and will also often require the performance of necessary services outside of normal business hours. The City will permit Employee such reasonable "time off" as is customary for exempt employees of the City so long as the time off does not interfere with normal business. **Notwithstanding the foregoing, under no circumstances may Employee work more than 960 hours during any City fiscal year, including any time served in other interim appointments, as specified in Section 7.10.** Employee will be required to keep accurate time records of his hours worked to ensure that he does not exceed 960 hours within the fiscal years that occur during the term of this Agreement.

(a) Employment Status. Employee shall serve at the will and pleasure of the City Council and understands he is an "at-will" employee subject to summary dismissal without any right of notice or hearing, including any so-called Skelly hearing. City may terminate the employment of Employee at any time, as set forth in Section 2.2 below. Employee shall not be subject to the City's Personnel Rules and Regulations. Employee will not acquire a property interest in the position of Interim City Manager. Employee is a temporary employee employed to perform specialized services in accordance with Government Code section 21221(h).

1.3 City Documents. All data, studies, reports and other documents prepared by Employee while performing his duties during the term of this Agreement shall be furnished to and become the property of the City, without restriction or limitation on their use.

All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information, and other materials either created by or provided to Employee in connection with the performance of this Agreement shall be held confidential by Employee to the extent permitted by applicable law, and except as may be required by any governmental agency or court of competent jurisdiction. Such materials shall not, without the prior written consent of the City Council, be used by Employee for any purposes other than the performance of his duties. Provided, further that no such materials may be disclosed to any person or entity not connected with the performance of services under this Agreement, except as required by (a) law, (b) any governmental agency, (c) subpoena, or (d) an order issued by a court of competent jurisdiction.

1.4 FLSA Exempt Status. Employee agrees that his position is that of an exempt employee for the purposes of the Fair Labor Standards Act.

2.0 TERM

2.1 Term. The term of this Agreement shall commence on March 11, 2015, and shall automatically terminate thereafter on December 31, 2015, unless terminated prior to this date by either Party ("Term"). Parties understand that services beyond nine hundred sixty (960) hours is subject to PERS per Government Section 2122(h).

(a) If the City Council appoints a permanent City Manager before December 31, 2015, Employee's services, and this Agreement, shall terminate within such time thereafter as the parties shall agree upon in writing.

(b) If the City Council does not appoint a permanent City Manager by December 31, 2015, the Term herein shall be extended for so long as required for the City Council to identify and appoint a permanent City Manager; provided that if such extension would cause Employee's services hereunder to exceed a total of nine hundred sixty (960) hours, the parties understand that such additional service is subject to approval by PERS per Government Code section 21221(h). In such instance, the parties shall cooperate to take any necessary action to secure such approval from PERS.

2.2 Termination by City or Employee. The City Council may terminate this Agreement at any time with or without cause. Additionally, Employee may terminate this Agreement at any time with or without cause, provided, however he shall reasonably provide the City Council with at least two (2) weeks' advance written notice prior to the effective date of termination, if practicable, unless a shorter period is acceptable to the City Council. Employee expressly agrees that he shall not be entitled to any severance pay as the result of the termination of this Agreement for any reason whatsoever.

2.3 Transfer of Responsibilities. After Notice of Resignation or Termination, Employee shall cooperate with the City, as requested by the City, to effect a transition of Employee's responsibilities and duties and to ensure that the City is aware of all matters being handled by Employee.

2.4 No Reappointment. In accordance with state law and the requirements of the California Public Employees Retirement Law, Employee may not be reappointed to this

position following the expiration of this Agreement, nor may this Agreement be modified to extend the term of the Agreement.

2.5 No Severance Pay. Employee shall not be entitled to severance pay and Employee expressly waives any and all rights with respect to severance pay.

3.0 COMPENSATION AND REIMBURSEMENT

3.1 Compensation. For the services rendered pursuant to this Agreement, City agrees to pay Employee compensation of **\$84.13 per hour**, which amount is in conformance with the requirements of Government Code section 7522.56(d). This hourly rate does not exceed the maximum monthly base salary paid to other employees performing comparable duties as listed on a publicly available pay schedule for the city manager position, divided by 173.333. Employee shall not receive any benefits, incentives, compensation in lieu of benefits, or any other forms of compensation in addition to the hourly rate of **\$84.13 per hour**.

3.2 Reimbursable Expenses. Employee shall not be entitled to reimbursement for any costs or expenses incurred in the performance of Employee's duties under this Agreement, unless said costs and expenses have received prior approval by the City Council, and are supported by written documentation in accordance with the established policies and customary practices of the City.

3.3 Reimbursement for Legal Actions. Employee shall be fully compensated and reimbursed pursuant to Section 3.1 above, for time spent and costs incurred while representing City in any legal action during or after the term of this Agreement.

4.0 CONDITIONS OF EMPLOYEE'S SERVICES AND WAIVER OF BENEFITS

4.1 Conflicts Prohibited. During the term of this Agreement, Employee shall not engage in any business or transaction or maintain a financial interest which conflicts, or reasonably might be expected to conflict, with the proper discharge of Employee's duties under this Agreement. Employee shall comply with all requirements of law, including but not limited to, Sections 87100 et seq., Section 1090 and Section 1125 of the Government Code, and all other similar statutory and administrative rules.

4.2 Provision of Benefits Prohibited. Employee is a retiree of the Public Employees' Retirement System and will thus not be enrolled in CalPERS or have any CalPERS retirement contributions reduced from his salary or made on his behalf by the City. Employee hereby waives all benefits provided to City employees, including retirement contribution, health/medical insurance, dental insurance, life and disability insurance, sick leave, vacation, and similar benefits. Employee shall be entitled to observe all City holidays in the same manner as employees of the City. Employee recognizes that Government Code Section 21221(h) provides that a retired person appointed to a vacant position pursuant to this subdivision shall not receive any benefits, incentives, compensation in lieu of benefits, or any other forms of compensation in addition to the hourly rate.

5.0 BONDS AND INDEMNIFICATION

5.1 Indemnification. For the purposes of indemnification and defense of legal actions, Employee shall be considered an employee of the City and entitled to the same rights and subject to the same obligations as are provided for all other employees of the City, as set forth in the Government Code. Accordingly, the City shall defend, hold harmless, and indemnify Employee against any tort, professional liability, claim or demand, or other legal action arising out of an alleged act or omission occurring within the course and scope of Employee's services under this Agreement. This section shall not apply if the City Council determines that the defense of the action or proceeding by the City would create a conflict of interest between the City and the Employee; or for acts or failure to act because actual fraud, corruption, or actual malice without entering into a reimbursement agreement with the City approved by the City Council in a form approved by the City Attorney. If the City Council or court of competent jurisdiction determines that the Employee committed actual fraud, corruption, or actual malice, then the City shall not provide for the defense of such legal action and the Employee shall reimburse the City all costs plus interest of the City in providing such defense. This section shall also not apply to any intentional tort or crime committed by Employee, to any action outside the course and scope of the services provided by Employee under this Agreement, or any other intentional or malicious conduct or gross negligence of Employee.

5.2 Bonds. City shall bear the full cost of any fidelity or other bonds, which may be required in the performance of Employee's services under this Agreement.

6.0 NOTICES

Any notice required or permitted by this Agreement shall be in writing and shall be personally served or shall be sufficiently given when served upon the other party as sent by United States Postal Service, postage prepaid and addressed as follows:

To City:

City Attorney
City of Bell
6250 Pine Avenue
Bell, California 90201

To Employee:

Jerome Groomes
(Address on file.)

Notices shall be deemed given as of the date of personal service or upon the date of deposit in the course of transmission with the United States Postal Service.

7.0 RETIRED ANNUITANT PROVISIONS; AB 1344

7.1 AB 1344 Provisions.

(a) The parties agree to fully comply with the Government Code sections that are part of AB 1344 (Government Code Section 53243) made effective January 1, 2012 and to fully comply with other applicable law as it exists as of the date of execution of this Agreement and as it may be amended from time to time thereafter.

(b) AB 1344 generally provides limits on local agency employee reimbursement requirements. These provisions are included the following Government Code sections, which are hereby incorporated into the terms of this Agreement:

§53243. Reimbursement of paid leave salary required upon conviction of crime involving office or position.

§53243.1. Reimbursement of legal criminal defense upon conviction of crime involving office or position.

§53243.2. Reimbursement of cash settlement upon conviction of crime involving office or position.

§53243.3. Reimbursement of non-contractual payments upon conviction or crime involving office or position.

§53243.4. Abuse of office or position defined.

Employee has reviewed, is familiar with, and agrees to comply fully with each of these provisions if any of these provisions are applicable to Employee, including that Employee agrees that any cash settlement related to the termination that Employee may receive from the City shall be fully reimbursed to the City if Employee is convicted of a crime involving an abuse of his office or position.

(c) AB 1344 also includes Government Code section 3511.2. Notwithstanding any other provisions of the Agreement itself, it shall be prohibited for the City or through the Agreement or any amendment thereto to provide an automatic renewal hereof that provides for an automatic compensation increase in excess of a cost-of-living adjustment or a maximum cash settlement in excess of certain limits established by section 3511.2. Government Code section 3511.2 is hereby incorporated into the terms of the Agreement.

7.2 No Unemployment Benefits Received By Employee. Employee expressly certifies and warrants to the City that he has not received any unemployment insurance payments for retired annuitant work for any public employer within the twelve (12) months prior to his appointment date.

7.3 Compliance With 960 Hours Per Fiscal Year Limit. Retired annuitants appointed to an interim position without reinstatement are limited to a combined total of nine hundred sixty (960) hours for all employers each fiscal year, including concurrent appointments pursuant to Government Code sections 21221, 21224 and 21229. Employee expressly certifies and warrants to the City that his anticipated work schedule of a maximum of forty (40) hours per week will not cause him to exceed the 960 hours per fiscal year limit pursuant to Government Code Section 21221(h), including work for this or any other CalPERS employer during the current fiscal year.

8.0 GENERAL PROVISIONS

8.1 Entire Agreement. This Agreement represents the entire agreement between the parties and supersedes any and all other agreements, either oral or in writing, between the parties with respect to Employee's employment by City and contains all of the covenants and agreements between the parties with respect to such employment. Each party to this Agreement acknowledges that no representations, inducements, promises or agreements, orally or otherwise, have been made by either party, or anyone acting on behalf of either party, which are not embodied herein, and that no other agreement, statement or promises not contained in this Agreement shall be valid or binding upon either party.

8.2 No Modification To Extend Agreement Term. In accordance with state law and the requirements of the California Public Employees' Retirement System, this Agreement may not be amended to extend the term of the Agreement.

8.3 Assignment. This Agreement is not assignable by either the City or Employee.

8.4 Severability. In the event any provision of this Agreement is finally held or determined to be illegal or void by a court having jurisdiction over the Parties, the remainder of this Agreement shall remain in full force and effect unless the parts found to be illegal or void are wholly inseparable from the remaining portions of this Agreement.

8.5 Effect of Waiver. The failure of either party to insist on strict compliance with any of the terms, covenants, or conditions of this Agreement by the other party shall not be deemed a waiver of that term, covenant, or condition, nor shall any waiver or relinquishment of any right or power at any one time or times be deemed a waiver or relinquishment of that right or power for all or any other times.

8.6 Governing Law and Jurisdiction. This Agreement shall be governed by and construed in accordance with the laws of the State of California, which are in full force and effect as of the date of execution. Any action to interpret or enforce the terms of this Agreement shall be held exclusively in a state court in Los Angeles County, California. Employee expressly waives any right to remove any such action from Los Angeles County.

8.7 Effective Date. This Agreement shall not become effective until it has been approved by the City Council and signed by Employee and the Mayor.

8.8 Effect of Agreement on Employee's CalPERS Retirement Benefits. The City makes no representation on the impact, if any, this Agreement shall or may have upon his CalPERS retirement benefits, status, duties, and/or obligations. Employee acknowledges that in entering into this Agreement, he has not relied upon any such representations (none of which being in existence) in assessing the CalPERS-related impact of his employment. Therefore, Employee releases the City from any and all CalPERS-related claims or liabilities that may arise in connection with his employment pursuant to this Agreement.

8.9 Interpretation. This Agreement shall not be construed against the party or its representatives who drafted it or who drafted any portion thereof.

8.10 Authority. The persons executing this Agreement on behalf of the parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement, such party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which said party is bound.

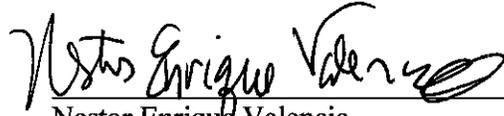
8.11 Independent Legal Advice. City and Employee represent and warrant to each other that each has received legal advice from independent and separate legal counsel with respect to the legal effect of this Agreement and, City and Employee further represent and warrant that each has carefully reviewed this entire Agreement and that each and every term thereof is understood and that the terms of this Agreement are contractual and not a mere recital.

[Signatures on following page]

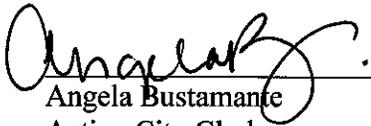
IN WITNESS WHEREOF, the City of Bell has caused this Agreement to be signed and executed on its behalf by its Mayor, and duly attested by its officers thereunto duly authorized, and Employee has signed and executed this Agreement, all in triplicate.

CITY OF BELL

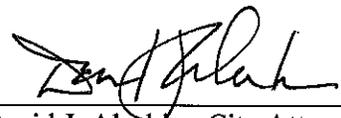
Dated: 3/27/15


Nestor Enrique Valencia
Mayor

ATTEST:


Angela Bustamante
Acting City Clerk

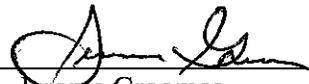
APPROVED AS TO FORM:


David J. Aleshire, City Attorney

EMPLOYEE

In signing this Agreement, Employee understands and agrees that he is an **at-will, temporary employee** and that his rights to employment with the City are governed by the terms and conditions of this Agreement rather than the ordinances, resolutions, and policies of the City of Bell which might otherwise apply to classified or other employees of the City. Employee further acknowledges that he was given the opportunity to consult with an attorney prior to signing this Agreement.

Dated: 3/27/15

Signed: 
Jerome Groomes
Employee