

STATE OF TEXAS

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AGREEMENT FOR INTERIM CITY MANAGER

COUNTY OF COLLIN

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This agreement ("Agreement") is made by and between the City of Allen, Texas ("City") and Peter H. Vargas ("Vargas") (each a "Party" or collectively, the "Parties") acting by and through their authorized representatives.

Recitals:

WHEREAS, Vargas has announced that he intends to retire effective January 31, 2019; and

WHEREAS, Vargas has offered to serve as the interim city manager for the City ("Interim City Manager") following his retirement beginning on February 1, 2019 and continue until the City employs a new City Manager; and

WHEREAS, City desires to engage the services of Vargas as an independent contractor and not as an employee to serve as the Interim City Manager in accordance with the terms and conditions set forth in this Agreement; and

WHEREAS, Vargas desires to render services as the Interim City Manager, in accordance with the terms and conditions set forth in this Agreement;

NOW THEREFORE, in exchange for the mutual covenants set forth herein and other valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the Parties agree as follows:

Article I

Term; Termination

1.1 The Term of this Agreement shall commence effective February 1, 2019 (the "Effective Date") and continue until the date a new City Manager appointed by the City begins employment as the City Manager for the City, unless sooner terminated as provided herein.

1.2 The City or Vargas may terminate this Agreement by giving thirty (30) days prior written notice to the other Party. In the event of such termination, Vargas shall deliver to the City all finished and unfinished documents and data prepared and/or maintained by Vargas in connection with this Agreement. Vargas shall be entitled to compensation for any services completed to the reasonable satisfaction of the City in accordance with this Agreement prior to such termination.

Article II

Scope of Services

2.1 Vargas agrees to serve as the Interim City Manager beginning February 1, 2019 and shall on an interim basis perform the functions and duties of the City Manager specified in the City

Charter, ordinances, resolutions, rules, and policies of the City and perform other legally permissible and proper duties and functions as the City Council shall from time to time assign.

2.2 Vargas shall comply with the City Charter, all lawful City Council directives, state and federal law, and all City ordinances, resolutions, rules, policies, and standards as they exist or may hereinafter be amended or enacted.

2.3 During the term of this Agreement, Vargas agrees to provide the services described herein exclusively to and for the benefit of the City. Vargas agrees that he shall not accept other employment or perform other services for other parties under during the term of this Agreement.

2.4 Vargas shall devote such time as reasonably necessary for the satisfactory performance of the services under this Agreement. Vargas acknowledges that the proper performance of the services herein will require him to generally observe normal business hours. However, it is further recognized that Vargas must also devote a great deal of time outside the normal office hours on business for the City and, to that end, Vargas shall be allowed to establish an appropriate work schedule. Vargas agrees to devote such additional time, outside the normal office hours as is necessary for the full and proper performance of the services provided herein.

Article III Compensation

3.1 City shall compensate Vargas for the services provided pursuant to this Agreement in the amount of Twenty-Five Thousand Dollars (\$25,000.00) per month to be paid in two (2) equal monthly installments at the same time as City employees are paid.

3.2 Vargas is responsible for any federal, state, or local income and withholding taxes, and FICA taxes applicable to this Agreement. Vargas shall not be entitled to and City will not provide or pay any City employee benefits, or any amount in relation to health, disability, automobile, and life insurance for Vargas. Vargas is not entitled to unemployment insurance or workers' compensation benefits because of performance of the services under this Agreement.

Article IV Expenses

4.1 City shall at its expense furnish an office, the facilities, equipment and personnel necessary for performance of the services by Vargas required under this Agreement unless otherwise provided herein.

4.2 City shall pay or reimburse Vargas for any out-of-pocket expenses incurred in the conduct of City business, including but not limited to the hosting of business and social meetings involving City business or economic development recruitment, official travel, meetings and occasions to adequately pursue necessary official and other functions for City, including but not limited to the annual conference of the Texas Municipal League (TML) and the Texas City Management Association (TCMA). Except as otherwise provided herein Vargas shall be responsible for payment of any professional dues and subscriptions.

4.3 Vargas at his sole expense shall furnish a vehicle, and maintenance for such vehicle, necessary to perform the services required under this Agreement.

Article V Indemnification

To the extent it may be permitted to do by applicable law, including, but not limited to, Texas Civil Practice & Remedies Code, Chapter 102, City does hereby agree to defend, hold harmless, and indemnify Vargas from any and all demands, claims, suits, actions, judgments, expenses and attorneys' fees incurred in any legal proceedings brought against Vargas while acting within the course and scope of the services provided herein, except for any such demand, claim, suits, actions, judgments, expenses and attorneys' fees for those claims or any causes of action where it is determined that Vargas committed official misconduct, or committed a willful or wrongful act or omission, or an act or omission constituting gross negligence, or acted in bad faith. To the extent this Section exceeds the authority provided and limitations imposed by Texas Civil Practice & Remedies Code, Chapter 102, it shall be construed and modified accordingly. The provisions of this Section shall survive the termination or expiration of this Agreement.

Article VI Miscellaneous

6.1 Entire Agreement. This Agreement constitutes the sole and only agreement between City and Vargas and supersedes any prior understandings and written or oral agreements between the Parties with respect to this subject matter.

6.2 Assignment. This Agreement may not be assigned by either Party.

6.3 Governing Law. The laws of the State of Texas shall govern this Agreement; and the exclusive jurisdiction and venue for any action arising hereunder shall be in the State District Court of Collin County, Texas. The Parties agree to submit to the personal and subject matter jurisdiction of said court.

6.4 Amendment. This Agreement may be amended by the mutual written agreement of the Parties.

6.5 Severability. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions, and the Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in it.

6.6 Notice. Any notice required or permitted to be delivered hereunder may be sent by first class mail, overnight courier or by confirmed telefax or facsimile to the address specified below, or to such other party or address as either party may designate in writing, and shall be deemed received three (3) days after delivery set forth herein:

If intended for City:

Attn: Mayor
City of Allen
305 Century Parkway
Allen, Texas 75013

With copy to:

Peter G. Smith
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.
1800 Ross Tower
500 North Akard
Dallas, Texas 75201

If intended for Vargas:

Peter H. Vargas
1207 Conroe Drive
Allen, Texas 75013

6.7 Counterparts. This Agreement may be executed by the Parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument. Each counterpart may consist of any number of copies hereof each signed by less than all, but together signed by all the Parties hereto.

6.8 Independent Contractor. It is understood and agreed by and between the Parties that the Vargas, in satisfying the conditions of this Agreement, is acting independently, and that the City assumes no responsibility or liabilities to any third party in connection with these actions. All services to be performed by Vargas pursuant to this Agreement shall be in the capacity of an independent contractor, and not as an agent or employee of the City. Vargas shall supervise the performance of its services and shall be entitled to control the manner and means by which its services are to be performed, subject to the terms of this Agreement.

6.9 Boycott of Israel. Vargas verifies that he does not Boycott Israel and agrees that during the term of this Agreement will not Boycott Israel as that term is defined in Texas Government Code Section 808.001, as amended.

6.10 Conditions Precedent. This Agreement is expressly subject to and the obligations of the Parties are conditioned upon Vargas retiring effective January 31, 2019. Subject to the conditions precedent this Agreement shall become effective on February 1, 2019.

6.11 Retirement Benefits. The Parties agree that this Agreement shall not affect nor delay the payment of any accrued benefits or other compensation that Vargas is entitled to receive or be paid as a result of his retirement from the City pursuant to his City Manager employment agreement with the City dated November 19, 1998.

[Signature Page to Follow]

EXECUTED this _____ day of _____, 2018.

CITY OF ALLEN, TEXAS

By: _____
Stephen Terrell, Mayor

Approved as to form:

By: _____
Peter G. Smith, City Attorney

EXECUTED this _____ day of _____, 2018.

By: _____
Peter H. Vargas