



staff report

TO: Honorable Mayor and Members of the City Council

ATTENTION: Jeffrey L. Stewart, City Manager

FROM: Mayra Ochiqui, City Clerk

SUBJECT: Consideration and possible action to receive and file Agreement File No. 721 with Janet Ashpaugh for Interim Deputy City Clerk Services.

DATE: August 22, 2016

EXECUTIVE SUMMARY

This Agreement is for Interim Deputy City Clerk Services to be provided on a part-time, temporary basis while the full-time Deputy City Clerk is on extended medical leave.

RECOMMENDATION TO CITY COUNCIL

1. Receive and file Agreement File No. 721; or
2. Alternatively, discuss and take other action related to this item.

FISCAL IMPACT

The Agreement is for an amount not to exceed \$10,000 (250 hours) to be paid from Contract Services Account No. 010-42054-1200 using department personnel savings.

DISCUSSION

On August 1, 2016, the full-time Deputy City Clerk commenced extended medical leave with an anticipated return-to-work date of November 1, 2016. In order to maintain full operations of the City Clerk's Office and minimize the impacts on customer service, the City Clerk has entered into an agreement with former/retired Deputy City Clerk Janet Ashpaugh to fill this capacity on a part-time basis until such time as the full-time Deputy City Clerk returns from extended leave.

ATTACHMENT

Agreement File No. 721 2

**AGREEMENT FILE NO. 721
INTERIM DEPUTY CITY CLERK AGREEMENT
BETWEEN THE CITY OF BELLFLOWER
AND JANET B. ASHPAUGH**

THIS AGREEMENT is entered into this 15TH day of August 2016 by and between the CITY OF BELLFLOWER, a general law city and municipal corporation ("CITY") and JANET B. ASHPAUGH, an individual ("ASHPAUGH").

1. **APPOINTMENT OF INTERIM DEPUTY CITY CLERK.** ASHPAUGH is appointed as CITY's Interim Deputy City Clerk. ASHPAUGH will serve at the pleasure of the City Clerk and may be replaced at any time, with or without cause, without amending this Agreement.

2. **SCOPE OF SERVICES.** ASHPAUGH will perform the services needed to serve CITY which will include, without limitation, the following:

- A. Deputy City Clerk Services in accordance with all applicable rules, regulations, and laws pertaining thereto. The services shall generally be provided at the City Hall of the CITY, Monday through Friday, on an as-needed basis (generally 12 hours per week) with the understanding that, with the prior consent of the CITY's City Clerk, some work weeks may be more than 12 hours per week and include travel (e.g., within the community and to and from the Registrar-Recorder's Office and Martin & Chapman Company).

3. **HOURS AND COMPENSATION.** During her employment, ASHPAUGH must devote such, time, interest and effort to the performance of this Agreement as is necessary to duly carry out her duties as Interim Deputy City Clerk. It is expected that ASHPAUGH will devote an average of 12 hours per week to the performance of her duties (not to exceed 250 hours or \$10,000). In no event, will ASHPAUGH work or be compensated for more than 960 hours during the period of August 15, 2016 through December 31, 2016. ASHPAUGH will be paid at the rate of \$40 per hour, payable in bi-weekly payments (at the same time that CITY employees are regularly paid) which is subject to all applicable federal, state and local payroll withholdings and deductions. ASHPAUGH must record all of her hours on a daily basis and transmit such records to the Finance Department on a biweekly basis.

4. **TERM.** The term of this Agreement will be from August 15, 2016, to December 31, 2016, unless otherwise extended by written amendment by the parties, terminated in accordance with this Agreement.

5. **BENEFITS.** ASHPAUGH will not receive any benefits, including, without limitation, medical, dental, sick leave, or vacation time, that are generally available to other CITY employees.

6. **EXPENSE REIMBURSEMENT.** During the term of this Agreement, CITY will reimburse ASHPAUGH for reasonable business expenses associated with travel or other business-related purposes, provided the prior approval of the City Clerk is first obtained.

7. **PERS BENEFITS.** At the time this Agreement is entered into, Government Code § 21224 allows a PERS retiree to perform contractual employee services for up to a total of 960 hours in any calendar year for all PERS contracting employers without being reinstated from retirement, and without loss or interruption of PERS retirement benefits. It is agreed and acknowledged by the parties, however, that in making this Agreement available to ASHPAUGH, neither the CITY nor any of its elected or appointed officials, officers, employees or agents assures, represents, or guarantees that performance of the contracted-for services will have no impact upon ASHPAUGH's PERS' retirement benefits. If a controversy arises between ASHPAUGH and PERS regarding the impact of this Agreement and the services provided for herein upon the nature of PERS retirement benefits, the CITY does not have an obligation to intervene in or defend or prosecute such dispute notwithstanding the indemnification set forth in this Agreement. Accordingly, it is recommended by the CITY that before entering into this Agreement, ASHPAUGH first bring it to the attention of PERS and that ASHPAUGH thereby personally determine, what, if any, impact this Agreement and the performance of the services set forth herein, will or may have upon the employee's PERS' retirement benefits.

8. **CONFLICTS OF INTEREST.** ASHPAUGH represents that she does not have any material financial interest, direct or indirect, in any contract or decision made by or on behalf of CITY that may be affected by the services to be provided to CITY pursuant to this Agreement, other than a financial interest that is similar, in all material respects, to the interests of the general public. ASHPAUGH agrees that she will comply with CITY's Conflict of Interest Code as adopted by CITY Council resolution.

9. **TERMINATION OF SERVICES.**

- A. CITY may terminate this Agreement with or without cause at any time by serving ASHPAUGH with notification of such termination by mail, by fax, or by CITY's Representative's oral notice of termination followed by written confirmation of same served on ASHPAUGH by mail.
- B. ASHPAUGH may terminate this Agreement with or without cause upon fifteen (15) days written notice to CITY.
- C. CITY will compensate ASHPAUGH for her services and reimburse her for costs rendered through and including the effective date of any termination.

10. **NOTICES.** Notices required under this Agreement must be given by personal service or by first class mail, postage prepaid, and addressed as follows:

To ASHPAUGH: Janet B. Ashpaugh
4403 Hacket Avenue
Lakewood, CA 90713
(562) 421-3033
janib1943@hotmail.com

To CITY: City of Bellflower
Attention: Mayra Ochiqui, City Clerk
16600 Civic Center Drive
Bellflower, CA 90706
(562) 804-1424, ext. 2222
mochiqui@bellflower.org

11. INDEMNIFICATION:

- A. CITY will indemnify and defend ASHPAUGH from any and all claims, demands, actions, losses, or charges arising out of, related to, or as a consequence of ASHPAUGH performing her duties as Interim Deputy City Clerk. Further, CITY will pay all expenses, costs and attorney's fees arising out of or related to the same.
- B. The Parties agree that this Section will survive the termination of this Agreement. CITY's obligations under this Section apply whether ASHPAUGH is or is not retained by the CITY at the time any such claim, demand, action, loss or charge is made or occurs, as the case may be so long as the action giving rise to the claim occurred during the time ASHPAUGH was retained by CITY.

12. **PERMITS AND LICENSES.** ASHPAUGH, at her sole expense, will obtain and maintain during the term of this Agreement, all permits, licenses, and certificates that may be required, as determined by CITY, in connection with the performance of services under this Agreement.

13. **ASSIGNABILITY.** This Agreement is for ASHPAUGH's professional services. ASHPAUGH's attempts to assign the benefits or burdens of this Agreement without CITY's written approval are prohibited and will be null and void.

14. INDEPENDENT CONTRACTOR. CITY and ASHPAUGH agree that ASHPAUGH will act as an independent contractor and will have control of all work and the manner in which it is performed. ASHPAUGH will be free to contract for similar service to be performed for other employers while under contract with CITY. ASHPAUGH is not an agent or employee of CITY and is not entitled to participate in any pension plan, insurance, bonus or similar benefits CITY provides for its employees. Any provision in this Agreement that may appear to give CITY the right to direct ASHPAUGH as to the details of doing the work or to exercise a measure of control over the work means that ASHPAUGH will follow the direction of the CITY as to end results of the work only.

15. AUDIT OF RECORDS. ASHPAUGH will maintain full and accurate records with respect to all services and matters covered under this Agreement. CITY will have free access at all reasonable times to such records, and the right to examine and audit the same and to make transcript therefrom, and to inspect all program data, documents, proceedings and activities. ASHPAUGH will retain such financial and program service records for at least four (4) years after termination or final payment under this Agreement.

16. INTERPRETATION. This Agreement was drafted in, and will be construed in accordance with the laws of the State of California, and exclusive venue for any action involving this agreement will be in Los Angeles County.

17. ENTIRE AGREEMENT. This Agreement sets forth the entire understanding of the parties. There are no other understandings, terms or other agreements expressed or implied, oral or written. This Agreement will bind and inure to the benefit of the parties to this Agreement and any subsequent successors and assigns.

18. RULES OF CONSTRUCTION. Each Party had the opportunity to independently review this Agreement with legal counsel. Accordingly, this Agreement will be construed simply, as a whole, and in accordance with its fair meaning; it will not be interpreted strictly for or against either Party.

19. SEVERABILITY. If any portion of this Agreement is declared by a court of competent jurisdiction to be invalid or unenforceable, then such portion will be deemed modified to the extent necessary in the opinion of the court to render such portion enforceable and, as so modified, such portion and the balance of this Agreement will continue in full force and effect.

20. AUTHORITY/MODIFICATION. The Parties represent and warrant that all necessary action has been taken by the Parties to authorize the undersigned to execute this Agreement and to engage in the actions described herein. This Agreement may be modified by written amendment. CITY's City Manager, or designee, may execute any such amendment on behalf of CITY.

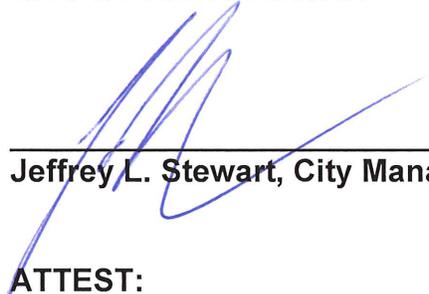
21. **ACCEPTANCE OF FACSIMILE SIGNATURES.** The Parties agree that this Agreement, agreements ancillary to this Agreement, and related documents to be entered into in connection with this Agreement will be considered signed when the signature of a party is delivered by facsimile transmission. Such facsimile signature will be treated in all respects as having the same effect as an original signature.

22. **EFFECTIVE DATE.** This Agreement is effective on August 15, 2016.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first hereinabove written.

CITY OF BELLFLOWER

INDIVIDUAL



Jeffrey L. Stewart, City Manager



Janet B. Ashpaugh

ATTEST:



Mayra Ochiqui, City Clerk

APPROVED AS TO FORM:



Karl H. Berger, City Attorney