

1. 1:00 P.M. City Council Special Meeting

Documents:

[2023-03-29 City Council Special Meeting Agenda.pdf](#)

2. Meeting Material

Documents:

[CM Pro Tem-Planner Contract.pdf](#)



**CITY OF YACHATS
CITY COUNCIL SPECIAL MEETING
Yachats OR
Wednesday, March 29, 2023, at 1:00 pm
To Be Held In-Person and Zoom**

City of Yachats is inviting you to a scheduled Zoom meeting.

Join Zoom Meeting

<https://us02web.zoom.us/j/83486336373>

Meeting ID: 834 8633 6373

One tap mobile

+16694449171,,83486336373# US

+16699006833,,83486336373# US (San Jose)

Special Council Meeting

- I. Announcements and Correspondence
- II. Public Comment - limited to items not on the agenda
(5-minute limitation per person)
- III. Discuss and possibly reconsider the Council vote and recommendation to the City Manager regarding the City Manager Pro Tem / Planner.
 - Review the Employment Agreement for ProTem City Manager / Planner Services that was not previously available
 - Given that agreement, discuss previous recommendation to City Manager and consider revisions

****If necessary, the Council may go into an Executive Session under ORS 192.640 (2.(a) and (2)i a.

****The Planner has requested that the discussion remain open regarding the employment and the City Manager may not be available.

The Yachats City Council meetings are open to the public and interested citizens are invited to attend via Zoom. These are open meetings under Oregon law, but a work session is not a community forum; audience participation is at the discretion of the Council. Meetings are audio-recorded. The meeting are accessible to persons with disabilities. For accommodations, please call (541) 547-3565, or Oregon Relay 1-800-735-2900 TDD) two days in advance. City of Yachats does not discriminate on the basis of race, color, religion, creed, gender, national origin, age, disability, marital or veteran status, sexual orientation, or any other legally protected status. Sign language or foreign language interpreter may be available, with advance notice. Call City Hall at 541-547-3565 or Oregon Relay 1-800-735-2900 (TDD) two days in advance. POSTED 03/27/23 By: Kimmie Jackson, Deputy City Recorder

**CITY OF YACHATS
EMPLOYMENT AGREEMENT FOR
PRO TEM CITY MANAGER / PLANNER SERVICES**

This Agreement is entered into this 24th day of May, 2021 by and between the City of Yachats, Oregon, hereinafter referred to as "CITY" and Katherine Guenther, (referred to herein as the "CITY MANAGER PRO TEM / PLANNER") so that the parties may secure temporary professional city manager services.

RECITALS

It is the desire of the CITY to temporarily secure and retain the professional services and skills of the CITY MANAGER PRO TEM / PLANNER and to provide inducement for CITY MANAGER PRO TEM / PLANNER to remain in such temporary employment, and

CITY MANAGER PRO TEM / PLANNER has the necessary skills and experience to assist the CITY; and

It is the desire of the CITY and CITY MANAGER PRO TEM / PLANNER to enter into a contractual agreement wherein the CITY MANAGER PRO TEM / PLANNER provides city manager services on a temporary basis and duties may include assisting the CITY in its search for a permanent City Manager.

THEREFORE, in consideration of the mutual covenants herein contained and for consideration herein specified, the CITY and CITY MANAGER PRO TEM / PLANNER mutually agree as follows:

SECTION I. – DUTIES

- A. Incoming Pro Tem City Manager Duties While current Interim City Manager Lee Elliott holds the office of Pro Tem City Manager and is willing and able to fulfill the duties of the office, but not extending beyond June 3, 2021, the CITY MANAGER PRO TEM / PLANNER will serve as Incoming Pro Tem City Manager and will work cooperatively with Lee Elliott to facilitate a smooth transition.
- B. Pro Tem City Manager Duties As soon as is needed, and no later than June 4, 2021, the CITY MANAGER PRO TEM / PLANNER will serve as the Pro Tem City Manager for the CITY pursuant to Section 33(h) of the City Charter. CITY and CITY MANAGER PRO TEM / PLANNER agree that the CITY MANAGER PRO TEM / PLANNER shall perform the functions and duties of the city manager as given in Section 33 of the City Charter. Pursuant to City Charter Section 33(h), CITY MANAGER PRO TEM / PLANNER will only be able to appoint or remove employees with City Council approval.
- C. The City Council expects the CITY MANAGER PRO TEM / PLANNER to adhere to the highest professional standards. Her actions will always comply with those standards. She agrees to follow the Code of Ethics and Guidelines of the International City/County Management Association and the ethics rules, regulations, and laws of the State of Oregon.
- D. The City Council annually establishes the City's goals and objectives. Decisions and actions generated as a result of the goal setting sessions supplement the annual budgetary process and serve as a guide in the formulation of the budget. The CITY MANAGER PRO TEM / PLANNER will be responsible for pursuing the goals and objectives of the City Council and for providing reports to the City Council regarding the progress toward achieving the Council's goals and objectives.
- E. Pro Tem City Manager / Planner Duties CITY and CITY MANAGER PRO TEM / PLANNER agree that the CITY MANAGER PRO TEM / PLANNER shall perform the functions and duties of city planner as well as the functions and duties described in item A.

SECTION II – TERM; AT WILL STATUS

- A. Term. The term of this Agreement will commence on May 24, 2021 and will continue until terminated as provided herein.
- B. At Will Employee. CITY MANAGER PRO TEM / PLANNER understands and agrees that she is an at-will employee and may be terminated at any time with or without cause, subject only to the terms of this Agreement. CITY MANAGER PRO TEM / PLANNER acknowledges that she is an FLSA-exempt, full-time, temporary employee.
- C. Planner Position: Following termination, CITY MANAGER PRO TEM / PLANNER will resume her position and duties as part-time Planner.

SECTION III. – TERMINATION AND RESIGNATION

- A. Notwithstanding anything herein to the contrary, the CITY may terminate this Agreement and the PRO TEM CITY MANAGER / PLANNER's employment as PRO TEM CITY MANAGER / PLANNER at any time by providing two weeks written notice of its intent to terminate. If the City terminates, it shall have no obligation to pay any severance monies or payments.
- B. The CITY MANAGER PRO TEM / PLANNER agrees not to give written notice of her resignation during the first thirty (30) days of her service as CITY MANAGER PRO TEM / PLANNER. Following this initial thirty-day period, the CITY MANAGER PRO TEM / PLANNER may voluntarily resign her position as CITY MANAGER/PRO-TEM and terminate this Agreement by giving written notice at least thirty (30) days prior to the resignation's effective date.
- C. Termination for Cause. In the event of a for-cause termination, this Agreement shall not be deemed to waive statutory or constitutional rights or remedies otherwise available to the CITY MANAGER PRO TEM / PLANNER. The CITY MANAGER PRO TEM / PLANNER'S employment with the CITY as PRO TEM CITY MANAGER / PLANNER may be terminated immediately in the sole discretion of a majority of the City Council members upon the occurrence of any of the following events:
 - i. The CITY MANAGER PRO TEM / PLANNER fails, refuses, or is unable to comply with the written policies, standards, and regulations of the CITY that are in existence at the time, or fails, refuses, or is unable to comply with any then-current state or federal laws;
 - ii. Dishonesty in any form;
 - iii. The City Council, after a thorough investigation, has reasonable cause to believe the CITY MANAGER PRO TEM / PLANNER has committed fraud, misappropriated CITY funds, goods, or services, or other acts of misconduct that cause injury to the CITY or affect the CITY MANAGER PRO TEM / PLANNER'S ability to perform her job; or
 - iv. The CITY MANAGER PRO TEM / PLANNER fails to perform her duties as CITY MANAGER PRO TEM / PLANNER faithfully and fully in accordance with the highest professional standards.

SECTION IV. – SALARY AND BENEFITS; RULES AND SCHEDULES

- A. Salary. The CITY agrees to pay the CITY MANAGER PRO-TEM/PLANNER a monthly salary of \$7,000 for each month of work provided under this Agreement, subject to all state and federal withholdings and payable in the same installments and manner as other employees are paid. Salary will be pro-rated for any partial month of employment.
- B. Benefits. Will be provided per the City's Personnel Policy for all full-time employee's. The full-time benefits will revert back to part-time benefits once the CITY MANAGER PRO TEM/PLANNER reverts back to her part-time Planner position.
- C. Workers' Compensation. CITY MANAGER PRO TEM / PLANNER will be treated as an employee for purposes of CITY'S workers' compensation coverage.
- D. PERS. CITY MANAGER PRO-TEM / PLANNER is eligible for PERS per the City's Personnel Policies.
- E. Vacation, Sick, Holiday. The CITY MANAGER PRO TEM / PLANNER will earn per the rates established in the City's Personnel Policies.
- F. General Expense. The City recognizes that certain expenses will be incurred by the CITY MANAGER PRO TEM / PLANNER on behalf of the CITY and agrees to reimburse or pay these expenses promptly if the expenses are (i) incurred in the performance of CITY MANAGER PRO TEM / PLANNER'S duties (ii) evidenced by receipts or other documentation, and (iii) approved by the City Council.
- G. Personnel Rules. The parties agree that CITY MANAGER PRO TEM / PLANNER will be bound by the CITY's personnel rules and procedures except as follows: 1) If the CITY's personnel manual, rules, or procedures conflict with the express terms of this Agreement, this Agreement shall control; and 2) CITY MANAGER PRO TEM / PLANNER shall not be subject to any CITY progressive discipline process or disciplinary due process provided in the CITY's personnel manual, rules, or procedures.
- H. Work Schedule. The parties acknowledge that the CITY MANAGER PRO TEM / PLANNER must often work in excess of 40 hours per week and during evening or early morning hours. Overtime pay will not be paid because she is exempt from the FLSA. The parties anticipate that the CITY MANAGER PRO TEM / PLANNER'S work schedule will be a flexible schedule and that she may set her own office hours as long as her work duties are being accomplished and as long as she is present in the office for an average of 40 hours per week.
- I. Consultant Assistance. Recognizing that the CITY MANAGER PRO TEM / PLANNER is agreeing to provide planning services as well as performing the functions and duties of the City manager, the CITY MANAGER PRO TEM / PLANNER has available \$2,200 each month for the payment of consultants / advisors to assist with projects or to provide advice / guidance relevant to her duties. A careful record of these expenses will be maintained. If additional funds are needed, a request should be placed by the CITY MANAGER PRO TEM / PLANNER to the mayor for City Council consideration.

SECTION V. – PROFESSIONAL LIABILITY/INDEMNIFICATION

In accordance with and subject to the tort claim limitations in the Oregon Tort Claims Act and the Oregon State Constitution, the CITY agrees to defend, hold harmless and indemnify CITY MANAGER PRO TEM / PLANNER from and against any and all demands, claims, suits, actions and legal proceedings brought against CITY MANAGER PRO TEM / PLANNER in her official capacity as an agent and employee of the CITY and arising out of any alleged act or omissions in her performance of CITY MANAGER PRO TEM / PLANNER'S duties, as long as such acts or omissions occurred while she was acting within CITY MANAGER PRO TEM / PLANNER'S proper scope of authority.

SECTION VI. – GENERAL PROVISIONS

- A. Entire Agreement; Severability. The text herein will constitute the entire Agreement between the parties and supersedes any and all prior discussions or Agreements between the parties, if any, which are not fully expressed herein. No oral understandings are binding upon the parties. No single person has the authority to amend this Agreement. This Agreement may only be amended by mutual, signed written consent of the parties. If any provision, or any portion thereof, contained in this Agreement is held to be unconstitutional, invalid or unenforceable, the remainder of this Agreement or a portion thereof will be deemed severable and will not be affected, and will remain in full force and effect.
- B. Representation. At all times, the CITY has been represented by attorneys at the firm of Local Government Law Group PC. CITY MANAGER PRO TEM/PLANNER acknowledges that she has had, at all times, the right and the opportunity to consult with independent counsel of her choosing in regard to this Agreement.

IN WITNESS WHEREOF, the City of Yachats, Oregon, has caused this Agreement to be signed and executed on its behalf by its Mayor and Katherine Guenther has signed and executed the Agreement effective the date noted above.


Leslie Vaaler, Mayor


Katherine Guenther