

RESOLUTION NO. 08/09-20
CITY OF DAYTON, OREGON

Title: *Personal Services Contract for Interim City Manager,
Beginning October 13, 2008*

WHEREAS, the City of Dayton wishes to utilize the services of an outside consultant to serve as Interim City Manager;

WHEREAS, the City Council acts as Local Contract Review Board for the City of Dayton under Dayton Municipal Code 1.10; and

WHEREAS, under ORS 279.011(6) contracts for personal services are not by definition subject to the competition requirements of ORS Chapter 279, Public Contracts and Purchasing; and

WHEREAS, the City Council, acting as Local Contract Review Board, has determined that Interim City Manager services are personal services under ORS 279.011(6); and

NOW, THEREFORE, IT IS HEREBY RESOLVED by the City Council of Dayton, Oregon:

- 1) **THAT** the Mayor is authorized to execute the Personal Services Agreement for Interim City Manager (attached hereto as Exhibit A and made a part hereof) on behalf of the City, which will be bound by its terms;
- 2) **THAT** this resolution shall become effective October 13, 2008.

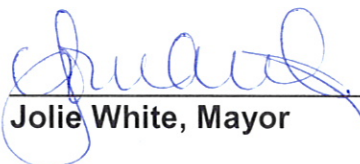
ADOPTED this 3rd day of **November, 2008**.

In Favor Blackburn, Evers, Webb, White

Opposed None

Absent Dickson, Hensley

Abstained None

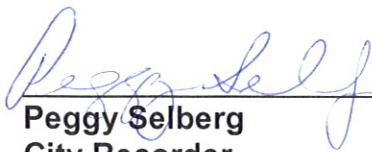


Jolie White, Mayor

11/15/2009

Date of Signing

ATTESTED BY:



Peggy Selberg
City Recorder

10/13/2008

Date of Enactment

Attachment - Exhibit A

**CITY OF DAYTON, OREGON
PERSONAL SERVICES CONTRACT**

A CONTRACT between THE CITY OF DAYTON, OREGON ("City"), and Ross Schultz ("Provider").

WHEREAS, City and Provider believe it is their mutual interest to enter into a written contract setting out their understandings concerning Provider's provision of executive city management service in acting as the City's interim City Manager.

1. Term

The term of this contract shall be from October 13, 2008 and shall continue until it is terminated by the mutual consent of the parties or it is terminated under the provisions of this contract, whichever event first occurs.

2. Provider's Service

The scope of Provider's services and time of performance under this contract are set forth in Exhibit A. All provisions and covenants contained in said Exhibit are hereby incorporated by reference and shall become a part of this contract as if fully set forth. It is understood and agreed that the provision of the executive city management services are personal in nature to the Provider.

3. Provider Identification

Provider shall furnish to City Provider's employer identification number, as designated by the Internal Revenue Service, or, if the Internal Revenue Service has designated no employer identification number, Provider's Social Security number.

4. Compensation

City agrees to pay Provider \$ 5,250.00 per month in two bimonthly payments payable on the fifteenth (15th) and thirtieth (30th) of each month. The City also agrees to pay into the Provider's Public Employees Retirement System fund at a rate no higher than six percent of Provider's salary per pay period.

5. Sick Leave

City agrees to allow Provider to take no more three paid sick days off per month. Any absence exceeding two consecutive weeks will be grounds for termination of this Agreement.

6. Supervision and Control

The Provider shall be subject to the direct supervision and control of the City Council in the carrying out and implementation of his duties under this contract. The City Council may ask for appropriate direction from the office of the City Attorney.

7. Additional Reimbursement Compensation

Provider shall be paid a monthly amount of \$300 for the daily workday round trip from the Provider's home in Sherwood, OR to Dayton, OR.

8. Provider is Independent Contractor

Except as specifically provided in this section, Provider is an independent contractor for all purposes and shall be entitled to no compensation other than the compensation expressly provided by this contract. City has elected, in light of the fact that Provider will be acting as the City's chief executive officer to provide coverage for Provider for all torts (as that term is used in the Oregon Tort Claims Act (ORS 30.260 to ORS 30.300)) arising in and out of his capacity as City Manager under its liability policy with City-County Insurance Services as well as for workers compensation coverage. However, in all other regards, Provider is an independent contractor.

9. Work is Property of City.

All work, including but not limited to documents, drawings, papers, computer programs, and photographs, performed or produced by Provider under this contract shall be the property of City.

10. Law of Oregon.

The contract shall be governed by the laws of the State of Oregon. Venue shall be in Yamhill County, Oregon.

11. Successors and Assignments

Each party binds itself, and any partner, successor, executor, administrator, or assign to this agreement. Provider shall not assign or transfer its obligations hereunder without the prior written consent of the City. Provider must seek and obtain the City's written consent before subcontracting any part of the work required of Provider under this contract. Any assignment, transfer, or subcontract attempted in violation of this subparagraph shall be void.

12. Records

a. Provider shall retain all books, documents, papers, and records that are directly pertinent to this contract for at least three years after the City makes final payment on this contract and all other pending matters are closed.

b. Provider shall allow the City, or any of its authorized representatives, to audit, examine, copy, take excerpts from, or transcribe any books, documents, papers, or records that are subject to the foregoing retention requirement.

13. Breach of Contract

Provider shall remedy any breach of this contract within the shortest reasonable time after Provider first has actual notice of the breach or the City notifies Provider of the breach, whichever is earlier. If Provider fails to remedy a breach in accordance with this paragraph, the City may terminate that part of the contract affected by the breach upon written notice to Provider, may obtain substitute services in reasonable manner and may recover from Provider the amount by which the price for those substitute services exceeds the price for the same services under this contract.

a. If the breach is material and Provider fails to remedy the breach in accordance with this paragraph, the City may declare Provider in default and pursue any remedy available for a default.

b. Pending a decision to terminate all or part of this contract, the City unilaterally may order Provider to suspend all or part of the services under this contract. If the City terminates all or part of the contract pursuant to this paragraph, Provider shall be entitled to compensation only

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for services rendered prior to the date of termination, but not for any services rendered after the City ordered suspension of those services. If the City suspends certain services under this contract and later orders Provider to resume those services, Provider shall be entitled to reasonable damages actually incurred, if any, as a result of the suspension.

c. To recover amounts due under this paragraph, the City may withhold from any amounts owed by the City to Provider, including but not limited to amounts owed under this or any other contract between Provider and the City.

14. Termination for Convenience

The City may terminate all or part of this contract at any time for its own convenience by written notice to Provider. Upon termination under this paragraph, Provider shall be entitled to compensation for all services rendered prior to actual notice of the termination or the receipt of the City's written notice of termination, whichever is earlier, plus Provider's reasonable costs actually incurred in closing out the contract.

15. Mediation/Trial without a Jury

Should any dispute arise between the parties to this Agreement it is agreed that such dispute will be submitted to a mediator prior to any litigation and the parties hereby expressly agree that no claim or dispute arising under the terms of this Agreement shall be resolved other than first through mediation and only in the event said mediation efforts fail, through litigation. Any litigation arising under or as a result of this contract shall be tried to the court without a jury. The parties shall exercise good faith efforts to select a mediator who shall be compensated equally by both parties. Mediation will be conducted in Portland, Oregon unless both parties agree in writing otherwise. Both parties agree to exercise good faith efforts to resolve disputes covered by this section through this mediation process. If a party requests mediation and the other party fails to respond within ten (10) days or if the parties fail to agree on a mediator within ten (10) days, a mediator shall be appointed by the presiding judge of the Yamhill County Circuit Court upon the request of either party. The parties shall have any rights at law or in equity with respect to any dispute not covered by this Section.

16. Intellectual Property

The interest in any intellectual property, including but not limited to copyrights and patents of any type, arising from the performance of this contract shall vest in the City. Provider shall execute any assignment or other documents necessary to effect this paragraph. Provider may retain a nonexclusive right to use any intellectual property that is subject to this paragraph. Provider shall transfer to the City any data or other tangible property generated by Provider under this contract and necessary for the beneficial use of intellectual property covered by this paragraph.

17. Conflict of Interest.

Except with City's prior written consent, Provider shall not engage in any activity, or accept any employment, interest or contribution that would, or would reasonably appear, to compromise Consultant's professional judgment with respect to this Project, including, without limitation, concurrent employment on any project in direct competition with the Project. Both parties acknowledge that the Contractor is in business to provide consulting services and may need time off during the engagement to set up other contracts for work at other locations that do not compete with the subject of this contract. All time off will be scheduled with the Council's designee. Further the contractor has previous dates that need to be reserved as unavailable for this contract. October 23rd and 24th and October 30th. Provider agrees to perform these additional duties in a manner which will result in the least interference with the duties and obligations of this contract as is reasonably feasible.

18. Modification

Any modification of the provisions of this contract shall be reduced to writing and signed by the parties.

19. No Waiver of Legal Rights

A waiver by a party of any breach by the other shall not be deemed to be a waiver of any subsequent breach.

20. Integration

This contract contains the entire agreement between the parties and supersedes all prior written or oral discussions or agreements regarding the same subject.

PROVIDER

Ron E. Shultz

Dated: Oct. 13, 2008

CITY OF DAYTON, OREGON

Jolie White
Jolie White, Mayor

Dated: October 13, 2008