

**AGENDA**  
**City of Brookings**  
**Special Council Meeting**  
Brookings City Hall Council Chambers  
898 Elk Drive, Brookings, Oregon 97415  
**Wednesday, January 3, 3:00 p.m.**

- I. Call to Order
- II. Pledge of Allegiance
- III. Roll Call
- IV. Action Item
  - A. Discussion and possible approval to authorize Mayor Sherman to enter into agreement with Kenneth Hobson for services of City Manager Pro Tem, effective January 8, 2007.
  - B. Discussion and possible approval to authorize Mayor Sherman to enter into agreement with Dale Shaddox for consulting services, effective January 4, 2007.
- V. Remarks from Mayor and Councilors
  - A. Mayor
  - B. Councilors
- VI. Adjournment

# CITY OF BROOKINGS

## City Council Agenda Report



Date: December 28, 2006

To: Mayor & City Council

From: Paul Hughes, Administrative Services Director

Subject: Interim City Manager Contract

Recommendation: **Authorize Mayor Sherman to sign a City Manager Pro Tem employment agreement with Kenneth Hobson.**

Background /Discussion:

On December 21<sup>st</sup>, Mayor Sherman, Councilor Gordon and staff interviewed by phone, three potential candidates for interim City Manager services. Kenneth Hobson, who has extensive management experience in Oregon, was the candidate chosen by the interview group. Mayor Sherman and staff developed a contract with Mr. Hobson (attached). The contract provides for employment to begin January 8<sup>th</sup> and terminate at the close of business on the date a permanent City Manager begins employment, or at the close of business on June 6, 2007, whichever occurs first.

Financial Impact(s):

The compensation package includes wages at \$45.92 hr., housing \$900 monthly, mileage for one round trip per month to permanent residence in Bend, OR. approx. \$290 monthly. Total package averages approximately \$9,150 per month compared to the previous managers at approximately \$9,360. Funds are available in the current year budget.

City Manager Review and Approval for placement on Council Agenda:

  
Dale Shaddox, City Manager

# **CITY OF BROOKINGS**



## **EMPLOYMENT AGREEMENT – CITY MANAGER PRO TEM**

This City Manager Pro Tem Employment Agreement (the Agreement) is between the City of Brookings, Oregon (City) and Kenneth D. Hobson (Manager).

### **RECITALS**

1. City's City Manager position is vacant and City is conducting a recruitment process for a permanent City Manager. While the recruitment process is underway, City desires the services of an interim City Manager.
2. Manager has experience as a City Manager and is available to provide interim City Manager services to City on a temporary basis while the recruitment process for a permanent City Manager is underway.

### **AGREEMENT**

1. Services to be provided by Manager. Manager is available to provide services to City as an interim City Manager on an as needed basis. The services to be provided shall be described in Chapter V of the City's Charter and Ordinance 89-O-457 of City's Municipal Code and any other applicable Charter or Code provision. Nothing in this Agreement shall preclude City and Manager from establishing any mutually agreeable arrangement regarding Manager's schedule and physical presence at City Hall.
2. Services to be provided by City. City shall provide necessary staff support to Manager, an office at City Hall for Manager's exclusive use, and such materials and equipment, as needed, to enable Manager to perform his work as an interim City Manager.
3. Compensation.
  - (a) City shall compensate Manager in the amount of \$40.11 per hour for performance of services pursuant to this Agreement. City shall also pay Manager \$5.81 per hour in lieu of health insurance coverage. City will withhold all applicable payroll taxes as required by law. Manager's compensation shall be payable on the regular City pay dates for employees. Final payment shall be made within 24 hours following Manager's last day of service or as mutually agreed upon between City and Manager.
  - (b) City shall reimburse Manager for use of his personal vehicle for required city business. Also, Manager will be reimbursed for one round trip per month to his personal residence in Bend, OR. Reimbursement rate shall be \$.485/mile.
  - (c) City will provide Manager housing during the term of this Agreement.

4. Term and Termination of Agreement.

- (a) The services to be provided by Manager shall commence on January 8, 2007 and shall terminate at the close of business on the date a permanent City Manager begins employment with the City or at the close of business on June 6, 2007 whichever occurs first.
- (b) Nothing in this Agreement shall preclude further service by Manager, in an advisory capacity only, and by mutual agreement between City and Manager, to provide assistance or orientation, as deemed necessary by City, for the benefit of the permanent City Manager. Such further service by Manager shall be subject to the same terms and conditions as described in this Agreement, except that the authorities or responsibilities described in Section 1 of this Agreement shall pass to the permanent City Manager, who shall be solely responsible for their performance or completion.
- (c) In addition to termination as provided in subsection (a), above, either Manager or City shall have the right to terminate this Agreement effective thirty (30) days after provision of written notice of termination to the other party. This Agreement may be terminated at any time by mutual written agreement between Manager and City.

5. This Agreement may not be assigned by either City or Manager.

6. Amendments. This agreement may be amended only by mutual written agreement of both City and Manager.

7. Employment Status.

- (a) Manager shall be an employee of City during the term of this Agreement and, as such, shall be subject to standard employee tax withholding and shall be entitled to holiday pay and workers' compensation coverage. Except as provided in section 3, above, Manager shall not be entitled, however, to receive any City of Brookings benefits, including but not limited to health insurance, vision care, life insurance benefits or disability insurance benefits, and shall not accrue sick, vacation or other types of leave.

8. Entire Agreement. This Agreement constitutes the entire Agreement between City and Manager and supersedes any prior communication of understandings between the parties.

CITY MANAGER

CITY OF BROOKINGS

By: \_\_\_\_\_

By: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_



## COUNCIL AGENDA REPORT

**To:** Mayor & City Council (mtg of 1/3/07)

**From:** City Manager

**Date:** December 28, 2006

**Re:** Proposed Consulting Agreement Between Dale Shaddox (contractor) and the City of Brookings (City).

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Subject: Approval of consulting agreement between Dale Shaddox and the City of Brookings.

Recommendation: It is recommended that the City Council, by motion, approve the attached agreement.

Background /Discussion: City Manager Dale Shaddox has resigned his position with the City effective January 4, 2007. He has indicated a willingness to be available to the City on a consulting basis after January 4 (subject to availability) if the City wishes him to perform any work.

The agreement clearly states that the City is not obligated to assign any amount of work. The purpose of having a pre-authorized agreement simply provides a basis for completing tasks if needed.

Financial Impact(s): Compensation is clearly defined in the attached agreement. The financial impact to the City will be determined by the amount of work assigned.

City Manager Review and Approval for placement on Council Agenda:

  
Dale Shaddox, City Manager

**INDEPENDENT CONTRACTOR AGREEMENT**  
**City of Brookings/Dale Shaddox**

This Agreement is made and entered between Dale Shaddox, (Contractor) and the City of Brookings, an Oregon municipality (City).

**City and Contractor agree as follows:**

**1. SERVICES**

Contractor shall perform the services agreed upon in writing by City. Performance and payment for Contractor's services shall be as specified in this Agreement.

**2. REMUNERATION AND EXPENSES**

Contractor shall be paid **fifty-four dollars and no cents (\$54.00) per hour** for services rendered to City under this Agreement. Services will be billed to the nearest half hour.

Contractor will be reimbursed for reasonable business expenses as deemed necessary and actually incurred by Contractor in the performance of services rendered to City. In addition, actual costs of travel, lodging and meals shall be reimbursed in accordance with current City policy. Invoices for time and travel to and from Contractor's residence shall be one way only. Remuneration and expenses will be submitted to City for approval within 5 working days after the end of each month. All such invoices shall be paid by City to Contractor within 30 days of invoiced date.

**3. TERM OF AGREEMENT**

The term of this Agreement shall begin on **January 5, 2007** and shall terminate on **December 31, 2007** unless extended by mutual agreement of City and Contractor in writing.

Either party may terminate this Agreement at any time without cause and without further obligation, except for payment due for services and expenses performed prior to date of such termination. Termination of this Agreement shall not terminate the obligations of parties under Section 4 through 10 herein, which shall survive termination. City does not represent or guarantee that any specific amount of work will be provided to Contractor.

**4. CONFIDENTIALLY AND OWNERSHIP**

Contractor recognizes and acknowledges that City may possess certain confidential and proprietary information that is not in the public domain and that constitutes a valuable and unique asset, the disclosure of which could damage City and lessen the information's value. Confidential information includes, but is not limited to, all information and materials belonging to, used by, or in possession of City relating to its processes, services, technologies, contracts, financial information, development strategies and trade secrets of every kind and character, but shall not include information already within the public domain.

Contractor agrees to exercise the highest degree of care in safeguarding confidential and proprietary information against loss, theft or unauthorized disclosure.

Contractor agrees that all confidential and proprietary information is, and shall continue to be, the exclusive property of City, whether or not prepared in whole, or in part, by

Contractor pursuant to this Agreement and whether or not disclosed, or entrusted to, Contractor's custody. Contractor further agrees that Contractor's work product is a "work for hire" as defined under United States copyright law. Contractor agrees not to use or disclose in any manner any confidential or proprietary information, except in the course of performing Contractor's work for City, without City's express written approval. Contractor shall turn over to City, periodically, and at the end of project, all work product related to Agreement.

#### **5. RETURN OF MATERIALS**

Upon termination of this Agreement, Contractor agrees to return to City all City property to include documents, electronic data, software, work product, materials and equipment. Contractor will not retain any such materials without express written approval of City.

#### **6. INDEMNITIES; LIMITATION OF LIABILITY**

Contractor shall indemnify and hold harmless City, City's elected and appointed officials, and employees from, and against, any and all costs, losses and damages, including, but not limited to, all fees and charges of engineers, architects, attorneys and other professionals, and all court or arbitration or other dispute resolution costs caused by breaches of this Agreement by Contractor or its officers, directors, employees and consultants.

City shall indemnify and hold harmless Contractor, Contractor's officers, directors, partners, employees and any individuals or entities having a contract with Contractor to furnish services with respect to any project Contractor has undertaken on behalf of City, from and against any and all costs, losses and damages including, but not limited to, all fees and charges of engineers, architects, attorneys and other professionals, and all court or arbitration or other dispute resolution costs caused by breaches of this Agreement by City, City's elected and appointed officials, employees and consultants.

#### **7. RELATIONSHIP OF PARTIES**

Contractor is an independent contractor of City. Nothing in this Agreement, or stated by Contractor, shall be construed as creating an employer-employee relationship, a guarantee of future employment or engagement, or a limitation upon City's sole discretion to terminate this Agreement at any time without cause. Contractor agrees to be solely responsible for Contractor's federal, state and local taxes, withholding, social security, insurance and other benefits as regards services rendered under the terms of this Agreement and understands that City will not withhold or make social security, unemployment insurance, disability insurance payments or obtain worker's compensation on Contractor's behalf.

Contractor warrants to City that Contractor will continuously maintain independent contractor status while performing services to City and agrees to accept exclusive liability for complying with all applicable state and federal employment practices to include obligations such as payroll, payment of taxes, social security, disability and other contributions based upon fees paid to Contractor, Contractor's agents or employees under this Agreement. Contractor agrees to indemnify, defend, and hold City harmless against any and all such taxes and contributions, including penalties and interest.

## **8. OTHER CONTRACTOR ACTIVITIES**

Contractor is free to engage in other independent contractor activities, provided that contractor does not engage in any such activities that are inconsistent, or in conflict, with any provisions herein stated, or that interfere with Contractor's proper and efficient performance of services rendered under this Agreement.

## **9. ASSIGNMENT**

Contractor may not assign its rights, obligations under, or interests in this Agreement without first obtaining written consent of City, which consent shall not be reasonably withheld.

## **10. MISCELLANEOUS**

**a. Governing Law:** This Agreement shall be governed and construed by and in accordance with Oregon state law without regard to conflict of law. Time is of the essence of this Agreement.

**b. Entire Agreement:** This Agreement contains the entire agreement and understanding between Contractor and City and supersedes any prior, or contemporaneous, written or oral agreements.

**c. Amendment:** This Agreement may be amended only by a writing signed by Contractor and City.

**d. Severability:** If any term, provision, covenant or condition of the Agreement, or application thereof to any person, place or circumstance, shall be held to be invalid, unenforceable or void, the remainder of this Agreement, and such term, provision, covenant or condition as applied to other persons, places and circumstances, shall remain in full force and effect.

**e. Construction:** The headings and captions of this Agreement are provided for convenience only and are intended to have no effect in construing or interpreting this Agreement. The language in all parts of the Agreement shall be in all cases construed according to its fair meaning and not strictly for or against either party.

**f. Rights Cumulative:** The rights and remedies provided by this Agreement are cumulative and the exercise of any right or remedy by either party hereto, whether pursuant to this Agreement, to any other agreement, or to law, shall not preclude or waive its rights to exercise any or all other rights and remedies.

**g. Non-waiver:** No failure or neglect in any instance of either party herein to exercise any right, power, or privilege hereunder, or under law, shall constitute a waiver of any other right, power or privilege, or of the same right, power or privilege in any other instance. All waivers by either party hereto must be contained in a written instrument signed by the party to be charged.

**h. Notices:** Any notice, request, consent or approval, required or permitted to be given under this Agreement or pursuant to law, shall be sufficient, if in writing, and when sent by certified or registered mail, with postage prepaid, to Contractor, addressed to Dale Shaddox, 893 St. Andrews Way, Eagle Point, OR 97524, or to City, addressed to City of Brookings, Mayor's Office, 898 Elk Drive, Brookings, OR 97415.

**i. Assistance:** Contractor shall, upon reasonable notice during and after termination of services rendered, furnish such information and proper assistance to the City as may



reasonably be required by City in connection with work performed by Contractor; provided, however, that such assistance following termination shall be furnished at the same level of compensation as provided in this Agreement.

**j. Disputes:** Any controversy or claim arising from, or relating to this Agreement, or the breach thereof, shall be settled by arbitration in Curry County, Oregon and conducted in accordance with the Arbitration Rules published by the Arbitration Service of Portland, Inc., except for the initiation process which shall be conducted as provided in subparagraph k., below, and judgment on the award rendered by the arbitrator(s) attorney fees to the prevailing party after consideration of settlement offers.

**k. Initiation of Arbitration:** Unless otherwise agreed by the parties, the arbitration shall be held before a single arbitrator selected as follows: the disputing parties shall, within five (5) business days from the date arbitration is requested in writing by either party, agree upon an arbitrator. If the parties cannot agree, then each party, with five (5) business days, thereafter, shall name an arbitrator who shall be an attorney licensed to practice in Oregon and experienced and qualified to resolve matters contemplated by this Agreement. Those two arbitrators shall then, within five (5) business days select a third arbitrator who shall be qualified as defined above, and such third arbitrator shall be the sole arbitrator to hear and determine the dispute. If a party fails to name an arbitrator within the time limit provided in this subparagraph, k., the arbitrator timely named by the other party shall hear and decide the dispute.

In witness whereof, the parties have executed this Agreement on the day or days hereunder appearing.

**CITY OF BROOKINGS:**

**CONTRACTOR:**

By: \_\_\_\_\_  
Pat Sherman, Mayor

By:   
Dale Shaddox

Signature authorized by City Council on:  
January 3, 2007