

City of Brookings

SPECIAL MEETING AGENDA

CITY COUNCIL

Monday, November 28, 2022, 3:00 P.M.

City Hall, 898 Elk Drive, Brookings, OR 97415

SPECIAL MEETING

A. Call to Order

B. Pledge of Allegiance

C. Roll Call

D. Staff Reports

1. Amendment to Agreement with Gary Milliman [Pg. 2]
 - a. Agreement – Management Consulting Services [Pg. 3-8]
2. City Manager Pro Tem Employment Agreement [Pg. 9]
3. Resignation of Councilor Brad Alcorn [Pg. 10]
4. Declare Council Position 1 Vacant and Prescribe Method for Filling Vacancy [Pg. 11]

E. Adjournment

*Public Comment forms and the agenda packet are available on-line at www.brookings.or.us, at Brookings City Hall and at Chetco Community Public Library. Return completed Public Comment forms to the City Recorder before the start of the meeting or during regular business hours.

All public meetings are held in accessible locations. Auxiliary aids will be provided upon request with at least 72 hours advance notification. Please contact 469-1102 if you have any questions regarding this notice.

If you would like to view the City Council Meeting live, you can via:

-Television – Charter Channel 181

-Internet – Go to the City of Brookings website at <http://www.brookings.or.us>

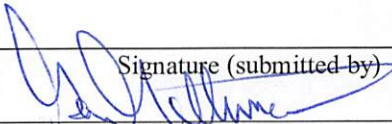
Watch Meeting Live instructions: 1. Visit the City of Brookings website home page. 2. Click on Government (top page). 3. Click on City Council (right side). 4. Under Agenda & Meetings click Watch Meeting Live. 5. You will need to download the VLC Media Player. Follow directions and links for your device.

CITY OF BROOKINGS

COUNCIL AGENDA REPORT

Meeting Date: November 28, 2022

Originating Dept: City Manager



Signature (submitted by)

City Manager Approval

Subject: Amendment to Agreement with Gary Milliman for City Manager Pro Tem services

Recommended Motion: Motion to authorize the Mayor to execute an amendment to the Agreement for City Services City Manager Pro Tem with Gary Milliman to provide that services as City Manager Pro Tem shall cease effective on the close of business on November 30, 2022, and providing that Milliman will continue to provide as-needed services as a management consultant under the direction of the City Manager Pro Tem.

Financial Impact: None

Background/Discussion: Gary Milliman was retained to serve as City Manager Pro Tem on July 11, 2022. The original 90-day agreement was amended to provide for continuing services. The City Charter provides for the maximum duration of term for a City Manager Pro Tem of six months, that being January 11, 2023. The City Council has indicated that they wish to appoint a new City Manager Pro Tem effective December 1, 2022. The agreement provides for four weeks notice of termination by Milliman or two weeks notice of termination by the City; Milliman has agreed to waive the notice requirements.

Certain City business matters which were initiated before or during the tenure of Milliman as City Manager Pro Tem are continuing and the City may request his assistance in the completion of these items, including certain contracts and an ordinance scheduled for action at the December 12, 2022, City Council meeting. It is proposed that the current agreement with Milliman be modified to provide for as-needed services at the discretion of the City Manager Pro Tem, with compensation fixed at \$75.00 hourly.

Attachment:

- a. Agreement – Management Consulting Services

AGREEMENT

MANAGEMENT CONSULTING SERVICES

This Agreement is made and entered into this 28th day of November, 2022, by and between the **City of Brookings**, a municipal corporation (“City”), and **Gary Milliman** (“Milliman”). The parties to this Agreement do hereby enter into the terms, conditions, covenants, duties , and responsibilities as follows:

WHEREAS, City is a municipal corporation providing a wide range of services to the community; and

WHEREAS, Gary Milliman was retained to serve as City Manager Pro Tem for 90 days, beginning on July 11, 2022; and

WHEREAS, the original 90-day agreement for City Manager Pro Tem services was amended to provide for continuing services; and

WHEREAS, the City Charter provides for the maximum duration of term for a City Manager Pro Tem of six months, that being January 11, 2023; and

WHEREAS, the City Council has indicated that they wish to appoint a new City Manager Pro Tem effective December 1, 2022; and

WHEREAS, Milliman’s employment agreement provides for four weeks’ notice of termination by Employee or two weeks’ notice of termination by City; and

WHEREAS, Milliman has agreed to waive the notice requirements; and

WHEREAS, certain City business matters which were initiated before or during Milliman’s tenure as City Manager Pro Tem are continuing and the City may request his assistance in the completion of these items, including certain contracts and an ordinance scheduled for action at the December 12, 2022, City Council meeting; and

WHEREAS, it is proposed that a consulting agreement with Milliman be executed to provide for as-needed services at the discretion of the City Manager Pro Tem, with compensation fixed at \$75.00 per hour.

WHEREAS, in contemplation of and subject to the approval of the City Council, Milliman and City agree that Milliman’s services to the City as City Manager Pro Tem shall cease effective on the close of business on November 30, 2022, and providing that Milliman will continue to provide as-needed services as a management consultant under the direction of the City Manager Pro Tem.

NOW THEREFORE, in consideration of the mutual covenants herein contained and in accordance with Oregon Revised Statutes, the parties hereto agree as follows:

1. **Term.** The term of this Agreement shall extend from December 1, 2022, to December 15, 2022,

unless extended for up to an additional term upon mutual agreement of both parties.

2. **Scope of Work.** Milliman agrees to perform during the term of this Agreement, the following services:

2.1 Generally, Milliman shall provide all materials and services associated with providing management services to City associated with pending City business matters which Milliman worked on while City Manager Pro Tem, in order to assist the incoming new City Manager Pro Tem.

2.2 Specifically, Milliman shall assist the incoming City Manager Pro tem with City Council meeting agenda items through the December 12, 2022, regular City Council meeting .

2.3 Milliman shall not perform and City shall not pay for services which are outside the work described in this Section 2, without City's prior written consent. Said consent shall identify any maximum, additional amount of compensation owed for such services, based upon the rate set out in Section 3.

3. **Compensation.**

3.1 **Compensation.** For the services described and performed by Milliman, the City agrees to pay, and Milliman agrees to accept, compensation in the maximum not to exceed amount of [insert payment amount/arrangement] .

3.2 **Invoices.** Invoices for Milliman's services shall be \$75.00 per hour. This amount shall be billed to the City in summary form, detailing Milliman's fees and costs.

3.3 **Payments.**

(A) City will review Milliman's invoice and within ten (10) days of receipt notify Milliman in writing if there is a disagreement or dispute with the invoice. If there are no such disputes, City shall pay the invoice amount in full within thirty (30) days of invoice date.

(B) City shall reimburse Milliman for pre-approved expenses reasonably incurred by Milliman in furtherance of his duties under this Agreement. Such expenses may include mileage, meals, or hotel accommodations. City shall not reimburse for any expense, unless Milliman first obtains City's prior written authorization before incurring such expense. Milliman will provide appropriate documentation and receipts of such expenditures when submitting them for reimbursement.

4. **Covenants.** Milliman agrees to faithfully and diligently perform the duties required by this Agreement and will not engage in any activity that is or may be contrary to the welfare, interest, or benefit of City.

5. City Responsibilities.

5.1 In addition to City's payment obligations, as set forth in Section 3.3 above, City shall report the total amount of all payments to Milliman, including any expenses, in accordance with federal Internal Revenue Services and State of Oregon Department of Revenue Regulations.

5.2 City shall make all provisions for Milliman to enter upon public and private property as necessary to perform Milliman's duties under this Agreement. City shall also provide all licenses and permits necessary to perform this Agreement.

6. Termination.

6.1 Termination for Convenience. This Agreement may be terminated by mutual consent of the parties upon written notice at any time. In addition, City may terminate all or part of this Agreement upon determining that termination is in the best interest of City by giving seven (7) days' prior written notice of intent to terminate, without waiving any claims or remedies it may have against Milliman.

Upon termination under this Section, Milliman shall be entitled to payment in accordance with the terms of this Agreement for work completed and accepted before termination less previous amounts paid and any claim(s) City has against Milliman. Pursuant to this Section, Milliman shall submit an itemized invoice for all unreimbursed work completed before termination and all Agreement closeout costs actually incurred by Milliman. City shall not be liable for any costs invoiced later than thirty (30) days after termination unless Milliman can show good cause beyond its control for the delay.

6.2. Termination for Cause. City may terminate this Agreement effective upon delivery of written notice to Milliman, or at such later date as may be established by City, under any of the following conditions:

(A) If City funding is not obtained, continued, or appropriated at levels sufficient to justify payments in the Agreement amounts. City may modify this Agreement or adjust Milliman's level of service to accommodate such a reduction in revenue.

(B) If federal or state regulations or guidelines are modified, changed, or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this Agreement or are no longer eligible for the funding proposed for payments authorized by this Agreement.

(C) If any license or certificate required by law, regulation, or this Agreement to be held by Milliman to provide the services required by this Agreement is for any reason denied, revoked, or not renewed.

6.3. Termination for Default.

(A) If the City fails to perform in the manner called for in this Agreement or if the City fails to comply with any other provisions of the Agreement, Milliman may terminate this Agreement for default after giving the City the notice and opportunity to cure required by this Section. Prior to termination for

default, Milliman must give the City written notice of the breach and of Milliman's intent to terminate. If the City has not entirely cured the breach within fifteen (15) days of the date of the notice, then the Milliman may terminate the Agreement at any time thereafter by giving the City a written notice of termination.

(B) If Milliman fails to perform in the manner called for in this Agreement or if Milliman fails to comply with any other provisions of the Agreement, the City may terminate this Agreement for default. Termination shall be effected by serving a notice of termination on Milliman setting forth the manner in which Milliman is in default. Milliman shall be paid the Agreement price only for services performed in accordance with the manner of performance as set forth in this Agreement.

7. **Disengagement Agreement.** Upon receiving a notice of termination, and except as otherwise directed in writing by City, Milliman will continue to perform management services to the date agreed upon as the termination date.

8. **Standard of Care.** The standard of care applicable to Milliman's service will be the degree of skill and diligence normally employed by professionals performing the same or similar services at the time such services are performed. Milliman will re-perform any services not meeting this standard without additional compensation, and shall perform such additional work as may be necessary to correct errors in the management services required under this Agreement without undue delay and without additional costs.

9. **Remedies.** In the event of breach of this Agreement, the parties shall have the following remedies:

9.1 If terminated under Section 6.3 by City due to a breach by Milliman, City may complete the work either itself, by agreement with another consultant, or by a combination thereof. If the cost of completing the work exceeds the compensation to Consultant as provided under this Agreement, then Milliman shall pay as damages to City the amount of the excess.

9.2 In addition to the above remedies for a breach by Milliman, City also shall be entitled to any other equitable and legal remedies that are available.

9.3 If City breaches this Agreement, Milliman's remedy shall be limited to termination of the Agreement and receipt of Agreement payments to which Milliman is entitled.

9.4 City shall not be liable for any indirect, incidental, consequential, or special damages under the Agreement or any damages arising solely from terminating the Agreement in accordance with its terms.

10. **Confidentiality.** Milliman shall maintain the confidentiality, both external and internal, of any confidential information to which it is exposed by reason of this Agreement.

11. **Notice.** Any required or permitted notices hereunder must be given in writing at the address of each party set forth below, or to such other address as either party may substitute by written notice to the other in the manner contemplated herein, by one of the following methods: hand delivery; registered, express, or certified mail, return receipt requested, postage prepaid; or nationally-recognized private express courier:

CITY:

MILLIMAN:

City of Brookings

12. **Indemnity.** To the extent permitted by law, Milliman shall protect, defend, indemnify and hold the City harmless from and against all claims, demands, damages, costs, actions and causes of actions, liabilities, fines, penalties, judgments, expenses and attorney fees, resulting from the injury or death of any person or the damage to or destruction of property, or the infringement of any patent, copyright, trademark or trade secret, arising out of the work performed or goods provided under this Agreement or Milliman's violation of any law, ordinance or regulation, contract provision or term, or condition of regulatory authorization or permit, except for damages resulting from the sole negligence of City.

13. **Independent Contractor.** Milliman is an independent contractor for all purposes and is not entitled to any compensation other than the compensation provided for under this Agreement. While City reserves the right to set various schedules and evaluate the quality of Milliman's completed work, City cannot and will not control the means and manner of Milliman's performance. Milliman is responsible for determining the appropriate means and manner of performing the work provided for under this Agreement. Milliman is responsible for all federal and state taxes applicable to compensation and payment paid to Milliman under this Agreement and will not have any amounts withheld by City to cover Milliman's tax obligations. Milliman is not eligible for any City fringe benefit plans. It is recognized that Milliman may or will be performing work during the term for other parties and that City is not the exclusive user of the services that Milliman provides.

14. **No Benefits.** Milliman will not be eligible for any federal Social Security, state Worker's Compensation, unemployment insurance or Public Employees Retirement System benefits from payments made pursuant to this Agreement, except as a self-employed individual.

15. **Public Contracting Requirements.** Milliman shall comply with all federal, state and local laws and ordinances applicable to the work under this Agreement, including, without limitation, applicable provisions of the Oregon Public Contracting Code including ORS 279B.020, 279B.220, 279B.230, and 279B.235, as more particularly set forth in Exhibit C.

16. **Governing Law.** This Agreement is to be governed by and under the laws of the State of Oregon.

17. **Consent to Jurisdiction and Venue.** The parties hereby consent to jurisdiction and venue of the Curry County Circuit Court, Curry County, Oregon, over all legal matters pertaining to this Agreement, including, but not limited to, its enforcement, interpretation or rescission.

18. **Waiver and Severability.** The failure of City to enforce any provision of this Agreement shall not constitute a waiver by City of that or any other provision of this Agreement. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the Agreement shall continue in full force and effect and shall in no way be impaired or invalidated.

19. **Entire Agreement.** This Agreement shall be the exclusive agreement between the parties for management services. No modification of this Agreement shall be effective unless in writing and signed by an authorized representative of both parties, except as otherwise authorized herein.

20. **No Third-Party Beneficiaries.** This Agreement is between City and Milliman only and there are no other parties, express or implied, that are beneficiaries to this Agreement.

34. **Signatures.** This Agreement is not effective unless and until it is approved, signed and dated by an authorized representative of each party.

IN WITNESS WHEREOF, the City of Brookings has approved and caused this Agreement to be signed and executed on its behalf by the Mayor and duly attested by the City Recorder, and Milliman has signed and executed three (3) copies of this Agreement.

Executed this ____ day of November, 2022 at Brookings, Oregon.

City of Brookings

By: _____
Gary Milliman

By: _____
Ron Hedenskog, Mayor

Date: _____

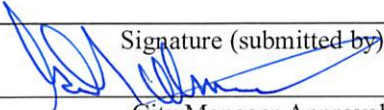
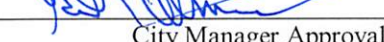
Date: _____

CITY OF BROOKINGS

COUNCIL AGENDA REPORT

Meeting Date: November 28, 2022

Originating Dept: City Manager


Signature (submitted by)

City Manager Approval

Subject: City Manager Pro Tem Employment Agreement

Recommended Motion: Motion to appoint Christy Wurster as City Manager Pro Tem and authorize the Mayor to execute an Employment Agreement

Financial Impact:

Background/Discussion: The City Council has interviewed Christy Wurster for the position of City Manager Pro Tem and has proceeded to negotiate the terms of an employment agreement. Assuming a tentative agreement on terms can be reached as of November 28, 2022, the appointment would be effective December 1, 2022.


Wurster has served previously as the City Manager in Silverton and Dayton, Oregon, and as City Manager Pro Tem for the Cities of Sweet Home (twice) and Fairview, Oregon; and served in management positions with the League of Oregon Cities and the City of Salem. She has a Master of Public Administration degree from Portland State University.

CITY OF BROOKINGS

COUNCIL AGENDA REPORT

Meeting Date: November 28, 2022

Originating Dept: City Manager


Signature (submitted by)

City Manager Approval

Subject: Resignation of Councilor Brad Alcorn

Recommended Motion: Motion to accept the resignation of Councilor Brad Alcorn effective November 28, 2022.

Financial Impact: None

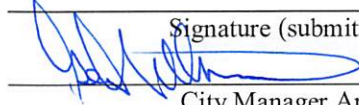
Background/Discussion: Councilor Brad Alcorn has been elected to the Curry County Board of Commissioners. Councilor Alcorn has advised staff that he plans to resign from his seat on the City Council (Position 1) at the City Council meeting of November 28, 2022.

CITY OF BROOKINGS

COUNCIL AGENDA REPORT

Meeting Date: November 28, 2022

Originating Dept: City Manager


Signature (submitted by)

City Manager Approval

Subject: Declare City Council Position 1 Vacant and Prescribe Method for Filling Vacancy

Recommended Motion: Motion to declare City Council Position 1 vacant effective November 28, 2022, due to the resignation of City Councilor Brad Alcorn.

Alternative Subsequent motions:

- a) Motion to place the matter of filling the vacancy in City Council Position 1 on the City Council agenda for December 12, 2022, for discussion and possible action.
- b) Motion to appoint _____ to Brookings City Council Position 1 to fulfill the unexpired term effective immediately.

Financial Impact: None

Background/Discussion: City Councilor Brad Alcorn has resigned, and the City Council has accepted his resignation, effective November 28, 2022.

The City Council can now declare the seat vacant. Subsequently the City Council may appoint any Brookings elector who has resided within the City for one year or more to the vacant seat. Such action could be taken immediately, or could be placed on a future City Council agenda