



CITY OF WHEATLAND

CITY COUNCIL MEETING STAFF REPORT

July 9, 2019

SUBJECT: Public Works Director Employment Agreement

PREPARED BY: Jim Goodwin

Recommendation

Staff recommends approving agreement as presented.

Background/Discussion

Don Scott has been employed by the City of Wheatland for 20 years. Mr. Scott will retire at the end of this calendar year.

This employment contract is an interim step, reducing the number of hours Mr. Scott will work for the next six months and adjusting the hourly rate and benefits.

Alternatives

The City Council may choose not to approve the proposed Employment Agreement.

Fiscal Impact

No impact as the position is funded in the current budget.

Attachments

1. Employment Agreement with Don Scott

**AGREEMENT BETWEEN THE CITY OF WHEATLAND
AND DON SCOTT FOR PUBLIC WORKS DIRECTOR SERVICES**

This Agreement ("Agreement") is made and entered into this 1st day of July, 2019, by and between the City of Wheatland, a municipal corporation ("City") and Don Scott, an individual ("Scott"), who agree as follows:

1. **Employment.** City hereby appoints and employs Scott as Public Works Director of the City, and Scott hereby accepts such employment, on and subject to the terms and conditions of this Agreement.

2. **Term.** This Agreement shall remain in effect until January 31, 2020 unless sooner terminated as provided by the termination provision below.

3. **Duties.** Scott shall perform those duties and have those responsibilities as outlined the job description for the position (Exhibit 1). Scott also shall perform such other duties and responsibilities as assigned by the City Manager from time to time. Scott at all times shall act in the best interests of City and perform his duties in a competent and professional manner.

4. **Hours.** Scott acknowledges that his position is a part-time management position. It is anticipated that Scott shall work an average of 48 hours per pay period. However, that time may vary depending on City's needs. Scott shall not engage in any conduct, other employment or business, commercial or professional pursuits, whether for compensation or otherwise, that would interfere with his responsibilities and duties to City or that would reflect unfavorably upon the interests of City. Any outside employment, consulting or business conducted by Scott during the term of this Agreement requires the prior approval of the City Manager.

5. **Compensation.**

(a) For all services to be rendered by Scott under this Agreement, City shall provide to Scott a salary in the amount of \$50 per hour. Salary shall be paid at the times and in the same manner as other City employees are paid.

(b) Scott shall not be compensated for overtime hours worked or otherwise earn or be entitled to compensatory time off for hours worked in excess of eight hours per day or 40 hours per week.

(c) Scott may participate in the City of Wheatland ICMA 401(a) retirement program.

(d) Scott's employment shall be governed by the City Personnel Rules and Regulations Manual (City Resolution No. 27-06), as such rules and regulations may be amended by City from time to time. If any term or condition of this Agreement is in conflict with a term or condition in the Personnel Rules and Regulations Manual, the provision in this Agreement shall govern. If any term or condition of this Agreement is inconsistent or in conflict with a federal or state law, the law shall govern.

(e) Because Scott's duties require the use of an automobile, City shall reimburse Scott for mileage incurred while performing City business (exclusive of

commuting mileage) at the current Internal Revenue Service mileage rates. Scott shall be required to obtain a rider on his personal automobile insurance naming City as an additional insured, and City shall reimburse Scott for any direct expenses related thereto.

(f) City-related direct expenses shall be reimbursed to Scott by City. Itemized documentation shall be required for any such reimbursement.

(g) Scott will accrue both sick and vacation leave at the same rate as other miscellaneous employees, prorated based on his part-time status.

(h) Scott will not receive employee medical benefits and may not receive in lieu payment for declining health insurance.

6. Ownership of Documents. Every document, report, study, spreadsheet, worksheet, plan, blueprint, specification, drawing, map, photograph, computer model, computer disk, magnetic tape, CAD data file, computer software and any other writing or thing prepared by Scott during the term of his employment (the "Work") shall be the property of City. City shall have the right to use, modify, reuse, reproduce, publish, display, broadcast and distribute the Work and prepare derivative and additional documents or works based on the Work without further compensation to or permission from Scott.

7. Termination. This Agreement may be terminated prior to its expiration date in any one of the following ways:

(a) By mutual agreement of the parties, expressed in writing.

(b) By Scott, upon giving City not less than 15 days prior written notice of his election to resign from employment and terminate this Agreement.

(c) By the death of Scott.

(d) By City, for cause, upon giving to Scott written notice of immediate termination. The written notice of termination shall specify: (1) the particular cause(s) and the facts and circumstances justifying the termination of the Agreement for cause, and (2) the opportunity of Scott to meet with the City Council on the reasons for his termination. If Scott requests a meeting, the meeting will be held at the City Council's earliest convenience in a closed session, unless Scott requests an open session. After the meeting, the City Council may affirm, modify or reverse its discretion to terminate for cause. For purposes of this Agreement, the following will justify termination for cause: willful breach of duty; habitual neglect of duty; gross insubordination; conviction of a crime involving moral turpitude; conduct that makes it impossible or impracticable to perform the duties under this Agreement or that seriously impedes City operations; conduct that tends to bring discredit to City; conduct unbecoming an employee in public service; mishandling of City funds; any intentional misrepresentation or fraud in connection with the performance of his duties; theft of City property; violation of law; or a material breach of this Agreement.

(e) By City, without cause, upon giving Scott 30 days prior written notice of termination.

8. **Entire Agreement.** The parties intend this writing to be the sole, final, complete, exclusive, and integrated expression and statement of the terms of their contract concerning the subject matter addressed in the Agreement. This Agreement supersedes all prior oral or written negotiations, representations, contracts or other documents that may be related to the subject matter of this Agreement, except those other documents that may be expressly referenced in this Agreement.

9. **Notices.** Any notice to be given to Scott shall be sufficiently served if given to him personally or if deposited in the United States Mail, regular pre-paid mail, addressed to him at his most recent residence address as shown on the Agency payroll records. Any notice to be given to City shall be addressed to the City Council and delivered or mailed to the City Clerk at City Hall.

10. **Successors and Assigns.** This Agreement is personal to Scott. He may not transfer or assign the Agreement or any part of it. Subject to this restriction on transfer and assignment, this Agreement shall bind, and inure to the benefit of, the successors, assigns, heirs and legal representatives of the parties.

11. **Amendments.** This Agreement may be amended only by a subsequent writing approved and signed by both parties. Any amendment by City must be approved by the City Council at a noticed public meeting. Individual City Council members do not have the authority, express or implied, to amend, modify, waive, extend or in any way alter this Agreement or the terms and conditions of Scott's employment.

12. **Waiver.** The waiver at any time by either party of its rights with respect to a default or other matter arising in connection with this Agreement shall not be deemed a waiver with respect to any subsequent default or matter.

13. **Construction and Interpretation.** The parties agree and acknowledge that this Agreement has been arrived at through negotiation and that each party has had a full and fair opportunity to revise the terms of this Agreement. Consequently, the normal rule of construction that any ambiguities are to be resolved against the drafting party will not apply in construing or interpreting this Agreement.

14. **Partial Invalidity.** If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way.

15. **Governing Law and Venue.** Except as otherwise required by law, this Agreement shall be interpreted, governed by, and construed under the laws of the State of California. The County of Yuba will be venue for any state court jurisdiction and the Eastern District of California will be venue for any federal court litigation concerning the enforcement or construction of this Agreement.

CITY OF WHEATLAND

DON SCOTT

Jim Goodwin, City Manager

Don Scott

Attest:

Lisa Thomason, City Clerk