

Council Business Meeting

October 20, 2020

Agenda Item	Confirmation of Mayoral Appointment of Scott Fleury as Public Works Director	
From	Tina Gray Adam Hanks	Human Resource Director Interim City Administrator
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SUMMARY

The Mayor is requesting confirmation by the City Council of the appointment of Scott Fleury as Public Works Director, removing the Interim designation from his title. The action that the confirmation takes is the approval of an employment agreement between the City of Ashland and Scott Fleury to serve as Public Works Director.

POLICIES, PLANS & GOALS SUPPORTED

Comply with Ashland Municipal Code Section 2.28.320 and 2.28.330.

PREVIOUS COUNCIL ACTION

The Council appointed Scott as Interim Public Works Director at the [regular business meeting on April 7, 2020](#), upon learning of Paula Brown's retirement as Public Works Director effective May 2, 2020.

BACKGROUND AND ADDITIONAL INFORMATION

During Scott's 13 ½ years with the City, he has obtained his Professional Engineer (P.E.) designation and has held progressively responsible positions in the Public Works Department. Fleury worked directly with Paula Brown as Deputy Public Works Director. Since being appointed as Interim Public Works Director, Fleury has successfully performed all the duties required by the Public Works Director job description and Ashland Municipal Code.

FISCAL IMPACTS

The adopted FY 19-21 biennial budget included funding for the position of Public Works Director as well as Deputy Public Works Director. Cost savings in Public Works Administration will continue as there are no plans to fill Scott's previous position of Deputy Public Works Director.

STAFF RECOMMENDATION

Staff recommends confirming the Mayor's appointment of Scott Fleury to Public Works Director and authorizing the Mayor to sign the employment agreement to effectuate appointment.

ACTIONS, OPTIONS & POTENTIAL MOTIONS

1. I move to confirm the Mayor's appointment of Scott Fleury as the Public Works Director and authorize the Mayor to sign the related employment agreement.
2. I move to amend the employment agreement . . .

REFERENCES & ATTACHMENTS

Attachment 1: Employment Agreement between the City of Ashland and Scott Fleury

**CITY OF ASHLAND
Employment Agreement**

Public Works Director

THIS AGREEMENT, made and entered into this ____ day of October, by and between the City of Ashland ("City") and Scott Fleury ("Employee").

R E C I T A L S

- A. City desires to employ the services of Employee as the Public Works Director of the City of Ashland; and,
- B. It is the desire of the City to establish certain conditions of employment for Employee; and,
- C. It is the desire of the City to (1) secure and retain the services of Employee and to provide inducement for Employee to remain in such employment, (2) to make possible full work productivity by assuming Employee's morale and peace of mind with respect to future security, (3) to act as a deterrent against malfeasance or dishonesty for personal gain on the part of Employee; and, (4) to provide a just means for terminating Employee's services at such time as Employee may be unable fully to discharge Employee's duties due to disability or when City may otherwise desire to terminate Employee's services; and,
- D. Employee desires to accept employment as Public Works Director of the City of Ashland, and to begin his employment October 21, 2020.

City and Employee agree as follows:

Section 1. Duties.

The City hereby agrees to employ Scott Fleury as the Public Works Director of the City of Ashland to perform the functions and duties specified in the City Charter, City Ordinances, and the job description for the position, and to perform such other legally and ethically permissible and proper duties and functions as the Mayor and/or City Council shall from time to time assign. The Public Works Director shall devote full time to the performance of his duties.

Section 2. Term.

- A. Nothing in this agreement shall prevent, limit, or otherwise interfere with the right of the Mayor, with the consent of the City Council in accordance with the City Charter, from terminating the services of the Public Works Director at any time, subject only to the provisions set forth in the section titled "Severance pay" of this agreement. Except as specifically provided in this Agreement, Employee shall

serve at the pleasure of the City, without any requirement to demonstrate cause for dismissal.

- B. Nothing in this agreement shall prevent, limit, or otherwise interfere with the right of the Employee to resign at any time from his position with the City, subject only to the provisions of this agreement.
- C. Employee agrees to remain in the employ of the City until October 21, 2023, and neither to accept other employment nor to become employed by any other employer until this termination date, unless the termination date is affected as otherwise provided in this agreement. This provision shall not restrict Employee from using vacation or personal leave for teaching, consulting or other activities provided these activities do not conflict with the regular duties of the Employee and are approved in writing by the Mayor, with the consent of the City Council.
- D. In the event written notice is not given by either party to terminate this agreement at least ninety (90) days prior to the termination date, this agreement shall be extended for successive three-year periods on the same terms and conditions provided herein.
- E. In the event Employee wishes to voluntarily resign the position during the term of this agreement, Employee shall be required to give the City thirty (30) days written notice of such intention, unless such notice is waived by the Mayor, with consent of the City Council. Employee will cooperate in every way with the smooth and normal transfer to the newly appointed individual.

Section 3. Salary

Beginning October 21, 2020, City agrees to pay Employee a monthly salary at step 3 of the salary schedule (\$57.4986/hour). Employee will advance to step 4 in the salary range for his position in December based on successful performance as determined by the City Administrator/Manager. The City agrees to annually increase the monthly salary and/or benefits in the same percentage as may be accorded other department heads. In addition, the Mayor and City Council agree to review the base salary and other benefits of the Employee at the Employee's annual performance review, and to make such adjustments, if any, which it deems appropriate.

Section 4. Performance Evaluation.

The City Administrator/Manager shall review and evaluate the performance of the employee at least once annually. Employee shall receive a written copy of the performance evaluation and be provided an adequate opportunity for the employee to discuss the details of the evaluation.

Section 5. Hours of Work.

It is recognized that Employee must devote a great deal of time outside the normal office hours to the business of the City, and to that end Employee will be allowed to take compensatory time off as Employee shall deem appropriate during normal office hours, so long as the business of the City is not adversely affected. Work in excess of forty (40) hours per week is deemed part of the professional responsibility for which the

Employee shall not be paid overtime. In recognition of the extra hours required of the Public Works Director, Employee shall receive forty (40) hours of administrative leave each year to be used before June 30th or deemed forfeited. Employee will receive additional administrative leave if granted by the City Council in the Management Resolution adopted each year.

Section 6. Automobile.

Employee's duties require that Employee shall have the use of a motor vehicle at all times during employment with the City. The City shall provide an automobile allowance of \$350.00/month for the use of said automobile for travel. Employee shall be responsible for paying for insurance, operation, maintenance and repairs of the vehicle.

Section 7. Health, Welfare and Retirement.

Except as modified by this agreement, Employee shall be entitled to receive the same retirement, vacation, sick leave benefits, holidays, and other fringe benefits and working conditions as they now exist or may be amended in the future, as apply to any other department head, as spelled out in the City's Management Resolution in addition to any benefits enumerated specifically for the benefit of Employee as provided in this agreement.

Section 8. Dues and Subscriptions.

City agrees to budget and to pay for the professional dues and subscriptions of Employee necessary for the continuation and full participation in national, regional, state and local associations and organizations necessary and desirable for Employee's continued professional, growth and advancement, and for the good of the City.

Section 9. Professional Development

The City hereby agrees to annually budget and allocate sufficient funds to pay necessary travel and living expenses of the Public Works Director while he represents the City at conferences, trainings, official business meetings or professional organizations that serve the City's interest and/or are reasonably necessary to provide for the professional advancement of the Public Works Director. Membership on any national or state commission or committee shall be subject to the approval of the City Administrator/Manager.

Section 10. Professional Liability

The City agrees that it shall defend, hold harmless, and indemnify the Public Works Director from all demands, claims, suits, actions, errors, or other omissions in legal proceedings brought against the Public Works Director in his individual capacity or in his official capacity, provided the incident arose while the Public Works Director was acting within the scope of his employment. If in the good faith opinion of the Public Works Director conflict exists as regards to the defense of any such claim between the legal position of the city and the Public Works Director, she may engage counsel in which event, the City shall indemnify the Public Works Director for the cost of legal counsel.

Section 11. Severance Pay

- A. In the event Employee is dismissed during the term of this Agreement, and Employee is not being dismissed for any reason set forth in paragraphs B or C of this section, the City agrees to offer Employee a severance agreement. The amount of severance pay to be offered to Employee in the severance agreement shall be equal to the employee's monthly base salary at the time of dismissal; times the number of months that employee has been employed up to a maximum of six (6) months.

In addition, the severance agreement offered to the employee will require the City to continue to pay the employer portion of the premium for medical and dental insurance coverage through the end of the month the Employee's severance pay is intended to cover or until the last day of the month in which Employee obtains employment with alternative insurance whichever occurs earlier.

As a condition of the severance offer, the Employee will be required to release the City, its officers, representatives, insurers, and employees from claims arising from employment with the City and separation of employment.

- B. Employee will not be eligible to receive the severance offer described in Paragraph A of this section if this Agreement is not renewed by the City, as provided in Section 2, above. Employee also will not be eligible to receive the severance agreement offer if Employee breaches any provision of this agreement, or if Employee engages in any act of misconduct in the performance of duties on behalf of the City. The term "misconduct" includes misappropriation, dishonesty, breach of trust, insubordination, neglect of duty, failure to perform duties in a manner that is consistent with applicable law, failure to correct performance deficiencies identified in writing by the City Council after a reasonable opportunity, as determined by the City, to correct the deficiencies; committing any violation of City policies or standards that the City deems a serious violation; or engaging in other action demonstrating a disregard for the interest of the City. The term "misconduct" also includes engaging in criminal acts or other off-duty behavior that the City views as impairing the Employee's ability to effectively perform the Employee's duties or jeopardize the reputation of the City.
- C. Employee will not be eligible to receive the severance offer described in Paragraph A of this Section if Employee, in accordance with applicable law, is dismissed due to a disability that prevents Employee from performing the duties of the position.

Section 12. Other Terms and Conditions of Employment

City shall by amendments to this agreement, fix such other terms and conditions of employment from time to time, as it may determine, relating to the performance by

Employee with the agreement of Employee, provided such terms and conditions are not inconsistent or in conflict with the provisions of this agreement.

Section 13. Severability.

In any part, term, or provision of this agreement is held by the courts to be illegal or in conflict with the laws of the State of Oregon, the validity of the remaining portions of the agreement shall not be affected and the rights and obligations of the parties shall be construed and enforced as if the agreement did not contain the particular part, term, or provision.

Section 14. Other Terms and Conditions of Employment

The Employee is subject to all personnel policies of the City of the City and the City's Management Resolution except to the extent that they are inconsistent with an expressed term of this agreement.

Section 15. PERS Pick-up

Employee contributions to the Public Employees' Retirement system (PERS) shall be "picked up" by the City. Employee shall not have the option of receiving money designated for retirement contributions and directly making the contribution to PERS. Employee's reported salary for tax purposes shall be reduced by the amount of the employee's contribution to PERS.

Section 16. Complete Agreement

This agreement shall constitute the entire agreement between the City and Employee and supersedes all prior agreements, representations and understandings between them. No supplement, modification or amendment of this Agreement shall be binding on the City unless it is set forth in a writing that is signed by the Mayor and approved by the City Council. Likewise, no waiver or any provision of this Agreement shall be valid unless set forth in writing that is signed by the Mayor and approved by the City Council.

Dated this _____ day of October, 2020.

Melissa Huhtala
City Recorder

John Stromberg
Mayor

Accepted this _____ day of October, 2020

Scott Fleury