



Molalla City Council

Meeting located at:
Molalla City Hall
117 N. Molalla Avenue
Molalla, OR 97038

November 1, 2011

Special Session Agenda

Business meeting: 7 p.m. The Council has adopted Public Participation Rules. Copies of these rules and public comment cards are available at the entry desk. Public comment cards must be turned into to the City Recorder prior to the start of the Council meeting.

The City will endeavor to provide a qualified bilingual interpreter, at no cost, if requested at least 48 hours prior to the meeting. To obtain services call the City Manager at (503) 829-6855.

1. CALL TO ORDER

- A. Flag Salute.
- B. Roll Call.
- C. Approval of Minutes

2. COMMUNICATIONS

3. AWARDS & RECOGNITIONS

4. PUBLIC HEARINGS

5. CONTINUING BUSINESS

6. NEW BUSINESS

- A. Ratify City Administrator Employment Agreement

7. *ORDINANCES*

8. *RESOLUTIONS*

9. *PROCLAMATIONS*

10. *REPORTS AND ANNOUNCEMENTS*

11. *EXECUTIVE SESSION*

12. *ADJOURNMENT*

City Of Molalla

City Council Meeting

Agenda Category: New Business

Subject: City Administrator Employment Agreement

Recommendation: *Council to ratify City Administrator employment agreement.*

Date of Meeting to be Presented: November 1, 2011

Fiscal Impact: NA

Background: (Type a brief detailed summary of the item to be presented.)

City Council agreed upon a set of parameters for structuring an employment agreement for the new City Administrator. Council unanimously approved extending an offer of employment to Ms. Ellen Barnes to serve as the City of Molalla's new City Administrator. Within the parameters set by Council and with assistance from the City Attorney, Mayor Clark negotiated an agreement with Ms. Barnes for her services as City Administrator. The Agreement was executed on September 19, 2011. Ms. Barnes began her services as City Administrator on October 17, 2011.

APPROVED BY: Ellen Barnes, City Manager

Agenda Item

6.A

EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT is made and entered into this 19th day of September, 2011 by and between the CITY OF MOLALLA, OREGON ("CITY") and ELLEN BARNES ("EMPLOYEE").

RECITALS

1. CITY and EMPLOYEE desire a written agreement creating a professional and businesslike relationship serving as the basis for effective communication and to avoid misunderstanding; and
2. CITY and EMPLOYEE, in consideration of mutual covenants herein contained and for consideration herein specified, mutually agree as follows:

SECTION 1. EMPLOYMENT, DUTIES AND AUTHORITY.

- A. CITY has agreed to employ Ellen Barnes as City Administrator. In performing the role of City Administrator, EMPLOYEE'S job title shall be City Manager. EMPLOYEE agrees to accept said employment.
- B. CITY agrees to employ Ellen Barnes as City Administrator to perform the functions and duties specified in the Molalla City Charter, ordinances, and resolutions of the City of Molalla and required by state and federal law, as well as to perform other legally permissible and proper duties and functions as City shall, from time to time, assign. Duties of the City Administrator shall include, but not be limited to, the following:
 - supervise and direct the overall management, administration and direction of City operations;
 - the hiring, disciplining and firing of all City employees/agents except Municipal Judge and City Attorney;
 - the negotiation, execution and administration of City contracts within budget appropriations pursuant to City policy and ordinance;
 - providing policy advice to elected officials;
 - maintaining open communications with the community to foster both responsive and courteous public services;
 - work toward achieving goals set by the City Council; and
 - such other duties as the City Council may, from time to time, assign.
- C. The Mayor and other members of the City Council agree to the principle of non-interference in the administration and management of the City's affairs (as described above in the bulleted points as being within EMPLOYEE's purview as Administrator) as being necessary to the orderly and efficient implementation of Council policy and City operations. The Mayor and other members of the City Council agree to direct their individual or collective concerns, communications and inquiries as to the administration

and management of the City's affairs to EMPLOYEE and EMPLOYEE agrees to respond within a reasonable time to such concerns, communications and inquiries (whether made individually or collectively) either with an answer or an estimated time of response with such response to be reasonably expeditious.

SECTION II. TERM.

- A. This Agreement begins on October 17, 2011 and, unless terminated consistent with the terms hereof, continues until October 31, 2013. This Agreement may be renewed by the parties for such additional periods as may be agreed upon in writing and approved by resolution.
- B. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the City Council to terminate the services of EMPLOYEE at any time, subject only to the provisions set forth in this Agreement.
- C. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of EMPLOYEE to resign at any time from her position with CITY, subject only to the provisions set forth in this Agreement.
- D. EMPLOYEE agrees to remain in the exclusive employ of CITY during the term of this Agreement.

SECTION III. TERMINATION AND SEVERANCE.

- A. Termination Without Cause. This Agreement may be terminated by either CITY or EMPLOYEE for any reason whatsoever upon giving thirty (30) calendar days' written notice to the other party.
- B. Termination With Cause. EMPLOYEE'S employment with CITY may be terminated immediately at the sole discretion of the City Council upon the occurrence of any of the following:
 - 1. EMPLOYEE fails or refuses to comply with the written policies, standards and regulations of CITY that are now in existence or are from time to time established;
 - 2. CITY has reasonable cause to believe EMPLOYEE has committed fraud, misappropriated City funds, goods or services to either her own or some other private third party's benefit and/or other acts of misconduct which the City Council believes, in its sole discretion, is detrimental to the City and/or its interests; or
 - 3. EMPLOYEE fails to perform faithfully or diligently her duties as City Administrator.
- C. Severance Relative to Performance Evaluation in April, 2012. In the event EMPLOYEE's employment with CITY is terminated for any reason identified by the Mayor and Council prior to or within seven business days after EMPLOYEE's performance evaluation described in Section VII(A), CITY is neither required to nor will it make any severance

payment to EMPLOYEE.

- D. Severance After Performance Evaluation. In the event EMPLOYEE is involuntarily terminated for reasons other than those set out in subsection III(B) after the seven business day period following her performance evaluation described in Section VII(A) but before October 31, 2013, then in that event CITY agrees to and will pay EMPLOYEE a severance payment equal to the monetary value of three (3) months of EMPLOYEE'S then current salary. Payment of the severance shall be made monthly, each payment being the value of one month's salary. In addition, EMPLOYEE shall be entitled to compensation for all earned but unused vacation. CITY also shall pay the cost to continue health insurance benefits as provided under this Agreement for three months following EMPLOYEE termination. The right to said payment shall cease if, during the period of the scheduled payments, EMPLOYEE accepts employment with another employer (including self-employment). EMPLOYEE has an affirmative obligation to notify the CITY upon acceptance of other employment.
- E. If EMPLOYEE resigns at the request of the City Council for reasons other than those set out in subsection III(B) after the seven business day period following her performance evaluation described in Section VII(A), then EMPLOYEE may deem this Agreement to be involuntarily terminated without cause and shall be entitled to a severance payment consistent with subsection (D) of this section.
- F. If EMPLOYEE voluntarily resigns her position with CITY before the expiration of this Agreement, then EMPLOYEE shall give CITY at least thirty (30) calendar days' written notice in advance (excluding accrued vacation) and EMPLOYEE shall be available to serve during this period. The City Council, however, shall have the discretion to decide whether EMPLOYEE shall continue in her position during the notice period.

SECTION IV. COMPENSATION, HOURS OF WORK, VACATION AND SICK LEAVE.

- A. Salary. Commencing October 17, 2011, and for the remainder of the two-year term of this Agreement, CITY agrees to pay EMPLOYEE Eighty Four Thousand Dollars and 00/100 (\$84,000.00) as a yearly salary to be paid in installments at the same interval as CITY pays its other employees.
- B. Cell Phone Reimbursement. As part of EMPLOYEE's taxable compensation, CITY agrees to pay EMPLOYEE the sum of \$30.00 per month for use of her personal cell phone in the discharge of her duties.
- C. Hours of Work. It is recognized that the proper performance of the EMPLOYEE's duties require her to observe normal business hours and will also often require her to perform necessary services outside of normal business hours. EMPLOYEE will devote such additional time as is necessary for the full and proper performance of her duties. The compensation this Agreement provides to EMPLOYEE includes compensation for all such necessary services.

- D. Vacation. Upon hiring, EMPLOYEE shall be credited with two (2) weeks' vacation. Thereafter, EMPLOYEE shall accrue the same vacation benefits as other management/professional employees employed at the City.
- E. Holiday Benefits. EMPLOYEE shall receive the same holiday benefits established for management/professional employees consistent with the provisions of the City's most current personnel policies.
- F. Sick leave. EMPLOYEE shall be entitled to the same sick leave benefits as other management/professional employees. No payment will be made by CITY to EMPLOYEE for any sick leave upon termination of employment.
- G. Moving Expenses. Upon hiring, CITY will reimburse EMPLOYEE for her expenses incurred in moving to Molalla, up to a maximum of Five Thousand Dollars (\$5,000.00). EMPLOYEE's moving expenses do not include the cost of temporary or permanent housing upon her arrival in Molalla.

SECTION V. RETIREMENT BENEFITS; HEALTH AND DENTAL INSURANCE.

- A. Retirement. CITY agrees to contribute into the Oregon Public Employees Retirement System on EMPLOYEE's behalf, an amount at least equal to that same percentage of salary contributed for the City's other management/professional employees. CITY will pay EMPLOYEE'S contribution to PERS.
- B. CITY agrees to provide coverage and make required premium payments for EMPLOYEE and her spouse and dependents for comprehensive medical and dental plans as provided in the City Personnel Policies.

SECTION VI. CIVIC MEMBERSHIP, PROFESSIONAL DEVELOPMENT AND EXPENSE.

- A. CITY recognizes the desirability of representation in and before local civic and other organizations, and the EMPLOYEE is authorized to become a member of local civic organizations, for which CITY shall pay membership expenses including the cost of meals. EMPLOYEE shall determine which civic organizations that she shall become a member of based on the benefits to the City and her duties. She will report her decision to the City for approval.
- B. To the extent funds are available and budgeted by the Council, CITY agrees to pay the professional dues and subscriptions of the EMPLOYEE appropriate for her continuation and full participation in national, regional, state and local associations and organizations necessary and desirable for her continued professional development, growth, and advancement, and to improve her performance in her duties as City Administrator of the City of Molalla.
- C. To the extent funds are available and budgeted by the Council, CITY agrees to pay the registration, travel, and subsistence expense of the EMPLOYEE for professional and

official travel, meetings, and occasions deemed necessary or desirable to continue the professional development of the EMPLOYEE and to adequately pursue necessary official functions of the City. Major expenses such as out of town attendance at meetings requiring lodging and meals shall be reviewed and be approved in advance by the Council.

- D. CITY recognizes that certain expenses are incurred by EMPLOYEE on behalf of the CITY and agrees to reimburse or pay reasonably necessary expenses upon receipt of appropriate documentation. An annual budget for expected expenses shall be set by the Council each year after consultation with EMPLOYEE and any expenses in excess of the budget or extraordinary expenses must be approved in advance by the City Council.

SECTION VII. INITIAL PERFORMANCE EVALUATION, ANNUAL GOAL-SETTING AND ANNUAL PERFORMANCE EVALUATION.

- A. The Mayor and City Council will evaluate the performance of the EMPLOYEE not later than April 17, 2012. If, as a result of this performance evaluation the Mayor and other members of the City Council determine EMPLOYEE's performance is unsatisfactory, the CITY shall have the right (but not the obligation) to terminate EMPLOYEE's employment and CITY will not, should EMPLOYEE's employment be terminated, then pay severance to EMPLOYEE.
- B. The Mayor and the City Council shall periodically identify concerns to EMPLOYEE either by informal discussions with EMPLOYEE or more formally. The City Council shall meet with EMPLOYEE at least once annually prior to April 17 for the purpose of setting City Council goals and priorities.
- C. After the initial performance evaluation described in subsection has been completed, the City Council and EMPLOYEE shall meet at least annually (and not later than February 15th) to evaluate and assess EMPLOYEE performance in meeting or progressing towards the goals formally adopted by the City Council and EMPLOYEE as well as the exercise of authority granted in Section I of this Agreement. These annual evaluations shall be in closed Executive Sessions, provided they are conducted consistent with Oregon's Public Meetings Law.
- D. In the event CITY determines that the performance of EMPLOYEE is unsatisfactory in any respect or needs significant improvement in any area, the Mayor and City Council shall describe these concerns in writing and in reasonable detail or with specific examples so as to be objective in nature.

SECTION VIII. GENERAL PROVISIONS.

- A. Professional Liability. CITY agrees to defend, hold harmless and indemnify EMPLOYEE from any and all demands, claims, suits, actions and legal proceedings brought against EMPLOYEE by a third party in her individual capacity, or in her official capacity as agent and employee of CITY, consistent with the terms of the Oregon Tort Claims Act (ORS 30.260 to 30.300).

- B. Nothing shall restrict the ability of CITY and EMPLOYEE to amend or adjust the terms of this Agreement. However, no amendment or adjustment shall be valid unless in writing and signed by both CITY and EMPLOYEE. EMPLOYEE reserves the right to discuss the terms of this Agreement with the City Council as a whole in either closed Executive Session or open Regular Session as state law allows and as EMPLOYEE deems appropriate.
- C. Severability. If any provision, or any portion thereof, contained in this Agreement is held to be unconstitutional, invalid or unenforceable, the remainder of this Agreement, or portion thereof, shall be deemed severable and shall not be affected, and shall remain in full force and effect.
- D. Mediation. Should any dispute arise between the parties regarding the terms of this Agreement, the employment relationship created thereby or the terms of any Exhibit or work or services covered thereby, it is agreed that such dispute will be submitted to a mediator prior to arbitration. 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 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 days, or if the parties fail to agree on a mediator within ten days, a mediator shall be appointed by the presiding judge of the Clackamas County Circuit Court upon request of either party.
- E. Arbitration. In the event the parties have a dispute concerning the terms of this Agreement, the terms and conditions of the employment relationship or the violation of any federal, state or local law relating to the employment relationship (and they have not otherwise resolved the matter through the mediation process set out in subsection (D) above) then the dispute shall be resolved by arbitration in accordance with the then effective arbitration rules of (and by filing a claim with) the Arbitration Service of Portland, Inc., and judgment upon the award rendered pursuant to such arbitration may be entered in any court having jurisdiction thereof. Each party shall bear equally the expense of the arbitrator and all other expenses of conducting the arbitration. Each party shall bear its own expenses for witnesses, depositions and attorneys.
- F. No Third-Party Beneficiaries. This Agreement confers no benefits or imposes any duties on anyone other than CITY and EMPLOYEE.
- G. Integration. This Agreement contains the entire Agreement between the parties and supersedes all prior written or oral discussions or agreements regarding the same subject.
- H. Headings. The headings used in this Agreement are solely for convenience of reference, are not part of this Agreement, and are not to be considered in construing or interpreting this Agreement

SECTION IX. NOTICES

- A. Any notice or other communication required or permitted to be given under this agreement shall be in writing and shall be mailed by Certified Mail, Return Receipt Requested, postage prepaid, addressed to the parties as follows:

CITY Mayor
City of Molalla
117 N. Molalla Avenue
Molalla, Oregon 97038

EMPLOYEE Ellen Barnes
34518 Mutts Way
Gold Beach, Oregon 97444


Either party may change such addresses from time to time by providing written notice to the other in the manner set forth above.

Alternatively, notices required pursuant to this Agreement may be personally served in the same manner as is applicable to civil judicial practice or alternative method where actual notice is shown. Notice shall be deemed given as of the date of personal service or as of the date of deposit of written notice with the United States Postal Service.

[SIGNATURES ON FOLLOWING PAGE]

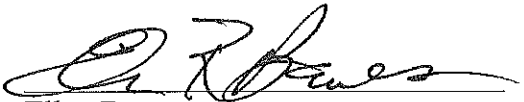
IN WITNESS WHEREOF, the CITY OF MOLALLA, OREGON has caused this Agreement to be signed and executed by its Mayor and ELLEN BARNES has signed and executed this Agreement, both in duplicate, the day and year first written above.

For CITY:



Mike Clarke
Mayor, City of Molalla

For EMPLOYEE:



Ellen Barnes
Employee