



## City of Falls City

299 Mill St • Falls City, Oregon • 97344  
Ph. (503) 787-3631 • [www.fallscityoregon.gov](http://www.fallscityoregon.gov)

### **PUBLIC NOTICE: City Council Meeting**

**Date:** Tuesday, September 8, 2020 **Time:** 6:00 pm

**Location:** The FC Community Center, Telephone, Web Application, in writing

### **How to Attend and/or Participate:**

1. **In-Person:**
  - a. Falls City Community Center, 320 N. Main St. Falls City, OR 97344
  - b. 10 Person Maximum Capacity
1. **Call-in:**
  - a. (425) 436-6370, Code: 251514(#)
  - b. You will be muted, but may "raise your hand" to indicate you wish to comment. Please visit [freeconferencecall.com](http://freeconferencecall.com) for a tutorial
2. **Web Application:** Download the [Freeconferencecall.com](http://Freeconferencecall.com) web application
  - a. Meeting ID: manager3208
  - b. You will be muted, but may "raise your hand" to indicate you wish to comment.
3. **Write-In:** Using regular mail or email.
  - a. [info@fallscityoregon.gov](mailto:info@fallscityoregon.gov); 299 Mill St. Falls City, OR 97344

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### **AGENDA**

1. CALL TO ORDER & ROLL CALL  
Jeremy Gordon, Mayor\_\_\_ Dennis Sickles \_\_\_ Lori Jean Sickles\_\_\_  
Jennifer Drill \_\_\_ Tony Meier\_\_\_ Cliff Lauder\_\_\_ Tj Bailey \_\_\_
2. PLEDGE OF ALLEGIANCE
3. MOTION TO ADOPT THE ENTIRE AGENDA
4. NEW BUSINESS
  - a. Resolution 23-2020, City Manager Pro-Tem Contract----- pg. 1-6
  - b. Resolution 24-2020, Council Training ----- pg. 7-9
  - c. Direct Connect Banner Authorization ----- pg. 10
5. ADJOURN

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## AGENDA REPORT

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**TO:** HONORABLE MAYOR AND CITY COUNCIL  
**FROM:** MAC CORTHELL, CITY MANAGER  
**SUBJECT:** RESOLUTION 23-20, CITY MANAGER PRO-TEM CONTRACT  
**DATE:** SEPTEMBER 8, 2020

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### **SUMMARY**

Adoption of contract for City Manager Pro-Tem, David Clyne

### **BACKGROUND**

The Falls City Charter requires the City Council to appoint a City Manager to conduct the administrative and business affairs of the city. In the event the City Manager's Office becomes vacant, the City Council is required to appoint a City Manager Pro-Tem at it's earliest convenience.

The purpose of a City Manager Pro-Tem is to keep operations and projects afloat while assisting and advising the City Council in a process that leads to the hiring of a permanent City Manager.

### **PREVIOUS COUNCIL ACTION**

August 25, 2020, Resolution 22-20, the City Council appointed David Clyne City Manager Pro-Tem pending contract approval.

- Appointed City Attorney, Ross Williamson and City Manager, Mac Corthell to negotiate Mr. Clyne's contract.

### **ALTERNATIVES/FINANCIAL IMPLICATIONS**

- Mr. Clyne has asked for a wage rate of \$40.00 per hour without benefits.
- Mr. Clyne is a PERS OPSRP retiree, so the city will be responsible to pay 15.01% of his gross wages to PERS, with no 6% match requirement which brings the hourly cost to the city to approximately \$46 per hour total.

### **STAFF RECCOMENDATION**

Adopt.

### **ATTACHMENTS**

Resolution 23-2020, Employment Contract for City Manager Pro-Tem, David Clyne.  
Exhibit A, Supplemental Budget No. 2

### **PROPOSED MOTION**

I move that the Falls City Council adopt Resolution 23-2020, EMPLOYMENT CONTRACT FOR CITY MANAGER PRO-TEM DAVID CLYNE.

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**Resolution 23-2020**

**EMPLOYMENT CONTRACT FOR CITY MANAGER PRO-TEM DAVID CLYNE.**

Whereas, The City Manager submitted his resignation, effective September 21, 2020; and

Whereas, The City Charter requires a City Manager Pro-Tem be appointed as soon as practicable in the event the City Manager’s Office becomes vacant; and

Whereas, The City Council in Resolution 22-2020 appointed David Clyne to the post of City Manager Pro-Tem, pending contract approval; and

Whereas, The City Attorney and City Manager were appointed to negotiate an employment contract with Mr. Clyne, and that negotiated contract is contained herein;

**Now therefore, be it resolved by the City Council of Falls City as follows:**

Section 1. The City Council adopts the employment contract attached hereto as exhibit A.

Section 2. This Resolution was duly PASSED and ADOPTED by the Falls City Council and takes effect upon signature of the Mayor.

Approved:

\_\_\_\_\_   
Date

\_\_\_\_\_   
Jeremy Gordon, Mayor

Attest:

\_\_\_\_\_   
Date

\_\_\_\_\_   
Jamie Ward, City Clerk

**CITY OF FALLS CITY  
EMPLOYMENT AGREEMENT FOR  
PRO TEM CITY MANAGER SERVICES**

This Agreement is entered into the date last signed below by and between the City of Falls City, hereinafter referred to as "CITY," and Mr. David Clyne, hereinafter referred to as "CITY MANAGER," so that the parties may secure temporary professional city manager services.

**RECITALS**

It is the desire of the CITY to temporarily secure and retain the professional services and skills of the CITY MANAGER and to provide inducement for CITY MANAGER to remain in such temporary employment, and

CITY MANAGER has the necessary skills and experience to assist the CITY; and

It is the desire of the CITY and CITY MANAGER to enter into a contractual agreement wherein CITY MANAGER provides city manager services on a temporary basis while he assists the CITY in its search for a permanent City Manager with the parties mutual anticipation that CITY MANAGER'S temporary tenure will be of a relatively short duration; and

CITY and CITY MANAGER acknowledge the current Covid-19 pandemic and the necessity to take employee health seriously such that the parties understand the job duties in this Agreement will allow CITY MANAGER flexibility to telework when appropriate and implement procedures to account for Covid-19 workplace accommodations.

THEREFORE, in consideration of the mutual covenants herein contained and for consideration herein specified, the CITY and CITY MANAGER mutually agree as follows:

**SECTION I. – DUTIES**

CITY appoints CITY MANAGER as the Pro Tem City Manager for the CITY pursuant to Section 33(f) of the City Charter. CITY and CITY MANAGER agree that the CITY MANAGER shall perform the functions and duties of the city manager, as more fully described in Falls City Code Section 31.01, which is incorporated herein. The CITY may adjust or change CITY MANAGER'S duties and responsibilities as needed upon notice to CITY MANAGER. Pursuant to City Charter Section 33(f), CITY MANAGER will only be able to appoint or remove employees with City Council approval.

**SECTION II – TERM; AT WILL STATUS**

- A. Term. The term of this Agreement will commence on September 21, 2020 and will continue until terminated as provided herein.

- B. At Will Employee. CITY MANAGER understands and agrees that he is an at-will employee and may be terminated at any time with or without cause, subject only to the terms of this Agreement. CITY MANAGER further agrees that he is an FLSA-exempt, hourly, temporary employee and PERS-retiree.

**SECTION III. – TERMINATION AND RESIGNATION**

Notwithstanding anything herein to the contrary, the CITY may terminate this Agreement and CITY MANAGER's employment at any time by providing five (5) business days' prior written notice of its intent to terminate. If the City terminates, it shall have no obligation to pay any severance monies or payments excepting salary and reimbursements up through the effective date of the termination. CITY MANAGER may voluntarily resign his position and terminate this Agreement by providing at least fourteen (14) calendar days' prior written notice.

**SECTION IV. – SALARY AND BENEFITS; RULES AND SCHEDULES**

- A. Salary. The CITY agrees to pay CITY MANAGER an hourly rate of \$40.00 per hour for each hour of work provided under this Agreement, subject to all state and federal withholdings and payable in the same installments and manner as other employees are paid. CITY will pay CITY MANAGER for up to twelve (12) hours of work conducted by CITY MANAGER prior to the start date of September 21 that was necessitated to cause a smooth transition into the role.
- B. Workers' Compensation. CITY MANAGER will be treated as an employee for purposes of CITY'S workers' compensation coverage.
- C. No Benefits. No other benefits or compensation, including retirement or PERS benefits, are promised unless expressly provided for within this Agreement.
- D. PERS. CITY MANAGER is an OPSRP retiree eligible for unlimited post-retirement employment with City under current PERS rules. As such, CITY MANAGER will not accrue additional PERS benefits related to his employment hereunder; CITY will be responsible for any PERS employer contributions for CITY MANAGER'S post-retirement employment as dictated by PERS rules.
- E. Vacation, Sick, Holiday. CITY MANAGER will not earn or accrue any paid vacation or holiday leave. However, state-mandated sick leave will be earned at the rate of 1 hour for every 30 hours worked.
- F. General Expense. The CITY recognizes that CITY MANAGER will incur certain expenses due to official job-related functions and agrees to reimburse or pay for such actual expenses, pursuant to the CITY's expense

reimbursement policies and practices. As for business travel, CITY will reimburse CITY MANAGER for any employee-owned vehicle travel that takes CITY MANAGER beyond 50 miles from City Hall on official business.

- G. Personnel Rules. The parties agree that CITY MANAGER will be bound by the CITY's personnel rules and procedures except as follows:
1. If the CITY's personnel manual, rules, or procedures conflict with the express terms of this Agreement, this Agreement shall control; and
  2. CITY MANAGER shall not be subject to any CITY progressive discipline process or disciplinary due process provided in the CITY's personnel manual, rules, or procedures.
- F. Work Schedule. CITY MANAGER will set his work schedule so as to meet the demands of the position, perform the duties of the position, and maintain the operations of the CITY until a permanent city manager is hired. It is anticipated that CITY MANAGER may work fewer than 40 hours during certain weeks, but may be required to work more than 40 hours in other weeks. As an hourly employee, CITY MANAGER will only be compensated for time spent on City business; overtime pay will not be paid because he is exempt from the FLSA. The parties anticipate that CITY MANAGER'S work schedule will be a flexible schedule and that he may set his own office hours as long as his work duties are being accomplished. So long as the Covid-19 pandemic continues, the parties acknowledge that CITY MANAGER will be able to accomplish many job duties remotely through various telework techniques.
- G. Outside Duties. CITY acknowledges that CITY MANAGER may have limited obligations outside this Agreement that may take CITY Manager away from his duties hereunder on occasion. CITY MANAGER will communicate such absences to the Mayor and appropriate CITY staff.

## SECTION V. – PROFESSIONAL LIABILITY/INDEMNIFICATION

In accordance with and subject to the tort claim limitations in the Oregon Tort Claims Act and the Oregon State Constitution, the CITY agrees to defend, hold harmless and indemnify CITY MANAGER from and against any and all demands, claims, suits, actions and legal proceedings brought against CITY MANAGER in his official capacity as an agent and employee of the CITY and arising out of any alleged act or omissions in his performance of CITY MANAGER'S duties, as long as such acts or omissions occurred while he was acting within CITY MANAGER'S proper scope of authority.

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The CITY will carry liability insurance insuring against litigation claims or demands brought by third parties against CITY MANAGER for unintentional torts, acts, failure to act, or negligence when acting within the proper scope of authority.

This section will survive the termination of this Agreement and remain in effect after termination of CITY MANAGER'S employment with the CITY.

**SECTION VI. – GENERAL PROVISIONS**

- A. Entire Agreement; Severability. The text herein will constitute the entire Agreement between the parties and supersedes any and all prior discussions or Agreements between the parties, if any, which are not fully expressed herein. No oral understandings are binding upon the parties. No single person has the authority to amend this Agreement. This Agreement may only be amended by mutual, signed written consent of the parties. 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 a portion thereof will be deemed severable and will not be affected, and will remain in full force and effect.
  
- B. Representation. At all times, the CITY has been represented by attorneys at the firm of Local Government Law Group PC. CITY MANAGER acknowledges that he has had, at all times, the right and the opportunity to consult with independent counsel of his choosing in regard to this Agreement.

IN WITNESS WHEREOF, the City of Falls City, Oregon, has caused this Agreement to be signed and executed on its behalf by its Mayor and David Clyne has signed and executed the Agreement on the date noted below.

\_\_\_\_\_  
Jeremy Gordon, Mayor

\_\_\_\_\_  
Date

\_\_\_\_\_  
David Clyne

\_\_\_\_\_  
Date

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## AGENDA REPORT

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**TO:** HONORABLE MAYOR AND CITY COUNCIL  
**FROM:** CITY COUNCILOR, TJ BAILEY VIA CITY MANAGER, MAC CORTHELL  
**SUBJECT:** RESOLUTION 24-20, COUNCIL TRAINING  
**DATE:** SEPTEMBER 8, 2020

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### **SUMMARY**

A resolution to direct council training at the City Attorney's Earliest Convenience.

### **BACKGROUND**

Since late January I have had the honor and privilege of representing our community as a city council member. Since being sworn in I have done my best to represent our city in a professional role while making decisions that best meet the needs of all of our citizens. I understand that I am just one voice and our council works best when we work and act as a body. Unfortunately, there are a select few council members, based on their actions that do not feel the same. These council members have demonstrated that they are above the rules of our charter and are entitled to cross over into the area of inappropriate attempts to influence staff's administrative responsibilities. This greatly concerns me.

Another concern is that a select few council members do not fully understand or respect the "council/manager form of government". In short, council members decide "**WHAT**" needs to be in policy and goals based on our community's needs and values, whereas the city manager and staff determine "**HOW**" to implement the policies and goals and deliver day-to-day services due to their experience and training. The select few council members who attempt to influence or direct staff outside a public forum as to how to implement or deliver day-to-day services makes it extremely difficult if not impossible for them to fulfill their responsibilities. This is a clear violation of our charter rules.

While being elected to a city council, and in my case voted in by the council, is an honor bestowed upon us by the voters, a select few of us do not keep that "**honor**" in perspective. Citizens elected the council and trust that judgments made represent the interests in community decision-making. They **DID NOT** elect us because they felt we were personally deserving of *special rights* or *privileges*. Unfortunately, there are some council members who feel they are **entitled** to such special rights and privileges. Those council members expect the city manager and staff to assist them in ways outside their formal role on the city council. In order for our city to run effectively, this false notion from certain council members needs to stop immediately.

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Additionally, I believe that one of the least favorite tasks for a city manager is to tell an individual council member or the council as a whole something they don't want to hear. We will never be well served by a manager who will not tell us when something is not appropriate or cannot be achieved simply to avoid appearing uncooperative. It is

very helpful for certain council members to understand that the manager has a professional obligation to give council advice contrary to what one would like to hear when he/she is required to do so. The city manager and staff are required to faithfully carry out the direction of the city council, regardless if particular council members did or did not recommend it and regardless if some council members oppose it. Council members should not misrepresent the truth or side with community members to save face when decisions are made that they disagree with nor should they cry foul when decisions are not in their favor.

In closing, I have touched briefly on a few, not all, of the ethical violations I have seen by a few council members in my short time on council. It is time to hold council members accountable for their behavior. If we continue to choose to ignore the blatant disregard to our charter rules we risk never hiring a qualified city manager and shedding the negative perception of our city from neighboring communities that still haunt us today. Due to the actions of a few, we have an unstable council/manager relationship that could have led to more serious negative consequences besides losing an outstanding individual who has done so much for our city. We need to understand that our actions greatly impact not only the council but the citizens we swore to represent. City managers in Falls City historically don't last long and it's time to break the pattern of dysfunction so we can thrive as a city while building a positive reputation as a place to live, work and play. Our service on council is a unique honor, not a privilege. We must conduct ourselves in a manner that when our time on council is over we can look back with pride, not only for what we accomplished, but also the way in which we conducted ourselves.

The first step in having a professional functioning council is making sure all council members know their role and abide by the rules of our charter which is one of our goals for council. Therefore, I make a motion to schedule trainings on roles, rules and responsibilities of our elected council as soon as possible.

#### **PREVIOUS COUNCIL ACTION**

- Council Training Adopted as Council Goal #4 for 2020-2021

#### **ALTERNATIVES/FINANCIAL IMPLICATIONS**

- Council Training was budgeted under Professional Services in the General Fund: Administrative. Approximate cost \$1,000.

#### **STAFF RECCOMENDATION**

Adopt.

#### **ATTACHMENTS**

Resolution 24-2020, Directing Council Training by the City Attorney.

#### **PROPOSED MOTION**

I move that the Falls City Council adopt Resolution 24-2020, DIRECTING CITY COUNCIL TRAINING BY THE CITY ATTORNEY.

**Resolution 24-2020**  
**DIRECTING COUNCIL TRAINING BY THE CITY ATTORNEY**

Whereas, The City of Falls City Charter adopted by the Citizens of Falls City, specifies a Council-Manager form of government; and

Whereas, Understanding of role and scope of authority is a necessity for the efficient operation of a Council-Manager form of government; and

Whereas, There is ambiguity for some elected city officials regarding their role as a city council member; and

Whereas, This ambiguity has led to some conduct outside the scope of a City Councilor's role; and

Whereas, A City Councilor acting outside the scope of their role may expose themselves to personal liability, and the City to vicarious liability; and

Whereas, Exposure to this type of liability may ultimately cost the Citizens of Falls City critical resources, and/or termination of the City's insurance; and

Whereas, A large damage award or termination of insurance coverage could lead the city to disincorporation.

**Now therefore, be it resolved by the City Council of Falls City as follows:**

Section 1. The City Council directs management to arrange for Council Training by the City Attorney as soon as practicable.

Section 2. This Resolution was duly PASSED and ADOPTED by the Falls City Council and takes effect upon signature of the Mayor.

Approved:

\_\_\_\_\_   
Date

\_\_\_\_\_   
Jeremy Gordon, Mayor

Attest:

\_\_\_\_\_   
Date

\_\_\_\_\_   
Jamie Ward, City Clerk

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## AGENDA REPORT

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**TO:** HONORABLE MAYOR AND CITY COUNCIL  
**FROM:** CITY MANAGER, MAC CORTHELL  
**SUBJECT:** DIRECT CONNECT BANNER  
**DATE:** SEPTEMBER 8, 2020

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### **SUMMARY**

Authorize hanging of a banner to notify Falls City residents that the Direct Connect mass transit service has resumed operations in Falls City.

### **BACKGROUND**

The Direct-Connect bus serving Falls City was forced to cease service due to COVID-19. The service will resume service this month and the County (who funds the bulk of the service) has asked if a banner can be hung in Falls City to notify citizens the bus will resume service.

### **PREVIOUS COUNCIL ACTION**

N/A

### **ALTERNATIVES/FINANCIAL IMPLICATIONS**

- The banner will be provided by the County at no cost to the City.
- Pacific Power has been solicited to assist in hanging the banner, this would be a free service and staff is awaiting a response as the liaison for this region is on vacation until 9/9/20.
- If Pacific Power cannot assist, City and County Public Works would partner to hang the banner.

### **STAFF RECCOMENDATION**

Authorize hanging of the Direct Connect Banner.

### **ATTACHMENTS**

None.

### **PROPOSED MOTION**

I move that the Falls City Council authorize HANGING OF THE DIRECT CONNECT BANNER.