



Agenda Item No. 8d.

Staff Report

Date: October 12, 2023

To: Mayor Brekhus and Councilmembers

From: Christa Johnson, Town Manager

Subject: Approval of First Amendment to Interim Employment Agreement with David Woltering to serve as temporary “Extra Help” in the Planning & Building Department

Recommendation

It is recommended that the Town Council authorize the Town Manager to execute an amendment to the Interim Employment Agreement with David Woltering to serve as temporary “Extra Help” in the Planning & Building Department for the purposes of orienting the new Director, managing the completion of the 6th Cycle Housing Element project and to begin implementation of its policies and programs with near-term deadlines.

Background and Discussion

On June 15, 2023, the Town Council adopted Resolution No. 2324 ratifying an interim employment agreement retaining David Woltering to serve as the Interim Planning & Building Director position while the Town conducted its recruitment to fill the regular Director position. Mr. Woltering began his position on July 5, 2023, and has performed his duties with distinction. The Town’s recruitment effort was successful and a new Director, Roberta Feliciano, will begin her employment with the Town effective October 17, 2023. Mr. Woltering’s last day as the Interim Director is October 6, 2023.

One of the Town’s most important current projects is the completion of the 6th Cycle Housing Element. The document was adopted by the Town Council on May 31, 2023; however, the State of California Department of Housing and Urban Development (HCD) has not yet certified the document. On August 15, 2023, the Town received an extensive set of comments from HCD regarding the Town’s adopted Housing Element. David Woltering has been leading the staff and consultant team that developed the adopted Housing Element and is seeking to obtain HCD certification.

The Town Manager would like to amend the existing interim employment agreement with David Woltering to enable him to continue working for the Town after the new Director begins her employment. After a week or two of orienting the new Director, Mr. Woltering's work will be focused on the Housing Element project. It is important to maintain project management leadership during this final phase to reach the finish line, which is HCD certification and to begin implementation of its policies and programs that have near-term deadlines. In addition, hiring Mr. Woltering on a temporary basis to focus on the Housing Element will allow the newly hired Director to get up to speed on the day-to-day management of the department.

The Town has negotiated the attached amendment to the existing agreement with David Woltering who is a PERS retiree. Pursuant to the terms of the agreement and in accordance with direction received from PERS, Mr. Woltering will serve as temporary "Extra Help" until HCD certification of the 6th Cycle Housing Element is obtained and implementation of its policies and programs with near-term deadlines or June 30, 2024. The Town will continue to pay Mr. Woltering at the rate of \$91.34 per hour, reflecting his 35+ years of experience and expertise in long-range planning such as the development of Housing Elements.

Fiscal Impacts

The estimated cost of employing David Woltering as temporary "Extra Help" is \$3,654 to \$5,480 per month. As a PERS retiree, Mr. Woltering is not allowed to receive benefits beyond sick leave required by state law. Mr. Woltering will work an average of ten to fifteen hours per week and the total amount of additional compensation authorized under this amendment will not exceed \$43,000. The department budget has funding available due to salary savings to absorb the cost.

Attachments

- First Amendment to Interim Employment Agreement with David Woltering
- Executed Interim Employment Agreement with David Woltering, dated July 5, 2023

**FIRST AMENDMENT TO INTERIM EMPLOYMENT AGREEMENT
WITH DAVID WOLTERING**

The Interim Employment Agreement by and between the Town of Ross and David Woltering, dated July 5, 2023, is hereby amended by mutual agreement of the parties to replace the title of David Woltering's interim position from Interim Planning & Building Director to "Extra Help in the Planning & Building Department". This change will be made throughout the agreement.

The Interim Employment Agreement by and between the Town of Ross and David Woltering, dated July 5, 2023, is also hereby amended by mutual agreement of the parties by the substitution of new Sections 1.0 and 2.0. to read as follows:

1.0 Appointment

The Town hereby retains and appoints David Woltering as "Extra Help" in the Planning & Building Department, and Woltering hereby accepts such employment for the purposes of orienting the new Director, managing the completion of the 6th Cycle Housing Element project and to begin implementation of its policies and programs with near-term deadlines. However, the appointment shall not exceed Woltering working more than 960 hours in a fiscal year in accordance with CalPERS requirements.

2.0 Term of Agreement

The term of this Agreement shall commence on October 23, 2023, and shall continue in full force and effect, ending June 30, 2024, unless sooner terminated with or without cause or notice by the Town Manager, or by David Woltering with fourteen (14) calendar days' advanced written notice to the Town Manager provided in accordance with Section 10.2 of this Agreement.

All other terms and conditions of the Interim Employment Agreement with David Woltering shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this First Amendment to the Interim Employment Agreement with David Woltering on this 12th day of October 2023.

TOWN OF ROSS,

Christa Johnson
Town Manager

David Woltering,



David Woltering

**TOWN OF ROSS
EMPLOYMENT AGREEMENT RETAINING DAVID WOLTERING
AS INTERIM PLANNING AND BUILDING DIRECTOR**

THIS INTERIM EMPLOYMENT AGREEMENT ("Agreement") is entered into by and between the Town of Ross, a California municipal corporation, (the "Town") and David Woltering, an individual, (hereinafter referred to as "Woltering") to be effective the 5th day of July 2023 ("Effective Date"). The Town and Woltering are sometimes hereinafter individually referred to as "party" and are hereinafter collectively referred to as the "parties."

A. The Town desires to retain and appoint on an interim basis Woltering as the Interim Planning and Building Director of the Town pending the Town's selection of a permanent Planning and Building Director following completion of the ongoing recruitment process.

B. Woltering, a retired CalPERS annuitant, desires to serve as the duly appointed Interim Planning and Building Director of the Town pending the Town's selection of a permanent Planning and Building Director following completion of the ongoing recruitment, and Woltering understands that he shall hold office at the pleasure of the Town Manager. Woltering has approximately 28 years of experience as a Community Development Director, and he has the knowledge and experience required to serve as the Interim Planning and Building Director.

NOW, THEREFORE, the parties agree as follows:

1.0 Appointment

1.1 The Town hereby retains and appoints David Woltering as Interim Planning and Building Director of the Town, and Woltering hereby accepts such employment and appointment with the Town to perform the functions and duties of the Interim Planning and Building Director as set forth in the Class Specification for Planning and Building Director. This interim appointment is subject at all times to the terms and conditions of this Agreement and to perform other permissible and proper duties and functions consistent with the position of the Planning and Building Director as the Town Manager may from time to time assign. However, the appointment shall not exceed Woltering working more than 960 hours in a fiscal year in accordance with CalPERS requirements

1.2 Woltering hereby agrees to perform fully and faithfully the functions and duties of the Planning and Building Director, as the duly appointed Interim Planning and Building Director, as specified above and in accordance with the terms and conditions set forth herein.

2.0 Term of Agreement

The term of this Agreement shall commence on the Effective Date set forth above and shall continue in full force and effect for a period of up to six (6) months, ending January 5, 2024, unless sooner terminated with or without cause or notice by the Town Manager, or by Woltering with fourteen (14) calendar days' advanced written notice to the Town Manager provided in accordance with Section 10.2 of this Agreement.

3.0 Compensation

3.1 Woltering shall maintain time records in the Town's timekeeping system for the services rendered pursuant to this Agreement.

3.2 Woltering will receive compensation at the rate of \$91.34 per hour for all hours worked pursuant to this Agreement, minus any applicable payroll taxes required by state and federal law, payable in accordance with the Town's established protocols and procedures used for Town employees. Woltering shall not be entitled to any additional compensation or any severance pay upon termination of this Agreement.

3.3 Subject to Section 4.0, Woltering is entitled to receive compensation for hours worked, which includes all time spent on Town related business, regardless of when or where performed and includes travel to and from business related meetings. Woltering may not invoice the Town for travel to and from home to the Town, or work unrelated to his work for the Town, whether personal or professional, even if performed while at the Town and during regular business hours of the Town.

3.4 Woltering shall not be entitled to receive any benefits of employment provided to Town's regular full-time or management employees, including, but not limited to, group health or medical benefits, life insurance, and vacation and other leave accruals. Woltering specifically acknowledges that his employment by the Town under this Agreement is intended to be temporary and of limited duration, and that he will not be entitled to be a member of or accrue benefits under the California Public Employees Retirement System (CalPERS). Notwithstanding the foregoing, Woltering may elect to participate in any salary deferral program under Internal Revenue Code section 457 that is maintained by the Town and for which Woltering is eligible, without contribution from the Town.

4.0 Hours of Work

The parties hereby expressly understand and agree that Woltering's hours will not exceed 960 hours in the Fiscal Year 2023/2024 in accordance with California Government Code section 21221. Woltering shall be responsible for ensuring that he does not exceed the 960 hour per fiscal year limit. The Town shall regularly audit Woltering's hours to ensure compliance with Government Code section 21221. Woltering is expected to work approximately 24 hours a week, including attendance at Town Council meetings as needed.

5.0 General Expenses

Woltering is not entitled to receive reimbursement for general expenses incurred, nor shall he be expected to incur such expenses, in the performance of his duties pursuant to this Agreement. Notwithstanding the foregoing, if Woltering incurs an extraordinary expense related to the performance of his obligations pursuant to this Agreement and wishes to seek reimbursement from the Town for such expense incurred, he shall do so by submitting a request for reimbursement to the Town Manager and copies of receipts substantiating the expense.

6.0 Indemnification

Except for an act of misappropriation of public funds, or an indictment, the filing of an information, a plea of guilty or a plea of nolo contendere for a crime involving moral turpitude, Town shall defend, hold harmless and indemnify Woltering against any tort, professional liability claim or demand or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring within the scope of his employment as Interim Planning and Building pursuant to and to the extent required by Government Code sections 825 and 995. Pursuant to Government Code section 825(a), Town reserves its rights not to pay a judgment, compromise, or settlement until it is established that the injury arose out of an act or omission occurring within the scope of Woltering's employment under this Agreement.

7.0 Other Terms and Conditions

The Town Manager, in consultation with Woltering, shall fix any such other terms and conditions, as it may determine from time to time, relating to the performance of Woltering, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement, or any other applicable law.

8.0 Compliance with Law

Woltering shall comply with all applicable laws, ordinances, codes, and regulations of federal, state, and local government in the performance of the duties and obligations that are the subject of this Agreement.

9.0 Governing Law and Venue

This Agreement has been negotiated and executed in the State of California and shall be governed by and construed under the laws of the State of California. Any legal action arising under or related to this Agreement shall be brought and prosecuted in the Marin County Superior Court.

10. General Provisions

10.1 This Agreement constitutes the entire agreement between the parties and supersedes all prior negotiations, arrangements, agreements, representations, and understandings, if any, made by or among the parties with respect to the subject matter hereof. No amendments or other modifications of this Agreement shall be binding unless executed in writing by both parties hereto, or their respective successors, assigns, or grantees. To the extent that other oral or written agreements exist or Town Personnel Rules may apply to the relationship between Town and Interim Planning and Building Director, this Agreement supersedes all others.

10.2 Any notices required by this Agreement shall be either given in person or mailed by first class mail with the postage prepaid and addressed as follows:

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| IF TO TOWN: | P.O. Box 320 Ross, CA 94957 Attention: Town Manager |
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| IF TO INTERIM PLANNING AND DIRECTOR | David Woltering [Address on file with HR BUILDING Department] |
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10.3 If any provision, or any portion thereof, contained in this Agreement is held to be invalid or unenforceable, the remainder of this Agreement, or portion thereof, shall be deemed severed, shall not be affected and shall remain in full force and effect.

10.4 The provisions of this Agreement are subject to CalPERS rules and regulations regarding the employment of CalPERS retirees. Any provision, or any portion thereof, determined by CalPERS to be inconsistent with such rules and regulations shall be deemed struck from this Agreement and shall not affect the validity or enforceability of any other provision of this Agreement.

10.5 Any modification of this Agreement shall be effective only if it is in writing and signed by the parties.

10.6 Town shall bear the full cost of any fidelity or other bonds, or insurance policies in lieu thereof, required of the Interim Planning and Building Director under any law or ordinance.

10.7 The foregoing recitals are true and correct and are incorporated herein by reference.

IN WITNESS WHEREOF, the parties have executed and entered into this Agreement as of the date first written above.

TOWN OF ROSS



Christa Johnson, Town Manager

ATTEST:



Cyndie Martel, Town Clerk

DAVID WOLTERING


