

CITY OF MOSIER

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CITY COUNCIL MEETING

Wednesday, August 5, 2020 6:30 P.M.

Please join the meeting from your computer, tablet or smartphone.

<https://www.gotomeet.me/CityCouncil1>

You can also dial in using your phone.

United States (Toll Free): [1 866 899 4679](tel:18668994679)

United States: [+1 \(646\) 749-3117](tel:+16467493117)

Access Code: 718-957-813

AGENDA

6:30pm	I	Call to Order/Roll Call – Mayor Burns
	II	Agenda corrections or additions
6:35pm	III	Business from the Audience - This is for Mosier residents and anyone else to express concerns, needs, or opportunities. Please keep your comments succinct and under two minutes. You may bring in written materials for Committee and Staff to review. The Facilitator can assign the issue to a future Committee meeting, or to an appropriate Committee or staff member. Please realize that we cannot always offer a response immediately but will give the matter due consideration. We encourage the participation of all stakeholders in our community.
6:40 pm	IV	Approval of: 07/22/2020 Council Meeting Minutes
	V	BUSINESS
6:45 pm	1.	Katie Skakel, New City Planner – Introductions/Contract
7:15 pm	2.	City Auditor – Tara Kamp, Pauly Rogers, Inc.
7:45 pm	VI.	ANNOUNCEMENTS
7:55 pm	VII.	ADJOURN

CITY COUNCIL MEETING

July 22, 2020 at 6:30 P.M.

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<https://www.gotomeet.me/CityCouncil1>

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United States (Toll Free): 1 866 899 4679

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6:30 Call MTG to Order: Mayor Burns

Attendance: Mayor Burns, Ron Wright, Acasia Berry, Peny Wallace, Lacy Gries, Witt Anderson, Charlie Cannon (late excused), Colleen Coleman City Manager, Laura Westmeyer City Attorney, Jayme Bennett City Recorder

Jayme Hafner League of Oregon Cities (LOC)

Kevin Lyddon, Mosier Valley

Agenda Corrections or Additions: Addition: Review audit letter (end of agenda), Kevin Lyddon business from the audience (follow up PUD conversation), Colleen Coleman announcement on the Pocket Park.

Business from the Audience: Kevin Lyddon is having a difficult time in responsiveness on the electricity research, inclusive of the PUD. Letting the council know he did make many attempts to participate, as discussed and has not received a response from the PUD in The Dalles.

Mayor Burns suggests call forward on the phone lines during the COVID pandemic to avoid loss of communication in Mosier City Hall, given most people are working from home at this time.

City manager requests email communications in the interim. Kevin clarifies the difficulties were primarily with PUD responsiveness.

Approval of July 8, 2020 Minutes:

Corrections: Spelling que/cue, environmental reference to renewable energy with Pacific Power, radio reference for recycle outreach (not Ron Wright).

Motion to approve the minutes from July 8, 2020 with above mentioned corrections:

1st : Peny Wallace

2nd : Lacy Gries

Motion carries, no opposition 6:39

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I. Jayme Hafner:

League of Oregon Cities training (first session) on council ethics (see information in the July 22nd agenda packet and July 22nd minutes for reference).

Forms of local government in Oregon in general (Mosier being Council/Manager).

Peny Wallace: my understanding is we highly support the mayor and her views, as the council, is that not correct?

LOC: (references the city attorney as best advice): Best practice is to pass a resolution in advance to show support of the mayor of the issue at hand. The recommendation for the mayor, if she is making statements as a regular citizen, is to clarify that she is not stating on behalf of the council. The mayor has no authority outside of the council. If the council is okay with the mayor representing them, an informal resolution would address that in advance.

Mayor Burns: we only meet every 2 weeks, and sometimes things come up, and we can't wait 2 weeks, it is typical for something to have no warning in an interview (for example).

LOC: simply by clarifying with "the council voted this way" as a statement would remove the personal component.

Laura Westmeyer: (adding to that): It is really a question of policy that is of concern here. If it is an action of the council that comes up, then the mayor would be an appropriate spokesperson. If it is not an action by council, or a resolution, or a vote, it is not okay for the mayor to speak on behalf of the council. The mayor can speak as a citizen.

Colleen: Is the mayor's role on guiding strategic planning and policy to the council? She doesn't always have time to go back to council to have a resolution signed when it is under the purview of the strategic plan.

Mayor Burns: For example, there are letters that need signatures to support climate strategy etc. that type of request doesn't always have a 2-week window.

Acasia Berry: I think what we are talking about right now is not Arlene as mayor, but any mayor. It is more of a policy position, what would be the council's role and responsibility and authority.

LOC: If it fits in with your strategic plan, and you have a set of goals, if that's something where a statement is made which is aligned, there isn't much grievance there.

If the mayor isn't aligned with the entire council, then there could be an issue. Not specific to Mayor Burns.

Laura Westmeyer: As individually elected officials, this would apply to all members and the mayor. You are here to bring ideas to council, push forward with legislative ideas and bring them forward.

LOC: There is no unilateral authority, you are a body.

Per your charter, the council serves as a legislative body for the City of Mosier. You will adopt a budget, ordinances, power is centralized, you act as a body, not individuals.

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You are the city's policy makers and visionaries. There is a framework and comprehensive strategic planning so everyone is on the same page. Routinely review those goals, check the progress, update as needed to ensure you're on the right train and headed in the right direction.

There is limited hiring authority. Outside of the recorder and attorney, the city manager has the authority to hire and fire. The council president would sit in and run the meeting in the absence of the mayor.

Colleen: Going back to the last slide (#5), we had one judiciary decision that needed to be made last year, and I am curious if a council member wants to get more information, is it appropriate for council members to go out canvassing and postpone the quasi-judicial hearing?

LOC: Land use meetings are a little different, I am not an expert, I work under the assumption that the more informed you can be, the better. Individual and unique perspective of the council members is essential.

Peny Wallace: sometimes in situations, we as individuals need to see what our community and constituents desire. Is that not the best approach, should we implore people to come to the meetings instead?

LOC: It is appropriate to engage with your community, they are going to share their opinion, it is also ideal to encourage their participation.

Mayor Burns: With COVID-19, is it appropriate to be traveling abroad and attend the meetings virtually?

LOC: OK

Laura Westmeyer: We generally need to have the governing body meet within the jurisdiction of the boundary. I think that applies to the public being able to attend the meeting in the city of Mosier, that will satisfy that requirement.

Mayor Burns: In the winter, this might be a good format (video calls) or an alternate to avoid the issues we have with quorum. Our council is majority to vote rather than consensus, even though we typically reach consensus, bottom line, we are majority. How much discussion is appropriate before you vote?

Acasia Berry: What is our obligation to vote (regarding public interest). There can be issues of contention and discussion or self-interest.

LOC: Recusing yourself for conflict. Disclosing potential if there is a conflict. You can always call the city attorney or call the League of Oregon Cities, and we can help you.

Charlie Cannon: Ramifications for opposition for council vote: The formal process would be an appeal?

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LOC: In a land use hearing that would be a possible path. A citizen recourse would be not to vote for you. Laura adds it really depends on the situation and decision at hand.

LOC: You can't violate your law, ordinances etc.

LOC: goes over the City Manager role:

You are authorizing the Mosier City Manager to do everything outside of the roles of Mosier City Council.

(REFER TO SLIDE 7))

Acasia Berry: Laura, how would you define attempt to influence? Colleen responds prior to Kathy Fitzpatrick being a city manager, they hadn't had one, so the process is relatively new.

Laura Westmeyer: The separation of role here is for administrative efficiency. The director and the manager type scenario. The board wouldn't get involved in day to day business. That's why they appoint a qualified professional to do that work. Attempting to influence or interfere with the day to day business of City of Mosier/City Hall at all is the definition.

Mayor Burns: We have been wanting to do reviews of staff for a couple years. What is the best mechanism for that?

LOC: Colleen would have an annual review with council, and she would give a review to any employee she supervises. Laura Westmeyer and CIS provide excellent advice and recommendations on these issues.

Mayor Burns: Is that in a public meeting? And a specific time of year?

LOC: City manager reports to the council. The city manager can request an open meeting (public), but you can only have executive sessions for specific reasons. It can be any time of year. Colleen may want to have it on anniversary dates, annual in January for calendar, or annual fiscally. It is up to Colleen.

Witt Anderson: Our charter says the city recorder and city attorney are appointed by the mayor. Do we have a resolution to transfer that authority to the presiding city manager? Have we provided Colleen the authority to oversee Jayme (Mosier City Recorder)? Technically, the mayor and council are supervising the city recorder and the city attorney?

Mayor Burns: So, we need to do Jayme's review too?

Laura Westmeyer: You delegated the authority of supervision and monitoring of the City Recorder to the City Manger via her employment contract.

LOC regarding the City Recorder: (REFER TO SLIDE 8)

Citizens' Role: (REFER TO SLIDE 9)

Council Meetings: City of Mosier should be following Robert's Rules of Order

Witt: Can you qualify a quorum (regarding multiple boards, small town, casual or informal events)

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LOC: Public mtg is triggered by a quorum. If you are in a coffee shop, and start talking about city business, you just had a public mtg. It gets trickier when person A and person B are talking about city business, person B goes and talks to person C. Once any other councilor discusses that issue, you now have a quorum and a public meeting.

If a committee is authorized to make decisions, then that committee is subject to the same quorum and public meeting law.

Charter and ordinances can conflict. The charter is the default document. Your ordinance would be amended to reflect the charter. After the charter and ordinances, you have the council rules. Of course, you have state and budget law etc.

Training opportunities: (REFER TO SLIDE 13)

Highly recommends additional and ongoing training.

<https://www.orcities.org/education/training/loc-training-calendar/details/council-roles-and-responsibilities-training>

II. USDA

Reviews the history of the project from inception to present. (see previous meeting minutes and water system plan).

Ron Wright: The back of the hand calculation I get is an \$8.00-\$10.00 increase per month for every citizen, is that the best thing for the community to do this back up well?

Mayor Burns: a large part of this project is to redo the east side system and pump house, which has been identified as a priority for several years. Not clear on the practicality of abandoning the project altogether at this point.

Colleen Coleman: There is an increase of revenue of \$30,000 this year (water) and we can use our SDC funds as well to mitigate the impact as best as we can.

Mayor Burns: Is this a project that can be reworked to reduce the scope or is it too late?

Colleen Coleman: It is unknown at this time, given the difficulties we experienced with the UPRR derailment. There are many decisions the council needs to move forward with that have been made already.

Acasia Berry: What are we approving tonight?

We are being asked tonight to rescind the decision to stay in the aquifer in the city and go out to the water shed and do the work there. In the last meeting we sited the well in the city aquifer and the analysis wasn't favorable.

Motion:

Move that the council direct the management and staff to abandon efforts in the existing city limit well site – and move forward in accordance with the memo dated July 22nd with necessary permitting and due diligence on the alternate site.

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1st Witt Anderson

2nd Peny Wallace

Acasia Berry abstains from voting

Motion carries, 9:01 pm

Announcements:

Mayor Burns: Reports on letter from audits division and reads the form letter regarding August 17, 2020 deadline to file the audit regarding shared revenue percentage being withheld.

Colleen Coleman: Concerns expressed regarding the visitors at Pocket Park, and people smoking there and not practicing social distancing. The concern is that we didn't close that park, like we did the other ones.

Mayor Burns: It's not really a legal access, there is no formal parking. In this heat, I am hesitant.

Peny Wallace suggests a sign to align with our messaging on other park signage. Peny will send Colleen some verbiage for the sign and we will post a sign there. We will post English and Spanish signs at the park as well.

Mayor Burns, in honor of everyone's time, I would like to adjourn unless there is anything else?

Adjourn 9:13

KATIE SKAKEL

kdskakel@gorge.net / (541) 806-0540

July 15, 2020

Colleen Coleman, City Manager
City of Mosier Administrative Office
P. O. Box 456
208 Washington St.
Mosier, OR 97040

Dear Colleen:

I'd like to express my interest in the contract planner position with the City of Mosier. My understanding is that the position will focus on general land use planning including review of development permits and site design, comprehensive planning, affordable housing, and community resilience. My professional history includes a stint as a contract planner in Mosier previously – see more below – and my qualifications make me an excellent candidate for the current position.

Having worked as professional planner for the past 25 years in land use planning, floodplain management, hazard mitigation, climate adaptation, and resiliency planning, I am seeking the right opportunity to use my skills. My professional career has focused on community resiliency. I am keenly interested right now to synthesize and strategize the best models being used in other parts of the country – and the world – towards providing insightful direction and a framework for the City of Mosier's projects.

To complement my past experience, I am currently completing two certifications as a Professional Planner: (1) Eco-District Accredited Professional (AP) which is a credential that demonstrates a commitment to creating sustainable, equitable neighborhoods and (2) Climate Change Professional. Both certifications are technical and action-oriented. Both call for looking at community resiliency with a lens on incorporating equity, the impact of coronavirus and climate change on more vulnerable communities, and ways to build resiliency for the whole community. Providing the framework includes data on funding opportunities as well as examples of how to catalyze a community's efforts optimize a community resiliency program.

I worked as the contract planner for the City of Mosier about 18 years ago. At that time, I drafted a new Land Use Development Ordinance (LUDO) which was funded through a DLCD grant that I wrote and submitted on behalf of the City. I have stayed current in Oregon Land Use Planning as I was the Multnomah County Senior Planner doing current planning for three and a half years. Other projects that I have worked on include a nationwide interview process to identify gaps and needs for Disaster Risk Reduction (DRR) at the local level. I created and developed the DRR Ambassador curriculum and conducted a pilot workshop for 60 local officials in Tulsa, OK to test the DRR curriculum. FEMA awarded additional funding due to the success, need, and importance of the work. I have also been trained in Transition Town Planning and the Oregon Natural Step which provide me with an ease to creating a collective conversation about resilient communities and planning with a whole community approach.

Working with the City of Mosier leadership, I am confident I can provide the city with what your team and partners will need to incorporate sound land use planning and community resiliency into ongoing work and projects. I am eager and available to start work now.

Thank you for your consideration of my candidacy! I look forward to hearing from you soon.

Best,

Katie Skakel

Katie Harkins Skakel

1550 State Rd Mosier, OR 97040

EXPERIENCE SUMMARY

Ms. Skakel is a Senior Planner with 25 years experience in land use planning, floodplain management, climate adaptation and resiliency planning. Katie focuses on whole-community systems thinking and working with communities to plan holistically while emphasizing taking steps to reduce the disaster cycle.

RELEVANT EXPERIENCE

Resiliency Planning Project Director, Ecology and Environment a WSP Co. January 2020 – April 2020. Lead team of professionals in update of Hazard Mitigation Plans and Climate Adaptation in the Pacific NW, Colorado and California.

Senior Planner, Multnomah County Land Use Planning, August 2016-December 2019. Lead planner for all current planning projects for County. Write staff reports, assign work, review work, provide technical assistance in all matters related to Land Use including mitigation issues and floodplain issues.

Project Manager and Liaison, Natural Hazards Mitigation Association (NHMA) Resilient Neighbors Network, Dec 2014- August 2016. Katie worked as the lead consultant to conduct a nation-wide interview process to identify gaps and needs for mitigation and Disaster Risk Reduction at local level. She created and developed the Disaster Risk Reduction (DRR) Ambassador curriculum, rewrote the “Patchwork Quilt”, now referred to as “Living Mosaic: A Path Forward” and managed, designed, and facilitated 12 webinars and a Pilot workshop for 60 local officials in Tulsa, OK to test the DRR curriculum. FEMA has awarded additional funding due to the success, need and importance of the work.

Senior Hazard Mitigation Planner, Tetra Tech, Inc., Portland, Oregon, Sept 2013 to Sept 2014. As Tetra Tech’s Senior Planner for the West Coast, Katie worked on several Multi-Hazard Mitigation Plans. Katie conducted Benefit Cost Analysis assessments for New York Rising Projects. Katie prepared an extensive presentation for Mayor of New York City concerning NFIP compliance and CRS. She also conducted an extensive literature review on landslides in Washington State.

Mitigation Floodplain Specialist, Reservist, FEMA, 1995-2013. As a planning specialist, Katie worked to develop short and long-term planning strategies for affected communities during Presidential Disaster Declarations. Katie worked for 4 months on Hurricane Sandy recovery and led a group of contractors in utilizing Substantial Damage Estimator (SDE) software for several Long Island communities and she coordinated GIS mapping and data collection to strategically address substantial damage structures. Ms. Skakel worked directly in City permitting offices, to answer questions of staff and citizens on substantial damage, requirements for elevation, increased cost of construction, and changes to the NFIP regulations.

EDUCATION

B.S, Environmental Science/Government, St. Lawrence University, 1986

Masters Coursework: University of Massachusetts; Wetland Identification and Delineation and Soil Science

Portland State University; Site Design and Planning

AREAS OF EXPERTISE

Floodplain Management

Hazard Mitigation Planning

Community Resiliency

REGISTRATIONS/ AFFILIATIONS

APA Member

Member, Natural Hazards Mitigation Association (NHMA)

KEY TRAINING/ CERTIFICATIONS

Climate Change Professional – currently enrolled in certification class.

CFM, 2013-2015

Project Management, June 2014

Haz US Certification, Sept 2014

Community Rating System (CRS) week long training Nov 2014

CONTACT

541-806-0540

kdskakel@gorge.net

Principal Planner, Skakel Planning Service, September 2006 to 2013. Ms. Skakel designed, developed, and prepared and presented Conditional Use Permits in hearings to establish the Westside Community Trail, a 3-mile-long pedestrian connection, on contract to Hood River Parks and Recreation District. Katie served as Planning Manager for the Columbia River Gorge Commission, which consisted of assigning work and facilitated staff meetings, reviewing staff reports for consistency with management plan, responding to difficult issues and participating in an APA award winning visioning process for 5 counties and 13 cities for long-range planning and local economies. Under contract to Natural Resource Conservation District (NRCD), Katie coordinated watershed and land use planning efforts for the Deschutes and Crooked River Basins, which culminated in identification of best management practices for resource and agriculture lands.

Water Rights Planner, Farmers Irrigation District and Farmers Conservation Alliance, Hood River, OR. July 2001-August 2006.

Planning Director/Senior Planner, Hood River County Planning Department, November 1997 to June 2001. Ms. Skakel managed department of seven including establishment of employee work plans and evaluations, budget, assignments and application of long-range and current planning. She ensured compliance with legal issues involved in zoning codes, building codes, and environmental regulations. She was lead planner on urban growth area and National Scenic Area (NSA). Ms. Skakel trained staff on complex planning procedure including capability tests in the agricultural zone, NSA applications, and forest template tests. She streamlined permitting and code enforcement.

Associate Planner, City of The Dalles, October 1996 to November 1997. Manage all aspects of current planning, including presenting in front of Planning Commission and leading Historic Preservation Committee.

Natural Hazards Program Specialist, FEMA, FTE GS 12 and Disaster Assistance Employee, December 1991 to October 1996, Bothell, Washington. As the principle federal contact for FEMA for States of Washington and Alaska, Ms. Skakel presented numerous workshops on the “how-to’s” of the NFIP and in educating about sound land use planning practices. Planning duties included ordinance writing, comprehensive plan review, community enforcement, site visits, reporting to State legislature, and permit reviews. Katie conducted numerous workshops in the post-recovery phase to citizens and community officials and she coordinated all aspects of the technical fieldwork, which ultimately allowed the communities to make decisions with a clear, and comprehensive public engagement process.

Regional Planner, Massachusetts Dept. of Environmental Management, November 1988 to December 1991, Boston, Massachusetts. Ms. Skakel managed staff of four and prepared and administered budget. She was point person for National Flood Insurance Program (NFIP), which includes working on planning programs for 342 Mass communities, and coordinated with several river and coastal agencies. Policy lead for DEM on Sea Level Rise Study, coastal bank and coastal dune protection policy, and evaluation of sanitary systems in velocity zones.

ADDITIONAL EXPERIENCE

Member, Natural Hazards Mitigation Association (NHMA) and American Planning Association (APA)

Land use law, water rights law; endangered species act compliance, firewise practices, economic development, and hazard mitigation

Trained in Transition Town Planning and Eco District Framework.

Managed Gorge Grown Food Network’s Summer Mobile Farmers Market. This entailed buying from local farmers, selling, and tracking mobile market in database.

Proficient and trained in grant writing, Word, Excel, Outlook and Power Point.

Homeowner builder and design of “green home” with solar tracking system.

PERSONAL SERVICES AGREEMENT (City Land Use Planner)

THIS PERSONAL SERVICES AGREEMENT (“Agreement”) is entered into by and between the CITY OF MOSIER (the “City”), an Oregon Municipal Corporation, and KATIE SKAKEL (the “Consultant”).

RECITALS

A. City requires a consultant to perform the services of a City Land Use Planner because City staff currently does not have the requisite knowledge, skill or training to perform such services.

B. The City advertised for public sector land use planning consultants in July 2020, which resulted in the City Manager’s selection of the Consultant as the best qualified to provide services of the City Land Use Planner.

C. The City and Consultant now wish to execute a one-year Personal Services Agreement for the provision of the City Land Use Planner services for current and long-range planning activities at the request and direction of the City Manager.

Based on the foregoing Recitals, the parties agree as follows:

AGREEMENT

1. Term. The term of this Agreement shall begin on the last date signed below and run for a period of one year from that date. This Agreement shall automatically expire at the end of one year unless the parties execute a new written Agreement. However, the City may renew the agreement for an additional two years and any nonrenewal or expiration shall not extinguish or prejudice City’s right to enforce this Agreement with respect to (i) breach of any warranty; or (ii) any default or defect in Consultant’s performance that has not been cured.

2. Scope of Services. Consultant’s services under this Agreement shall be to serve as the City Land Use Planner, which shall consist of current and long-range planning needs of the City and such other services as the City may reasonably require.

3. Consultant Identification. Consultant shall furnish to City its taxpayer identification number, as designated by the Internal Revenue Service, or Consultant’s social security number, as City Manager deems applicable.

4. Compensation.

(a) City agrees to pay Consultant on a time-and-materials basis for the services rendered. The City shall pay to the Consultant \$85 per hour for land use planning services.

(b) Any change in rates must be proposed no later than 60 days before the expiration of the City’s fiscal year, and any rate changes will be effective only for the subsequent fiscal year.

(c) Invoices submitted in connection with this Agreement shall be properly documented and shall identify the pertinent agreement and/or purchase order numbers. All monthly invoices shall describe the work, the date the work was performed and the amount of time (15 minute intervals) worked. In addition, the invoice shall identify the nature of the work performed, including information such as the following, where applicable: the area of the city affected, the applicant's name, the name of the land use applicant, whether it is an enforcement action or such other information reasonably designed to inform the City of the nature of the work.

(d) City agrees to pay Consultant within 30 days after receipt of Consultant's itemized statement. Amounts disputed by City may be withheld pending settlement.

(e) Consultant understands and agrees that City operates on limited funding and that much of the work under this Agreement is financed through grants and fees assessed to applicants. Thus, funds to finance the costs of the services under this Agreement are expressly subject to availability and the City's annual budgeting process.

(f) City shall not pay any amount in excess of the compensation amounts set forth above, nor shall City pay Consultant any fees or costs that City reasonably disputes.

5. Independent Contractor Status. Consultant will comply with ORS 670.600 through 670.605 during the life of this Agreement and as amended and shall be free from direction and control over the means and manner of providing labor or services, subject only to the specifications of the desired results. Consultant is responsible for obtaining all assumed business registrations or professional occupation licenses required by state or local law. Consultant shall furnish the tools or equipment necessary for the contracted labor or services. Consultant agrees and certifies that:

(a) Consultant is engaged as an independent contractor and will be responsible for any federal or state taxes applicable to any payments made under this Agreement.

(b) Consultant is not eligible for any federal social security or unemployment insurance payments by the City for work performed under this Agreement. Consultant is not eligible for any PERS or workers' compensation benefits from compensation or payments made to Consultant under this Agreement.

(c) Consultant has filed federal and state income tax returns in the name of the business as part of the personal income tax return for the previous year for labor or services performed as an independent contractor in the previous year.

(d) Consultant agrees and certifies that work performed pursuant to this Agreement will be performed by Katie Skakel. At the time of execution of this Agreement and for all work performed under this Agreement, Nick Kraemer is a fully and lawfully qualified professional land use planner in the State of Oregon familiar with the state and local laws affecting land use and zoning.

6. Early Termination.

(a) This Agreement may be terminated without cause prior to the expiration of the agreed-upon term:

(i) by mutual written consent of the parties; or

(ii) by either party upon 10 days' written notice to the other, delivered by certified mail or in person.

(b) Upon receipt of notice of early termination, Consultant shall immediately cease work and submit a statement of services for all services performed and expenses incurred since the date of the last submittal of a statement of services. Consultant and the City will negotiate to ensure completion of any work in progress.

(c) Any early termination of this Agreement shall be without prejudice to any obligation or liabilities of either party already accrued prior to such termination.

(d) The rights and remedies of City provided in this Agreement and relating to defaults by Consultant shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

7. No Third-Party Beneficiaries. City and Consultant are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide, any benefit or right, directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.

8. Subconsultants and Assignment. Consultant shall neither subcontract any of the work, nor assign any rights acquired hereunder, without obtaining prior written approval from City. City, by this Agreement, incurs no liability to third persons for payment of any compensation provided herein to Consultant.

9. Access to Records. City shall have access to all books, documents, papers and records of Consultant that are pertinent to this Agreement for the purpose of making audits, examinations, excerpts and transcripts.

10. Ownership of Work Product; License. All work products of Consultant that result from this Agreement (the "Work Products") are the exclusive property of City. In addition, if any of the Work Products contain intellectual property of Consultant that is or could be protected by federal copyright, patent, or trademark laws, or state trade secret laws, Consultant hereby grants City a perpetual, royalty-free, fully paid, nonexclusive and irrevocable license to copy, reproduce, deliver, publish, perform, dispose of, use and re-use, in whole or in part (and to authorize others to do so), all such Work Products and any other information, designs, plans, or works provided or delivered to City or produced by Consultant under this Agreement. The parties expressly agree that all works produced (including, but not limited to, any taped or recorded items) pursuant to this Agreement are works specially commissioned by City, and that any and all such works shall be works made for hire in which all rights and copyrights belong exclusively to City. Consultant shall not publish, republish, display or otherwise use any work or Work Products resulting from this Agreement without the prior written agreement of City.

11. Compliance With Applicable Law. Consultant shall comply with all federal, state, and local laws and ordinances applicable to the services to be performed pursuant to this Agreement, including, without limitation, the provisions of ORS 279.312, 279.314, 279.316, 279.320 and 279.555. Without limiting the generality of the foregoing, Consultant expressly agrees to comply with (i) Title VI of the Civil Rights Act of 1964; (ii) Section V of the Rehabilitation Act of 1973; (iii) the Americans With Disabilities Act of 1990 (Pub. L No. 101-336), ORS 659.425, and all regulations and administrative rules established pursuant to those laws; and (iv) all other applicable requirements of federal and state civil rights and rehabilitation and other applicable statutes, rules and regulations.

12. Coordination with City Staff and Consultants. Consultant understands and agrees that, in the performance of his work as City Planner, he shall communicate and coordinate in a timely fashion with the City Manager, City Engineer and the City Attorney and keep them informed of land use permitting and legislative matters that have city management, engineering or legal implications or are affected by city policy, legal or engineering requirements.

13. Conflict of Interest. If, under this Agreement, the Consultant has occasion to supervise, regulate, review, recommend or critique the work of any corporation, person, partnership or any other entity for whom the Consultant has previously worked, the Consultant shall immediately notify the City Manager of this prior relationship. The Consultant shall not perform any work for the City that involves supervising, reviewing, regulating, recommending or critiquing the work of any corporation, person, partnership or any other entity for whom the Consultant has previously worked unless the Consultant first advises the City Manager, and the City Manager provides written authorization for the Consultant to proceed. Failure by the Consultant to so notify the City Manager and obtain the authorization as required by this section may result in the immediate termination of this Agreement and discharge of the Consultant as City Planner.

14. Professional Standards. The Consultant shall be responsible, to the level of competency presently maintained by other land use planners in City's community, for the professional, technical and legal soundness, accuracy and adequacy of all services and materials furnished under this Agreement.

15. Modification, Supplements or Amendments. No modification, change, supplement or amendment of the provisions of this Agreement shall be valid unless it is in writing and signed by the parties hereto.

16. Indemnity and Insurance.

(a) Indemnity. Consultant acknowledges responsibility for liability arising out of Consultant's negligent performance of this Agreement and shall hold City, its officers, agents, consultants, and employees harmless from, and indemnify them for, any and all liability, settlements, loss, costs, and expenses, including attorney fees, in connection with any action, suit, or claim caused or alleged to be caused by the negligent acts, omissions, activities or services by Consultant, or the agents, consultants or employees of Consultant provided pursuant to this Agreement.

(b) Workers' Compensation Coverage. Consultant certifies that, to the extent required, Consultant has qualified for workers' compensation as required by the state of Oregon. Consultant shall provide the City, upon request, a certificate of insurance evidencing coverage of all subject workers under the applicable workers' compensation statutes. The insurance certificate and policy shall indicate that the policy shall not be terminated by the insurance carrier without 30 days' advance written notice to City. All agents or consultants of Consultant shall maintain such insurance.

(c) Comprehensive, General, and Automobile Insurance. Consultant does not currently carry comprehensive general and automobile liability insurance covering clients such as the City. On a project-specific basis, the City Manager may require, and Consultant shall obtain and maintain, comprehensive general and automobile liability insurance for the protection of Consultant and City and its directors, officers, agents, and employees, insuring against liability for damages because of personal injury, bodily injury, death, and broad-form property damage, including loss of use, and occurring as a result of, or in any way related to, Consultant's work. This insurance, if required, shall be in an amount not less than \$1,000,000 combined, single-limit, per-occurrence/annual aggregate. If required, this insurance shall name City as an additional insured, with the stipulation that coverage, as to the interest of the City, shall not be invalidated by any act or neglect or breach of this Agreement by Consultant. If the City Manager elects to require Consultant to obtain comprehensive general and automobile liability insurance, Consultant shall be entitled to adjust his rates charged to the City to reflect the cost of this insurance.

(d) Errors and Omissions Insurance. Consultant does not currently carry professional errors and omissions liability insurance. On a project-specific basis, the City Manager may require, and Consultant shall obtain and maintain, professional errors and omissions liability insurance for the protection of Consultant and its employees, insuring against bodily injury and property damage arising out of Consultant's negligent acts, omissions, activities or services in an amount not less than \$1,000,000 combined, single limit. If required, this insurance shall include contractual liability and shall remain in effect for a period of 3 years following completion of the project for which the insurance was obtained. When required to obtain such insurance, Consultant shall furnish City a certificate evidencing the dates, amounts, and types of insurance that have been procured pursuant to this Agreement. The provisions of this subsection apply fully to Consultant and its consultants and agents. If the City Manager elects to require Consultant to obtain professional errors and omissions liability insurance, Consultant shall be entitled to adjust his rates charged to the City to reflect the cost of this insurance.

17. Integration. This Agreement contains the entire agreement between and among the parties, integrates all the terms and conditions mentioned herein or incidental hereto, and supersedes all prior written or oral discussions or agreements between the parties or their predecessors-in-interest with respect to all or any part of the subject matter hereof.

18. Legal Expenses. In the event legal action is brought by City or Consultant against the other to enforce any of the obligations hereunder or arising out of any dispute concerning the terms and conditions hereby created, the losing party shall pay the prevailing party such reasonable amounts for attorney fees, costs, and expenses as may be set by a court. "Legal action" shall include matters subject to arbitration and appeals.

19. Severability. The parties agree that, if any term or provision of this Agreement is declared by a court to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected.

20. Number and Gender. In this Agreement, the masculine, feminine or neuter gender, and the singular or plural number, shall be deemed to include the others or other whenever the context so requires.

21. Captions and Headings. The captions and headings of this Agreement are for convenience only and shall not be construed or referred to in resolving questions of interpretation or construction.

22. Calculation of Time. All periods of time referred to herein shall include Saturdays, Sundays and legal holidays in the state of Oregon, except that, if the last day of any period falls on any Saturday, Sunday or legal holiday, the period shall be extended to include the next day that is not a Saturday, Sunday or legal holiday.

23. Notices. Any notices, bills, invoices, reports or other documents required by this Agreement shall be sent by the parties by United States mail, postage prepaid, or personally delivered to the addresses below. All notices shall be in writing and shall be effective when delivered. If mailed, notices shall be deemed effective 48 hours after mailing, unless sooner received.

<u>For Consultant:</u> Katie Skakel 1550 State Road Mosier, OR 97040 kdskakel@gorge.net	<u>For the City of Mosier:</u> Mosier City Manager P.O. Box 456 Mosier, OR 97040-0456 mosiercityhall@mosierwinet.com
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24. Nonwaiver. The failure of City to insist upon or enforce strict performance by Consultant of any of the terms of this Agreement or to exercise any rights hereunder shall not be construed as a waiver or relinquishment to any extent of its rights to assert or rely upon such terms or rights of any future occasion.

25. Information and Reports. Consultant shall, at such time and in such form as City may require, furnish such periodic reports concerning the status of work being performed under this Agreement and other information relative to this Agreement as may be requested by City. Consultant shall furnish City, upon request, with copies of all documents and other materials prepared or developed in relation with or as a part of the work performed under this Agreement. Working papers prepared in conjunction with work under this Agreement are the property of City, but shall remain with Consultant. Copies as requested shall be provided free of cost to City.

26. City's Responsibilities. City shall furnish Consultant with all available necessary information, data, and materials pertinent to the execution of this Agreement. City shall cooperate with Consultant in carrying out the work herein and shall provide adequate staff for liaison with Consultant.

27. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of Oregon without resort to any jurisdiction's conflicts of law, rules or doctrines. Venue for any legal action under this Agreement shall be Wasco County, Oregon.

28. Authorization. The person signing this Agreement on behalf of Consultant hereby covenants and warrants he or she is authorized to do so and that his or her signature will fully bind Consultant to the terms and conditions of this Agreement. Upon City Manager's request, Consultant shall provide City with evidence reasonably satisfactory to City confirming the foregoing covenants and warranties.

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IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly appointed officers on this _____ day of _____ 2020.

For Katie Skakel:

Dated: _____, 2020.

For the City of Mosier:

By: _____

Title: _____

Dated: _____, 2020.

Approved as to Form:

By: _____
City Attorney