

## AGENDA

SPECIAL MEETING OF THE CITY COUNCIL OF THE CITY OF COTTONWOOD, ARIZONA, TO BE HELD FEBRUARY 20, 2024, AT 5:30 PM., AT THE CITY COUNCIL CHAMBERS--RIVERFRONT, 1083 RIVERFRONT ROAD, COTTONWOOD, AZ.

- I. CALL TO ORDER
- II. ROLL CALL
- III. ITEMS FOR DISCUSSION, CONSIDERATION, AND POSSIBLE LEGAL ACTION:
  1. EXECUTIVE SESSION--PURSUANT TO A.R.S. 38-431.03(A)(1), 38-431.03(A)(3), AND 38-431.03(A)(4) DISCUSSION OR CONSULTATION WITH LEGAL COUNSEL FOR LEGAL ADVICE REGARDING A CONTRACT WITH THE ACTING CITY MANAGER.
  2. DISCUSSION REGARDING A CONTRACT WITH THE ACTING CITY MANAGER, TOM WHITMER.
- IV. ADJOURNMENT

The Cottonwood Council Chambers is accessible to the disabled in accordance with Federal 504 and ADA laws. Those with needs for special typeface print or hearing devices may request these from the City Clerk (TDD 634-5526.) All requests must be made 24 hours prior to the meeting.

Members of the City Council will attend either in person or by telephone conference call.

City of Cottonwood, Arizona  
City Council Agenda Communication



 Print

Meeting Date: February 20, 2024  
Subject: Discussion and Legal Advice Regarding the Proposed Contract with Acting City Manager Tom Whitmer  
Department: HR  
From: Amanda Wilber, Human Resources Director

REQUESTED ACTION

Discussion and Legal Advice Regarding the Proposed Contract with Acting City Manager Tom Whitmer

SUGGESTED MOTION

If the Council desires to approve this item the suggested motion is:

N/A

BACKGROUND

On February 6, Council appointed Tom Whitmer as the Acting City Manager, contingent upon agreement between the two parties on specific terms and conditions. These terms and conditions are outlined in a potential contract and will be discussed in executive session per A.R.S. 38-431.03(A)(1), (A)(3), and (A)(4).

JUSTIFICATION/BENEFITS/ISSUES

N/A

COST/FUNDING SOURCE

N/A

ATTACHMENTS:

File Name	Description	Type
Acting_CM_Assignment_Agreement_Feb_2024(6087005.3).pdf	Proposed Agreement	Cover Memo

## **ACTING CITY MANAGER TEMPORARY ASSIGNMENT AGREEMENT**

This Temporary Assignment Agreement (this “Agreement”) is made and entered into as of February 20, 2024, by and between the City of Cottonwood, an Arizona municipal corporation in the County of Yavapai, State of Arizona (“Employer” or “City”), and Tom Whitmer (“Employee”). The Employer and Employee are the only parties to this Agreement.

### **RECITALS**

**WHEREAS**, Employee is the Director of the City of Cottonwood Utility Department (“Utilities Director”); and

**WHEREAS**, the City Council is authorized by the Municipal Code of the City of Cottonwood (“City Code”), Section 2.16.040, to appoint an Acting City Manager; and

**WHEREAS**, Employee has accepted the role of Acting City Manager, as a temporary assignment in addition to his duties as Utilities Director; and

**WHEREAS**, Employee and Employer desire to establish the terms of Employee’s role as Acting City Manager, including appropriate remuneration; and

**NOW, THEREFORE**, in consideration of the foregoing introduction and recitals, the following mutual covenants and conditions, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Employer and Employee agree as follows:

### **SECTION 1: EMPLOYEE MANUAL**

The appointment of Employee as Acting City Manager shall be treated as a temporary assignment for purposes of interpreting and applying the City of Cottonwood Employee Manual. If any conflict arises between the terms of this Agreement and those of the City of Cottonwood Employee Manual, the terms of this Agreement control. The terms of this Agreement apply to and for the duration of Employee’s role as Acting City Manager and do not modify or subtract from any term, benefit, status, allowance, or condition of his employment as Utilities Director.

### **SECTION 2: DUTIES**

In addition to his responsibilities as Utilities Director, Employee shall have the powers, duties, and responsibilities of the City Manager of the City of Cottonwood, in accordance with the terms and conditions set forth herein. Employee shall perform the functions and duties of the City Manager as set forth under City Code Chapter 2.16, as well as those set forth under state law, and shall perform such other legally permissible and proper duties and functions as the City Council assigns from time to time.

### **SECTION 3: TERM**

Employee's appointment as Acting City Manager took effect during the Regular Meeting of the Cottonwood City Council held on February 8, 2024 (the "Effective Date"). The term of this Agreement shall be for one year from the Effective Date, unless renewed by mutual agreement.

Nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of the City Council to terminate Employee's appointment as Acting City Manager at any time, subject only to the provisions set forth in Section 7 of this Agreement.

### **SECTION 4: REMUNERATION**

During the term of this Agreement, a 20% premium shall be added to Employee's base pay.

### **SECTION 5: BENEFITS, ALLOWANCES**

Any benefit or allowance to which Employee is entitled as Utilities Director shall remain unchanged by this Agreement or by Employee's temporary assignment.

### **SECTION 6: BONDING**

Employer shall bear the full cost of any fidelity or other bonds required of Employee under any law or ordinance.

### **SECTION 7: TERMINATION; UNDERLYING POSITION NOT AFFECTED**

As Acting City Manager, Employee serves at the pleasure of the City Council, which may terminate this Agreement and remove Employee from the position of Acting City Manager at any time, with or without cause and with or without notice to Employee.

If Employee voluntarily resigns from his role as Acting City Manager before the end of the term set forth in Section 3 above, he shall give Employer at least 60 days' notice thereof, unless the parties otherwise agree.

The termination or resignation of Employee's position as Acting City Manager will not impact his role as Utilities Director; however, if such termination is for cause, the same set of supporting facts may lead to additional disciplinary action against Employee in his role as Utilities Director.

## **SECTION 8: PERFORMANCE EVALUATION**

The City Council may review and evaluate Employee's performance annually or more or less frequently, in Council's sole discretion. Employer shall provide adequate opportunity for Employee to discuss his evaluation with the City Council.

## **SECTION 9: NOTICE PROVISIONS**

Any notice concerning this Agreement must be via e-mail to Employee, or in writing delivered personally or sent by certified or registered mail to the City, as follows:

Employer: Mayor & City Council  
City of Cottonwood  
827 North Main Street  
Cottonwood, AZ 86326

Employee: Tom Whitmer  
twhitmer@cottonwoodaz.gov

## **SECTION 10: GENERAL PROVISIONS**

A. Headings. The descriptive headings of the sections of this Agreement are inserted for convenience only and do not control or affect the meaning or construction of the provisions hereof.

B. Jurisdiction and Venue. This Agreement must be administered and interpreted under the laws of the State of Arizona, and venue for any legal action hereunder shall be the Yavapai County Superior Court in Camp Verde, Arizona.

C. Attorney's Fees. If either party brings any action for any relief, declaratory or otherwise, arising out of this Agreement or on account of any breach or default hereof, the prevailing party is entitled to receive from the other party reasonable attorneys' fees and reasonable costs and expenses, as the court may adjudge, or in event of appeal as allowed by the appellate court.

D. Severability. If any part of this Agreement is determined by a court to conflict with any statute or constitution or to be unlawful for any reason, the parties intend that the remaining provisions of this Agreement remain in full force and effect unless the stricken provision leaves the remaining Agreement unenforceable.

E. Conflict of Interest. Employee covenants that he presently has no interest and will not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of services required to be performed under this Agreement. The parties agree that this Agreement may be cancelled for conflict of interest in accordance with Arizona Revised Statutes § 38-511.

F. Entire Agreement. This Agreement constitutes the entire Agreement between the parties and must not be changed or added to except by written amendment. All prior

and contemporaneous agreements, representations, and understandings of the parties, oral or written, other than specifically incorporated herein by reference, are superseded by this Agreement.

G. No Waiver. No waiver of, acquiescence in, or consent to any breach of any term, covenant, or condition hereof may be construed as, or constitute, a waiver of, acquiescence in, or consent to any other, further, or succeeding breach of the same or any other term, covenant, or condition.

H. Indemnification. In addition to that required under state and local law, Employer shall defend, save harmless, and indemnify Employee from and 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 in the performance of his Acting City Manager duties as prescribed by the City Code or separate directions of the City Council. Except for actions or omissions that are intentional and tortious, or criminal in nature, Employer shall indemnify, defend, and hold Employee harmless from all liability for damages, court costs, litigation expenses, defense costs, and attorneys' fees that arise out of Employee's acts or omissions committed within the course and scope of his role as Acting City Manager. If Employee engages in actions or omissions that are intentional and tortious or criminal in nature, then Employer may, in the sole discretion of the City Council, indemnify, defend, and hold Employee harmless from all liability for damages, court costs, litigation expenses, defense costs, and attorneys' fees that arise out of his acts or omissions committed within the course and scope of his role as Acting City Manager.

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed and executed on the day and year first above written.

**CITY OF COTTONWOOD:**

**EMPLOYEE:**

\_\_\_\_\_  
Tim Elinski, Mayor

\_\_\_\_\_  
Tom Whitmer

Attest:

\_\_\_\_\_  
Tami Mayes, City Clerk

Approved as to Form:

\_\_\_\_\_  
Gust Rosenfeld, PLC, City Attorney  
By John Gaylord

City of Cottonwood, Arizona  
City Council Agenda Communication



 [Print](#)

Meeting                      February 20, 2024  
Date:  
Subject:  
Department:              HR  
From:                        Amanda Wilber, Human Resources Director

SUGGESTED MOTION

If the Council desires to approve this item the suggested motion is:

**ATTACHMENTS:**

File Name	Description	Type
-----------	-------------	------

No Attachments Available