



**Fairhaven Board of Selectmen
Meeting Minutes
January 4, 2021**

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TOWN CLERK

2021 JAN 14 A 10:57

FAIRHAVEN,
MASS.

Present: Chairman Daniel Freitas Vice-Chairman Robert Espindola, Selectman Keith Silvia, Town Administrator Mark Rees, Finance Director Wendy Graves and Administrative Assistant Vicki Oliveira

Present via Zoom: Town Counsel Tom Crotty, Cable Production Coordinator Eric Sa.

The meeting was videotaped on Cable Access and Zoom meeting application.

Chairman Freitas opened the meeting at 4:32 pm in the Town Hall Banquet Room and read the following statement:

“This Open Meeting of the Fairhaven Board of Selectmen is being conducted remotely consistent with Governor Baker’s Executive Order of March 12, 2020, due to the current State of Emergency in the Commonwealth due to the outbreak of the “COVID-19 Virus.”

In order to mitigate the transmission of the COVID-19 Virus, we have been advised and directed by the Commonwealth to suspend public gatherings, and as such, the Governor’s Order suspends the requirement of the Open Meeting Law to have all meetings in a publicly accessible physical location. Further, all members of public bodies are allowed and encouraged to participate remotely.

The Order, which you can find posted with agenda materials for this meeting allows public bodies to meet entirely remotely so long as reasonable public access is afforded so that the public can follow along with the deliberations of the meeting.

Ensuring public access does not ensure public participation unless such participation is required by law. This meeting will allow public comment related to the posted agenda items only. For this meeting, Fairhaven Board of Selectmen is convening by telephone conference/video conference via Zoom App as posted on the Town’s Website identifying how the public may join.

Appointment of interim Town Administrator

Mr. Freitas reminded the Board at their last meeting they voted 2-1 to appoint Finance Director Wendy Graves to the position of Interim Town Administrator.

Mr. Rees and Town Counsel have negotiated an agreement (Attachment A) with Ms. Graves for \$25 per hour for the position of interim Town Administrator. Town Counsel, Tom Crotty explained that the contract is a similar copy of the permanent Town Administrator contract. Ms.

Graves will assume this duty as a stipend to her existing position as Finance Director and will have the same duties as the existing Town Administrator.

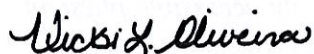
The Board discussed the terms of the contract with Attorney Crotty. Mr. Freitas feels this contract is a savings to the town because this is a temporary position and if the town had to hire out, this would have cost more to hire someone. Mr. Espindola has concerns regarding how much time will be spent for each position and if other employees will have to pick up the slack. Mr. Espindola would like to see Ms. Graves keep track of her time and based on his calculations (Attachment B) the pay rate for the interim position should be \$12 per hour.

Mr. Silvia made a motion to appoint Ms. Graves as the interim town administrator and use the current form; strike the words "or without" in section 3. And in section 4; strike the last 2 sentences that begin "the stipend will not apply." The position will begin on Friday, January 8, 2021 but the stipend will begin on Tuesday, January 5, 2021 at 8:30 am. so Ms. Graves can train. Mr. Freitas seconded. Vote passed. (2-1)

The Board wished Mr. Rees "Good Wishes" for his upcoming retirement.

Mr. Espindola made a motion to adjourn at 5:13 p.m. Mr. Silvia seconded. Vote was unanimous. (3-0)

Respectfully submitted,



Vicki L. Oliveira
Administrative Assistant
(approved 01/11/2021)

Attachments:

- A. Employment Agreement- Wendy Graves
- B. Mr. Espindola's spreadsheet

**EMPLOYMENT AGREEMENT BETWEEN
THE TOWN OF FAIRHAVEN
AND
WENDY GRAVES**

THIS AGREEMENT, pursuant to Chapter 381 of the Acts of 2014 (hereinafter called "c. 381"), made and entered into this ___ day of _____, 20___, by and between the Town of Fairhaven, Commonwealth of Massachusetts, a municipal corporation, (hereinafter called the "Town") acting by and through its Board of Selectmen, (hereinafter called "Board") and Wendy Graves (hereinafter called "Acting Town Administrator"), as follows:

WITNESSETH:

WHEREAS, pursuant to c. 381 § 1(k), the Board may designate an acting town administrator to perform the duties of the office during any vacancy exceeding 30 days, caused by the town administrator's absence, illness, suspension, removal or resignation; provided, that the appointment of an acting town administrator shall be for a period not to exceed 180 days;

WHEREAS, the Town desires to employ the services of Wendy Graves as Acting Town Administrator of the Town of Fairhaven, upon the retirement of current Town Administrator, Mark Rees;

WHEREAS, it is the desire of the Board to contract for the salary and benefits of said Acting Town Administrator;

WHEREAS, Wendy Graves agrees to accept employment as Acting Town Administrator of the Town and to perform the duties thereof, while maintaining and performing the duties of her current position as Finance Director / Treasurer / Collector for the Town;

WHEREAS, the parties understand that the designation as Acting Town Administrator is a temporary position, with no fixed term, and with no expectation of continuity in that position;

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

Section I, Functions and Duties of the Acting Town Administrator.

The Town hereby offers to employ Wendy Graves as Acting Town Administrator of the Town, and Wendy Graves accepts that offer. The Acting Town Administrator shall have the powers and duties specified in c. 381 § 2, and such other duties as the Board shall from time to time legally assign to her, which she shall perform in addition to her duties as Finance Director/ Treasurer / Collector for the Town.

Section II, Term.

This Agreement shall become effective January __, 2021, and shall be in full force and effect until terminated pursuant to the provisions of Section III, but in any event shall terminate 180 days from its effective date.

Section III, Termination

The Board may terminate this agreement and its designation of the Acting Town Administrator at any time, with or without cause. This agreement and the designation of the Acting Town Administrator shall terminate upon the appointment and commencement of services of a permanent Town Administrator for the Town.

Section IV, Stipend.

The Town agrees to pay the Acting Town Administrator for services rendered under this Agreement, a stipend of \$1000 per week. This stipend shall be in addition to the salary and benefits paid to her as Finance Director / Treasurer / Collector. The stipend will not apply on non-work days such as holidays, personal days, sick leave, vacation or other leave, and the weekly stipend will be reduced by \$200 for each non-work day during a given week.

Section V, Hours of Work.

The Acting Town Administrator will devote full time and attention to the business of the Town and will not engage in any other business during office hours, except with the approval of the Board.

Section VI, Expenses.

A. The Acting Town Administrator shall be reimbursed for any expenses incurred in the performance of her duties, or as an official representative of the Town, provided that such expenses are approved in advance by the Board of Selectmen.

Section VII, Indemnification.

A. The Town shall defend, save harmless and indemnify the Acting Town Administrator 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 her duties as Acting Town Administrator, even if said claim has been made following her termination from employment, provided that the Acting Town Administrator acted within the scope of her duties. The Town shall pay the amount of any settlement or judgment rendered thereon. The Town may compromise and settle any such claim or suit and will pay the amount of any settlement or judgment rendered thereon without recourse to the Acting Town Administrator.

B. The Town shall reimburse the Acting Town Administrator for any attorneys' fees and costs incurred by the Acting Town Administrator in connection with an indemnified claim if the Town has failed or refused to defend the Acting Town Administrator from such claim.

C. This indemnification shall also apply to the Acting Town Administrator after she leaves that position.

D. This section shall survive the termination of this Agreement.

Section VIII, Other Terms and Conditions of Employment.

This Agreement shall prevail over any conflicting personnel provisions of the Town By-Laws or Rules and Regulations.

Section IX, No Reduction in Stipend

A. The Town shall not at any time during the term of the Agreement reduce the stipend, of the Acting Town Administrator, except to the degree such a reduction is across the board for all other employees of the Town, or is the result of the failure of Town Meeting to appropriate sufficient funds to pay the stipend provided for in this Agreement.

B. Notwithstanding the forgoing, no provisions of this Agreement shall be interpreted to allow or require the payment of compensation in excess of the amount appropriated by town meeting.

Section X, Notices.

A. Notices pursuant to this Agreement shall be given by deposit in the custody of the United States Postal Service, postage prepaid, addressed as follows:

To the TOWN: Chairman of Board of Selectmen
 Town of Fairhaven
 40 Center Street
 Fairhaven, MA 02719

To Wendy Graves

B. Alternatively, notices required pursuant to this Agreement may be personally served. Notice shall be deemed as given as of the date of personal service or as of the date of deposit of such written notice in the course of transmission in the United States Postal Service.

Section XVIII, General Provisions.

- A. The text herein shall constitute the entire Agreement between the parties.
- B. This Agreement shall be binding upon and inure to the benefit of the heirs at law and personal representation of the Acting Town Administrator.
- C. If any provision, or any portion thereof, contained in this Agreement is held unconstitutional, invalid or unenforceable, the remainder of this Agreement, or portion thereof, shall be deemed severable, shall not be affected, and shall remain in full force and effect.
- D. For the purposes of the Fair Labor Standards Act, the Acting Town Administrator shall be an "exempt employee."

IN WITNESS WHEREOF, the Town of Fairhaven, Massachusetts, has caused this Agreement to be signed and executed in its behalf by its Board of Selectmen, and the Acting Town Administrator has signed and executed this Agreement, both in duplicate.

TOWN OF FAIRHAVEN
Acting by and through
Its Board of Selectmen

ACTING TOWN ADMINISTRATOR

Wendy Graves

Chairman, Board of Selectmen

DATE: _____

DATE: _____

Approved as to Legal Form:

Town Counsel

DATE: _____

I certify there is an appropriation in Account to fund this contract:

Town Accountant

DATE: _____

Proposed by Wendy Graves / Dan Freitas			
Hourly Rate	\$ 55	1,000 Weekly Stipend	\$ 1,000
Annual Equivalent	\$ 114,400	Hourly Raise	\$ 25.00
		Annual Equivalent Increase	\$ 52,000
		Proposed Total Rate	\$ 166,400
		TA Position Statement	\$ 155,000
		Differential	\$ 11,400

If Wendy works 50/50 Split			
Hourly Rate	\$ 55	1,000 Weekly Stipend	\$ 1,000
Annual Equivalent	\$ 114,400	Hourly Rate for TA portion	\$ 50.00
		Annual Equivalent Increase	\$ 104,000
		Proposed Total Rate	\$ 218,400
		TA Position Statement	\$ 155,000
		Differential	\$ 63,400

If Wendy works 80/20 Split			
Hourly Rate	\$ 55	1,000 Weekly Stipend	\$ 1,000
Annual Equivalent	\$ 114,400	Hourly Rate for TA portion	\$ 31.25
		Annual Equivalent Increase	\$ 65,000
		Proposed Total Rate	\$ 179,400
		TA Position Statement	\$ 155,000
		Differential	\$ 24,400

Bob's Recommendation - Prorated on Time Card			
Hourly Rate	\$ 55	12.00 Hourly Rate for TA portion	\$ 12,000
Annual Equivalent	\$ 114,400	Annual Equivalent Increase	\$ 24,960
		Proposed Total Rate	\$ 139,360
		TA Position Statement	\$ 155,000
		Differential	\$ (15,640)

Bob's Recommendation - Prorated on Time Card			
Hourly Rate	\$ 67.00	12.00 Hourly Rate for TA portion	\$ 12,000
Annual Equivalent	\$ 114,400	Annual Equivalent Increase	\$ 24,960
		Proposed Total Rate	\$ 139,360
		TA Position Statement	\$ 155,000
		Differential	\$ (15,640)

