

**SUBJECT: APPROVAL OF SEPARATION AGREEMENT AND MUTUAL
RELEASE**

DATE: JULY 9, 2024

**PRESENTED BY: MARILEE LANGHOFF, SPECIAL COUNSEL
KATHLEEN KELLY, CITY ATTORNEY**

SUMMARY:

Attached for City Council consideration is a Separation Agreement and Mutual Release between the City and City Manager Jeff Durbin.

The Agreement provides the City Council will accept the City Manager's resignation effective July 1, 2024; the City will pay the City Manager 30 days separation pay in lieu of the 30 days' notice required by the City Manager's Employment Agreement; the City will provide the City Manager with the cost of three months of COBRA benefits for the months of August, September, and October 2024; and the City Manager and the City agree to a mutual release of claims as set forth in the Agreement.

FISCAL IMPACT:

The City Manager will be paid his current rate of salary until July 31, 2024 and receive the cost of three months of COBRA benefits.

RECOMMENDATION:

City Council consider approval of the Agreement

ATTACHMENT(S):

1. Separation Agreement and Mutual Release

SEPERATION AGREEMENT AND MUTUAL RELEASE

THIS SEPARATION AGREEMENT AND MUTUAL RELEASE ("Agreement") is made as of this ____ day of July, 2024, by and between Jeffrey L. Durbin, hereinafter referred to as the "City Manager", and the City of Louisville, a Colorado home rule city, hereinafter referred to as the "City." The City Manager and the City are sometimes collectively referred to as the "Parties."

WHEREAS the City Manager began his employment with the City on December 31, 2021; and

WHEREAS, pursuant to the terms of Paragraph 2 of the Third Amendment to Employment Agreement, ("Employment Agreement") the City Manager tendered his resignation with thirty (30) days written notice on July 1, 2024; and

WHEREAS the Parties deem it is their mutual interest and benefit for the City to accept the City Manager's resignation effective as of July 1, 2024, based on the consideration, terms and conditions of this Agreement as hereafter set forth.

NOW THEREFORE, the Parties do hereby promise and agree as follows:

1. Resignation. The City will accept the City Manager's resignation effective July 1, 2024 (hereinafter, "Separation Date").

2. Separation Pay. In lieu of the thirty (30) days' notice, the City will pay the City Manager 30 days separation pay, at his current rate, from the date of his separation, July 1, 2024, through July 31, 2024, subject to all regular withholdings. During this time period, the City will continue to provide City Manager with the insurance benefits he had in effect as of July 1, 2024. In addition, as negotiated by legal counsel for both Parties, the City will provide City Manager with a sum equal to the out-of-pocket cost of three months of COBRA benefits for the months of August, September and October 2024. The City Manager will be solely responsible for taking steps to enroll in and make payments to maintain such COBRA coverage; City shall have no such responsibility to do so on his behalf.

3. Paid Leave. To the extent City Manager had accrued leave time, not yet paid as of his Separation Date, which is payable pursuant to the City's policies and procedures, City Manager will be paid those sums in addition to the payment described in Section 2 above.

4. No Other Monetary Consideration. City Manager agrees that the payment and benefits provided for under this Agreement shall be the full and final amount of any wages, retirement or benefits to be paid at any time by the City to the City Manager or his heirs, successors or personal representatives.

5. MUTUAL RELEASE. For the consideration above mentioned, the sufficiency of which is hereby acknowledged, the Parties do each release the other as follows:

JLD_____ City_____

City Manager, with the intent of binding himself, his heirs, successors and personal representatives, hereby expressly releases and forever discharges the City, its elected and appointed officers, officials, directors, employees, agents, and insurers, from and for any and all liability, claims, demands, rights controversies, damages, compensation. wages, retirement contributions, expenses, attorney's fees, interest, and causes of action of any kind whatsoever, including but not limited to rights or claims under the Age Discrimination in Employment Act; Title VII of the Civil Rights Act: 42 USC §§1981 through 1988; the Older Workers' Benefit Protection Act, the Americans with Disabilities Act and the Family and Medical Leave Act and any other federal statute; and any state claim, including but not limited to claims under the Colorado Anti-Discrimination Act, the Colorado Wage Claim Act and or any other state statutory or regulatory claim; and any claim whether legal or equitable, arising in tort or from contract, express or implied, arising out of or in any way connected to City's Manager's employment with the City and his separation therefrom or otherwise; provided however that this release shall not prohibit the City Manager from claiming state unemployment insurance benefits for which he may be entitled, and does not constitute a release from any worker's compensation claim arising from a work related injury occurring before the City Manager's Separation Date. The City Manager warrants that as of the date of this Agreement, to the best of his knowledge and belief, no worker's compensation claim exists. City Manager further agrees that he will not hereinafter institute any suit, action grievance or claim or seek any form of relief whether pursued judicially, administratively, or otherwise, against the City, its elected or appointed officers, officials, directors, employees, agents and insurers, or any of them arising out of or in any way connected with City Manager's employment with the City or his separation therefrom or otherwise. Notwithstanding the foregoing, the Parties acknowledge and agree that City Manager is *not* releasing any claims or waiving any rights with respect to (a) any vested benefits to which City Manager may be entitled under any employee benefit plan maintained by the City, (b) any claim that may arise as a result of any act, conduct or omission of the City or the persons being released occurring *after* City Manager's execution of this Agreement, (c) any claims or rights that may not be released as a matter of law, and (d) any rights provided for in this Agreement.

City, by and through its authorized representative, hereby expressly releases and forever discharges City Manager, his heirs, and personal representatives from any and all liability, claims, demands, rights, controversies and damages, **except** to the extent that it is discovered after the date of this Agreement that City Manager engaged in malfeasance in the performance of his duties such as embezzlement, conversion, misappropriation, breach of fiduciary duty or any other intentional act(s) or omission(s) tantamount to felonious conduct.

6. Terms Contractual/No Admission. It is expressly understood and agreed that the recitals and mutual obligations of the Parties as herein expressed are in full accord and satisfaction of any disputed matters and claims whether either party has or could have made against the other, that each such recital and obligation on behalf of each party represent consideration in addition to anything of value to which the other party is already entitled and that each recital and obligation of the Parties as herein expressed are not to be construed in any way as an admission of liability on the part of the either party against the other, but on the contrary, it is specifically denied that there is any

JLD_____ City_____

liability on account of the above-mentioned employment or separation from employment, or any matters incident hereto, or otherwise, and it is further understood and agreed that all agreements and understandings between the Parties are embodied and expressed herein and the terms of this Agreement are contractual and binding and not mere recitals. This Agreement shall be construed and interpreted in accord with the laws of the State of Colorado, and any action necessary to enforce, construe or interpret the within shall be maintained only within the County or District Court in and for Boulder County.

7. Advice of Counsel. The Parties hereto have had the opportunity to seek, and have sought, legal counsel concerning their respective rights and obligations hereunder and have entered into this Agreement voluntarily, and represent that they fully understand their rights and obligations as a result of their execution of this Agreement.

8. Waiver. City Manager acknowledges that he has been offered a period of at least 21 days in which to review and consider this Agreement. City Manager may sign this Agreement before the end of the twenty-one day period, but by doing so, City Manager hereby acknowledges and represents that he is knowingly and voluntarily waiving this a twenty-one-day period. If City Manager does not sign this Agreement on or before the end of the 21-day period it shall become null and void and of no force or effect on either Party.

9. Seven Day Period of Revocation. This Agreement shall not become effective or enforceable for a period of seven days following its execution by the Parties. During such seven-day period, City Manager may revoke his acceptance of this Agreement, in which case this Agreement shall be null and void and of no force or effect on either party. To be effective, any such revocation must be in writing and received by the City by 5:00 p.m. on the seventh day after this Agreement has been executed by the Parties, such receipt to be by the Mayor at 749 Main Street, Louisville, CO 80027. If this Agreement is not so revoked, it shall at the expiration of such seven-day period become effective, enforceable and forever binding.

10. Terms Severable. If any provision of this Agreement is found to be invalid, illegal or unenforceable, the validity and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. Further, in the event of such holding of invalidity, illegality or unenforceability, the Parties agree to take such action as may be necessary to achieve, to the highest degree possible, the intent of the affected provision.

IN WITNESS WHEREOF, the City Manager, in his individual capacity, and the City have executed this Agreement this _____ day of _____, 2024, as their own free and voluntary act.

Jeffrey L. Durbin

JLD_____ City_____

ACKNOWLEDGEMENT

STATE OF COLORADO)

) ss

COUNTY OF BOULDER)

The above and foregoing signature of Jeffrey L. Durbin was subscribed and sworn to before me this ____ day of July 2024.

Witness my hand and official seal.

My commission expires on: _____

Notary Public

CITY OF LOUISVILLE, COLORADO

By: _____

Chris Leh, Mayor

ATTEST:

Meredyth Muth, City Clerk

JLD_____ City_____