

SUBJECT: APPROVAL OF FIRST AMENDMENT TO EMPLOYMENT AGREEMENT FOR INTERIM CITY MANAGER

DATE: SEPTEMBER 17, 2024

PRESENTED BY: KATHLEEN KELLY, CITY ATTORNEY

SUMMARY:

On July 16, 2024, the City Council appointed Samma Fox as Interim City Manager, subject to execution of an employment agreement. The employment agreement with Ms. Fox was approved by the City Council on July 30th and executed by the City and Ms. Fox.

Following execution of the Agreement, the City's Human Resources Department advised that the Extended Illness Bank ("EIB") accrual set forth in the Agreement did not reflect an increase in this accrual that had been made for all full-time City employees but not yet incorporated into the City's Personnel Guidelines.

Approval of this First Amendment to Employment Agreement for Interim City Manager will allow Ms. Fox to continue at the higher rate she had been receiving as Deputy City Manager, and at the same rate as all other full-time City employees.

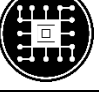
RECOMMENDATION:

City Council to approve the First Amendment to Employment Agreement for Interim City Manager.

ATTACHMENT(S):

1. First Amendment to Employment Agreement for Interim City Manager
2. Employment Agreement for Interim City Manager

STRATEGIC PLAN IMPACT:

☐	 Financial Stewardship & Asset Management	☒	 Reliable Core Services
☐	 Vibrant Economic Climate	☐	 Quality Programs & Amenities
☐	 Engaged Community	☐	 Healthy Workforce
☐	 Supportive Technology	☐	 Collaborative Regional Partner

**FIRST AMENDMENT TO
EMPLOYMENT AGREEMENT FOR INTERIM CITY MANAGER**

THIS FIRST AMENDMENT TO EMPLOYMENT AGREEMENT FOR INTERIM CITY MANAGER ("Agreement") is made effective as of the 17TH day of September, 2024, by and between the City of Louisville, a Colorado home rule municipal corporation, hereinafter known as "CITY", and Samma L. Fox, hereinafter known as "INTERIM CITY MANAGER" or "FOX."

WHEREAS, on July 16, 2024, the City Council appointed Samma L. Fox to serve as Interim City Manager and on July 30, 2024, the City Council approved an Employment Agreement for Interim City Manager with Ms. Fox, which Agreement was made effective as of July 16, the date of her appointment; and

WHEREAS, Section 7 of the Agreement provides Ms. Fox will receive 4.0 hours of Extended Illness Bank ("EIB") leave for each 80 hours worked during the term of the Agreement, to be used in accordance with the City's Personnel Guidelines; and

WHEREAS, accrual of EIB was increased for all City employees to 8.0 hours per pay period, and although such increase has not yet been incorporated into the City's Personnel Guidelines, all full-time City employees have been accruing 8.0 hours of EIB per pay period, including Ms. Fox prior to her appointment as Interim City Manager; and

WHEREAS, the City and Ms. Fox desire to amend the Agreement so that Ms. Fox will continue to accrue EIB at the same rate as she had been accruing as Deputy City Manager, which is the same rate of accrual for all full-time City employees.

NOW THEREFORE, in consideration of the following mutual covenants and conditions the parties agree as follows:

Section 1. Section 7 of the Employment Agreement for Interim City Manager between the City of Louisville and Samma L. Fox is hereby amended to read as follows (words to be deleted ~~stricken~~; words to be added underlined):

7. Paid Illness Leave and Leave Time. The Interim City Manager shall receive ~~4.0~~ 8.0 hours of Extended Illness Bank ("EIB") leave ~~for each 80 hours worked~~ each pay period, to be used in accordance with the City's Personnel Guidelines. ~~Illness~~

~~leave time shall be accrued on a biweekly basis, coincidental with established pay dates.~~ The Interim City Manager may accrue up to a maximum of 480 hours of ~~illness leave time~~ EIB. Upon termination of her employment with the City, the Interim City Manager shall not be paid for any accrued, unused ~~illness leave time~~ EIB.

The Interim City Manager shall also receive paid leave time. Paid leave time ("PLB"), which consists of vacation, holiday, and personal leave, shall be accrued on a biweekly basis, coincidental with established pay dates, at a rate of 12.32 hours per pay period. The Interim City Manager may accrue up to a maximum of 480 hours of paid leave time ("Maximum Leave Time"); if the Interim City Manager's accrued but unused leave time reaches the Maximum Leave Time, leave time will cease to accrue until such time as the Interim City Manager uses enough leave time to reduce her remaining accrued but unused leave time below the Maximum Leave Time. Upon termination of her employment with the City, the Interim City Manager shall be paid for all accrued, unused paid leave time.

Section 2. The amendment to the EIB accrual set forth in Section 1 of this First Amendment shall be applied retroactively to July 16, 2024.

IN WITNESS WHEREOF, the parties have executed this First Amendment to Employment Agreement for Interim City Manager on the dates set forth adjacent to their respective signatures, intending the same to be effective as of the 17th day of September, 2024; the parties agree that electronic signatures are sufficient and binding for this Agreement.

CITY OF LOUISVILLE

By: _____
Christopher M. Leh, Mayor

Date: _____

ATTEST:

Meredyth Muth, City Clerk

INTERIM CITY MANAGER

Samma L. Fox

Date: _____

EMPLOYMENT AGREEMENT FOR INTERIM CITY MANAGER

THIS EMPLOYMENT AGREEMENT FOR INTERIM CITY MANAGER

("Agreement") is made effective as of the 16th day of July, 2024, by and between the City of Louisville, a Colorado home rule municipal corporation, hereinafter known as "CITY", and Samma L. Fox, hereinafter known as "INTERIM CITY MANAGER" or "FOX."

WHEREAS, the City desires to employ the services of Samma L. Fox as Interim City Manager of the City of Louisville, Colorado; and

WHEREAS, Fox is currently employed by the City as Deputy City Manager; and

WHEREAS, the City and Fox desire to set forth certain specifics concerning her employment by the City as Interim City Manager, and to establish conditions of employment related thereto; and

WHEREAS, Fox desires to accept employment as Interim City Manager of the City of Louisville under the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the following mutual covenants and conditions the parties agree as follows:

1. Duties; Residency. The City agrees to employ Samma L. Fox as Interim City Manager to perform the functions and duties of City Manager specified by Colorado State Statutes, Article 8 of the Louisville Home Rule Charter and Section 2.04.030 of the Louisville Municipal Code, and any other applicable laws, ordinances, or regulations of the City of Louisville. The Interim City Manager is not currently a Louisville resident and will not be required to reside in the City of Louisville throughout the Interim City Manager's appointment. The Interim City Manager agrees to perform any legally permissible and proper duties and functions as the City Council of the City shall from time-to-time assign to her as Interim City Manager. The Interim City Manager acknowledges this is an in-person role, with remote work typically to be performed outside of normal working hours (Monday-Friday, from 8:00 am to 5:00 pm).
2. Term. The Interim City Manager is an employee at will. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the City Council of the City to terminate the services of the Interim City Manager at any time, subject to the provisions set forth in Section 4 herein. Nothing

in the Agreement shall prevent, limit or otherwise interfere with the right of the Interim City Manager to resign at any time from her position upon thirty (30) days prior written notice, unless the City designates a shorter period, subject only to the provisions as set forth in Section 4 herein. Fox's first day of employment as Interim City Manager was July 16, 2024. The term of this Agreement shall begin on the effective date and shall terminate no later than midnight, February 28, 2025 ("Expiration Date"); provided, however, that this Agreement may be terminated prior to said Expiration Date in accordance with this Agreement, and provided further the Interim City Manager agrees the City Council may extend this Agreement for not more than three (3) thirty-day (30-day) periods under the same terms and conditions by providing written notice of the same to the Interim City Manager ("Extended Expiration Date"). Under no circumstances shall this Agreement be effective after the Extended Expiration Date unless the parties agree in writing to extend this Agreement under terms and conditions mutually satisfactory to the parties.

3. Compensation. The City agrees to pay to Fox for her services as Interim City Manager rendered pursuant hereto an annual base salary of \$218,163.00, commencing with the first pay period starting after July 16, 2024 and payable in biweekly installments at the same time as other employees of the City are paid. In lieu of compensation for "Temporary, Acting or Interim (TAI) Assignments" in the City's Personnel Guidelines, the City further agrees to pay to Fox a bonus in the amount of \$2,000.00 for the time she served as the Acting City Manager, with such bonus to be paid in a lump sum in the next pay period following execution of this Fourth Amended Employment Agreement.

The position of Interim City Manager is an exempt position under the provision of the Fair Labor Standards Act. As such, the Interim City Manager shall not be bound by the record keeping or overtime provisions of the Act, and shall not earn overtime pay.

4. Termination & Position Restoration. Fox's employment as Interim City Manager may be terminated by the City Council at any time, with or without cause. In the event of her termination as Interim City Manager by the City Council for any reason, except as expressly provided below, Fox shall be restored to her former position as Deputy City Manager, at which point she will become subject to the provisions contained in the City's Personnel Guidelines, and with all benefits existing thereunder as of the date of termination of this Agreement, including any accrued retirement and leave.

Additionally, City Council may select a candidate to fill the position of City Manager at any time during the course of Fox's employment, at which time she shall be restored to her former position as Deputy City Manager, and will become subject to the provisions of the City's Personnel Guidelines and with all benefits existing thereunder as of the date of termination of this Agreement, including any accrued retirement and leave. In the case of restoration to her former position under either of the foregoing sentences, Fox's compensation shall be adjusted to her Deputy City Manager salary as of the date of this contract plus a 5% increase and benefits, including any accrued retirement and leave, as in effect at the date of termination of this agreement, and with retirement and leave balances adjusted to reflect time accrued and used while serving as Interim City Manager. If Fox is terminated from the Interim City Manager position prior to a City Manager being hired, is terminated rather than being restored to the Deputy City Manager position, or is terminated within six months of being restored to the Deputy City Manager position, the City shall pay Fox six months' salary at the rate of Fox's Deputy City Manager salary then in effect upon Fox's execution of a release of claims against the City in a form to be approved by the City Council. Notwithstanding any of the foregoing provisions of this Section 4 to the contrary, it is understood that in the event the Interim City Manager is terminated because of her conviction of any illegal act involving personal gain to the Interim City Manager, or because of her conviction of any felonious act or due to any act of moral turpitude, or because of insubordination, nonfeasance, or malfeasance in the performance of duties, the Interim City Manager shall have no right to be restored to her former position as Deputy City Manager.

5. Performance Evaluation. The City Council shall set performance goals for Interim City Manager within 45 days after mutual execution of this Agreement, reduced to writing. The City Council shall review and evaluate the performance of the Interim City Manager on a periodic basis, with prior notification of any review to be provided to the Interim City Manager.
6. Automobile. The City shall provide the Interim City Manager with an automobile allowance of \$500.00 per month, commencing with the first pay period starting after July 16, 2024, and payable via payroll check on the first pay date of each month. The Interim City Manager shall then provide her own transportation as necessary in the performance of her duties. The Interim City Manager shall maintain all liability insurance as required by the State of Colorado.

7. Paid Illness Leave and Leave Time. The Interim City Manager shall receive 4.0 hours of Extended Illness Bank ("EIB") leave for each 80 hours worked, to be used in accordance with the City's Personnel Guidelines. Illness leave time shall be accrued on a biweekly basis, coincidental with established pay dates. The Interim City Manager may accrue up to a maximum of 480 hours of illness leave time. Upon termination of her employment with the City, the Interim City Manager shall not be paid for any accrued, unused illness leave time.

The Interim City Manager shall also receive paid leave time. Paid leave time ("PLB"), which consists of vacation, holiday, and personal leave, shall be accrued on a biweekly basis, coincidental with established pay dates, at a rate of 12.32 hours per pay period. The Interim City Manager may accrue up to a maximum of 480 hours of paid leave time ("Maximum Leave Time"); if the Interim City Manager's accrued but unused leave time reaches the Maximum Leave Time, leave time will cease to accrue until such time as the Interim City Manager uses enough leave time to reduce her remaining accrued but unused leave time below the Maximum Leave Time. Upon termination of her employment with the City, the Interim City Manager shall be paid for all accrued, unused paid leave time.

8. Insurance. The Interim City Manager shall be entitled to receive the same health, dental, disability, life, liability, and other insurance coverage as set forth under the terms of the group insurance coverages provided by the City to all employees. The Interim City Manager must meet all of the terms and conditions required by the individual carriers in order to receive said coverages.
9. Retirement. The City agrees to pay an amount equal to six and one-half percent (6.5%) of the Interim City Manager's base salary into the International City Management Association Retirement Corporation's (ICMA-RC) 401-A Money Purchase Plan, which is the current uniform percentage rate paid for all employees participating in the plan. The Interim City Manager shall contribute at a rate in accordance with the City's personnel policies. Each payment shall be made on a biweekly basis according to the City's payroll schedule, with the City contribution being 6.5% of the base salary paid for such payroll period. In the event the City Council approves any change in the uniform percentage rate paid for all employees participating in the plan, the above-stated 6.5% rate shall automatically adjust to the new rate, effective as of the effective date of the change. All of the City's contribution will vest to the Interim City Manager from her date of employment.

10. Deferred Compensation. The City agrees to pay an amount equal to five percent (5%) of the Interim City Manager's base salary into the International City Management Association Retirement Corporation's (ICMA-RC) Section 457 Deferred Compensation Plan, subject to contribution limits under federal law. Each payment shall be made on a biweekly basis according to the City's payroll schedule, with the City contribution being 5% of the base salary paid for such payroll period. All of the City's contribution will be vested to the Interim City Manager from her date of employment.
11. Other Terms and Conditions of Employment. The City Council shall fix such other terms and conditions of employment, as it may determine from time to time, relating to the performance of the Interim City Manager, provided such terms and conditions are not inconsistent with the provisions of this Agreement, federal and Colorado law, or the Louisville Home Rule Charter or Municipal Code.

It is understood that the Interim City Manager is not to be treated as an employee under the provisions contained in the City's Personnel Guidelines. It is further understood that the rights and obligations contained in said Guidelines are not binding upon the City with respect to the employment of the Interim City Manager except as expressly enumerated in this Agreement.

12. Dues and Subscriptions. The City agrees to budget and pay for reasonable professional dues and subscriptions of the Interim City Manager necessary for her participation in national, regional, state, and local associations and organizations necessary and desirable for her continued professional participation, growth, and advancement, and which are for the good of the City. The City also agrees to budget and pay for necessary travel expenses for the Interim City Manager to adequately pursue official and other functions for the City. By way of example, such functions include, but are not limited to, meetings and conferences of the International City Management Association and the Colorado Municipal League.
13. Reimbursement of General Expenses. The City recognizes that certain expenses of a non-personal and job-related nature will be incurred by the Interim City Manager, and hereby agrees to reimburse reasonable general expenses.
14. Outside Activities. The Interim City Manager shall not spend any time in remunerated business outside of this Agreement, nor shall she spend more

than ten hours per week in non-remunerated non-City connected business, without the prior approval of the City Council. No such outside activities shall be contrary to the interests of the City.

15. Funding. Notwithstanding any other provisions contained herein, this Agreement is subject to an annual appropriation by the City Council of sufficient funds to pay the full amount due, or which may be due hereunder for the following year. A failure to appropriate such funds shall constitute a termination pursuant to Section 4 of this Agreement.
16. Constitutionality. The parties hereto do not extend this Agreement to be a multiple fiscal year financial obligation within the meaning of Article X, Section 20 of the Colorado Constitution, and this Agreement shall be interpreted so as to avoid any such meaning.

This Agreement is held to be the entire Agreement of the parties thereto. In addition, this Agreement shall be binding upon and inure to the benefit of the heirs, representatives, and assigns of the Interim City Manager.

If any provision or portion of this Agreement is held to be unconstitutional, invalid, or unenforceable, the remainder of this Agreement shall be deemed severable and shall remain in full force and effect.

17. Indemnification. The Interim City Manager shall be defended and indemnified in her actions undertaken in her official capacity pursuant to all insurance coverages maintained by the City and pursuant to the terms of the Colorado Governmental Immunity Act ("CGIA"), C.R.S. § 24-10-101, *et seq.*; provided, however, the Interim City Manager shall not be indemnified for any act or omission that is willful or wanton as those terms are defined in the CGIA.

This Section survives the termination of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates set forth adjacent to their respective signatures, intending the same to be effective as of the 16th day of July, 2024; the parties agree that electronic signatures are sufficient and binding for this Agreement.

[Signatures on Following Page]

CITY OF LOUISVILLE

By: 
Christopher M. Leh, Mayor

Date: July 30, 2024

ATTEST:


Meredyth Muth, City Clerk

INTERIM CITY MANAGER


Samma L. Fox

Date: July 30, 2024