



TRANSMITTAL MEMORANDUM

TO: The Honorable Mayor and City Council

FROM: Lacey G. Simpson, Acting City Manager

DATE: July 29, 2022

RE: **Approving Employment Contract – City Manager/General Manager**

At its January 20, 2022 meeting, the City Council awarded Contract No. 21-19, City Manager/General Manager Recruitment Services, to Strategic Government Resources, Inc. (SGR) for the purpose of assisting the City Council with recruitment for the vacant City Manager/General Manager position. The position became vacant on September 1, 2021 with the retirement of previous City Manager/General Manager Karl Amylon.

Per the process approved by the City Council, SGR Senior Vice President of Executive Recruitment Lynn Barboza developed a position profile based upon stakeholder interviews conducted with the Mayor and City Council, leadership staff, and other stakeholders. The City Council approved the final position profile for release at its meeting of April 7, 2022. SGR conducted a national search, and thirty-nine (39) applications were received by the May 11, 2022 deadline. Through the selection process, five finalist candidates were selected by the City Council at its meeting of June 21, 2022, and interviews of four finalist candidates were conducted by the City Council at the special meeting of July 16, 2022.

The City Council adopted a motion selecting finalist candidate Delilah Walsh of Las Cruces, New Mexico as the successful City Manager/General Manager candidate at the special July 16, 2022 City Council meeting. The negotiation of the employment contract terms and conditions commenced shortly thereafter through Ms. Barboza and have successfully concluded.

Attached for City Council review and consideration is the City Manager/General Manager employment contract between Delilah Walsh and the City of Ketchikan. Per the contract and the City's Charter, Ms. Walsh would be appointed to the position for an indefinite term commencing October 1, 2022 with annual employment compensation of \$215,000 and an annual vacation accrual rate of 20 working days.

Should it become necessary, the City Council will note that the City Manager's office has scheduled an executive session to discuss the employment contract and terms [see agenda report 15a(1)]. If Councilmembers have specific questions and/or concerns

regarding the proposed agreement, it is suggested that consideration of the employment contract be deferred pending the executive session.

If the City Council determines that the terms and conditions negotiated of the employment contract are acceptable as drafted, a motion approving the contract has been prepared for formal consideration.

City Attorney Mitch Seaver, recruiter Lynn Barboza, and City Manager/General Manager selected candidate Delilah Walsh will be attending the City Council meeting of August 4, 2022, in order to address any questions and/or concerns that Councilmembers may have.

A motion has been prepared for City Council consideration.

RECOMMENDATION

It is recommended the City Council adopt the motion approving the City Manager/General Manager employment contract between the City of Ketchikan and Delilah Walsh presented to the City Council and authorizing Mayor Dave Kiffer to execute the contract on behalf of the City Council.

Recommended Motion: I move the City Council approve the City Manager/General Manager employment contract between the City of Ketchikan and Delilah Walsh presented to the City Council and authorize Mayor Dave Kiffer to execute the contract on behalf of the City Council.

EMPLOYMENT CONTRACT BETWEEN
THE CITY OF KETCHIKAN, ALASKA
AND
DELILAH WALSH

THIS AGREEMENT is made and entered into this ____ day of _____, 2022, by and between the **CITY OF KETCHIKAN**, a home rule chartered municipality, and **DELILAH WALSH**.

WHEREAS, the City of Ketchikan, Alaska (hereinafter referred to as "the City") desires to employ the service of Delilah Walsh (hereinafter referred to as "the Employee") as City Manager of the City of Ketchikan, Alaska, pursuant to Article III of the Charter of the City of Ketchikan, Alaska, and Ketchikan Municipal Code, Chapter 2.08, and

WHEREAS, both the City and the Employee believe that a written employment contract is necessary to specifically describe their relationship, to serve as the basis of effective communication between them, and to describe the terms and conditions of employment,

NOW THEREFORE, the City and the Employee agree as follows:

1) Duties. The City hereby employs the Employee to perform such functions and duties of City Manager as assigned by the City Council of the City of Ketchikan, Alaska, and as specified in the Charter and ordinances of the City of Ketchikan. The Employee shall, under the direction of the City Council, have charge of the administration of the City government. The Employee agrees to remain in the exclusive employ of the City until her employment terminates and neither to accept other employment nor to become employed by any other employer until after said termination date and then, only in accordance with Chapter 2.05 of the Ketchikan Municipal Code. The term "employment" shall not be construed to include

occasional teaching, writing, consulting or military reserve service performed on employee's time off.

2) Term. The Employee is employed at the pleasure of the City Council and may be terminated at will by the Council at any time with or without hearing or other termination process.

3) Termination and Severance Pay. (a) Except as provided in (c) below, the City shall pay, through the regular payroll process, to the Employee a severance payment of twelve (12) weeks salary plus one week's salary for each year of employment under this agreement, not to exceed a total of twenty-six (26) weeks of salary, the employer's share of health insurance premiums under the City's Group Health Insurance plan as described in (6)(d) for the period during which severance payments are paid, plus accrued vacation hours determined on the date of termination, minus any applicable deductions, if the Employee is terminated by motion or resolution of the City Council or by Council action described in (b) below.

Provided, however, that if the City Council terminates the Employee primarily for any of the following reasons:

- i) The commission by the Employee of an act which, in the City Council's reasonable determination, constitutes a felony regardless of whether or not criminally convicted;
- ii) Substantial noncompliance with the City Charter, City Ordinances or the lawful and reasonable direction of the City Council;
- iii) Incompetency, which is defined as the inability or the unintentional or intentional failure to reasonably perform the City Manager's customary duties in a satisfactory

manner. Except for egregious acts, termination due to incompetency shall be based upon at least two consecutive employee evaluations, and shall include the development of, and the Employee's failure to complete to the satisfaction of the City Council, a professional improvement plan; or

iv) Failure to continue full time employment with the City of Ketchikan,

then the City shall have no obligation to make the severance payment described above except for payment of accrued vacation and further provided that the Employee will make reasonable efforts to find comparable employment or consulting work during the time she is receiving severance pay. The amount of severance payments made to the Employee will be reduced by an amount equal to any earnings from other employment or consulting work. Upon request, the Employee will produce documentation of her efforts to find comparable employment or consulting work.

(b) In the event the City reduces the total salary and other financial benefits of the Employee in a proportionately greater amount than an across-the-board reduction applied to other non-represented City general government employees, then the Employee may, at her option, be deemed terminated on the effective date of the reduction.

(c) In the event the Employee voluntarily resigns her position with the City, the Employee shall give the City two months' notice in advance, unless the parties otherwise agree. In said event, the City shall not be required to pay the described severance benefit, but shall pay accrued vacation.

4) Salary. The City agrees to pay the Employee for her services rendered pursuant

hereto an annual base salary of Two Hundred Fifteen Thousand Dollars (\$215,000.00). Salary shall be payable in installments at the same time as other employees of the City are paid. The City Council may increase the salary from time to time during the term of this Agreement.

5) Performance Evaluation. The City Council shall evaluate and assess in writing the performance of the Employee at least once a year during the term of this contract. This evaluation and assessment shall be reasonably related to the job description of the City Manager and the goals and objectives of the City Council for the year in question. The Mayor shall provide the Employee with a written summary statement of the findings of the Council and shall provide a reasonable opportunity for the Employee to discuss her evaluation with the City Council. The written summary shall include recommendations as to areas of improvement in all instances where the City Council deems performance to be unsatisfactory.

6) Vacation and Other Benefits. (a) Vacation. The Employee shall accrue vacation hours, based upon hours worked, according to the City's Personnel Policies for non-represented employees of City general government and any relevant amendments thereto. Upon commencing full time employment, Employee shall begin accruing vacation based upon an annual accrual of twenty (20) work days per year (1.66 days per month). Under no circumstances may the Employee accrue more than fifty (50) work days of vacation without the council's approval.

(b) Holidays and Sick Leave. The Employee shall have credited to her personal account such sick leave and shall be entitled to such holidays according to the City's Personnel

Policies for non-represented employees of City general government and any subsequent amendments thereto.

(c) Retirement. The City agrees to make all City-required payments/contributions to Employee's State of Alaska PERS Plan for such time as the City contributes toward such plan for non-represented employees of City general government. Employee agrees to pay all employee required contributions to said Plan.

(d) Health and Life Insurance. The City shall provide the Employee such group medical-dental-vision insurance and group life insurance in the same amounts and on the same terms and conditions as the City provides to non-represented employees of the city general government, and shall make such partial payment toward the premiums of such insurance as it does for non-represented employees of the City's general government. The City may change insurance, reduce the Employee's insurance coverage or reduce any premiums paid by the City towards the Employee's coverage provided that any such changes apply in general to other non-represented employees of the City's general government. The Employee shall pay all premiums in excess of the City's payment.

7) Expenses. (a) Automobile. The Employee shall have use of a City vehicle for take home purposes. The City shall be responsible for maintenance, insurance, and fuel for such vehicle.

(b) Business Expenses. The City shall pay or reimburse the Employee for reasonable business expenses to the extent budgeted and approved by the Council.

(c) Professional Expenses. The city shall pay or reimburse the Employee for reasonable professional dues and subscriptions and reasonable travel and other expenses for professional

meetings, seminars and other professional development activities to the extent budgeted and approved by the City Council. The City shall also pay 100% of the membership fee for the employee's membership in the International City Manager's Association.

8) Relocation Expenses. (a) Moving Expenses. The City agrees to pay actual reasonable moving and transportation expenses, not to exceed \$20,000.00, incurred by the Employee in moving her family and property from La Cruces, New Mexico to Ketchikan, Alaska in accordance with the Employee Move/Authorization Request form attached as Exhibit A to this agreement.

(b) Housing Advance. To assist Employee in obtaining suitable housing upon relocation to Ketchikan, the City will advance the amount of security deposit and prepaid rent required by the lease for such housing to Employee. Upon termination of that lease the Employee shall repay the City the amount advanced. Employee authorizes the City to withhold that amount from any sum payable to the Employee by the City or to recover such amounts by other legal means.

(c) Recovery by City. In the event Employee resigns or is terminated pursuant to (3)(i) through (iv), Employee authorizes the City to withhold all amounts due under paragraph (8)(a) calculated based on Paragraph 12 of Exhibit A from any sum payable to Employee by the City or to recover such amounts by other legal means.

9) Indemnification. The City agrees that it shall defend, hold harmless, and indemnify the Employee from any and all demands, claims, suits, actions and legal proceedings brought against the Employee in her individual capacity, or in her official capacity as agent and employee of the City, provided the demand, claim, suit, action or legal proceeding arises

from an incident occurring while the Employee was acting within the scope of her employment and excluding criminal litigation, claims for fraud and dishonesty, and administrative and disciplinary proceedings against the Employee. The City shall have the option, within its sole discretion, of hiring an outside attorney or providing legal representation through the City Attorney's Office and to settle or litigate the matter as it determines. In no case, will individual City Council members be considered personally liable for indemnifying the Employee against such demands, claims, suits, actions and legal proceedings.

10) Bonding. The City shall bear the full cost of any fidelity or other bonds required of the Employee under any law or ordinance.

11) Residency. The Employee shall reside within the City limits of the City of Ketchikan, Alaska.

12) Amendments. The City Council, after consultation and mutual agreement with the Employee, shall fix any such other terms and conditions of employment, as it may determine from time to time, relating to the performance of Employee, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement, the City of Ketchikan Charter or any other law.

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

CITY

City of Ketchikan
334 Front Street
Ketchikan, Alaska 99901

EMPLOYEE Delilah Walsh
 334 Front Street
 Ketchikan, Alaska 99901

Alternatively, notices required pursuant to this Agreement may be personally served in the same manner as is applicable to civil judicial practice. Notice shall be deemed 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.

14) 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 benefits of the heirs at law and executors of Employee.
- (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) The laws of the State of Alaska shall govern the construction, validity, performance and enforcement of this Agreement. Venue as to any action, claim, or proceeding arising out of, or based upon this Agreement, including, but not limited to, any action for declaratory or injunctive relief, shall be the appropriate Court sitting in the City of Ketchikan, First Judicial District, Alaska.
- (e) This Agreement may be executed in separate counterparts, each of which is part of a single contract. A party's transmission to the other by fax, email or other electronic means

of the transmitting party's signature on this Agreement shall be effective as an acceptance of this Agreement by the transmitting party, with the same force and effect as the delivery of an executed original.

15) Starting Date. Employee shall commence full-time employment with the City on October 1, 2022.

IN WITNESS WHEREOF, the City of Ketchikan has caused this Agreement to be signed and executed in its behalf by its Mayor, and duly attested by its City Clerk, and the Employee has signed and executed this Agreement, the day and year first above written.

Dave Kiffer, Mayor
City of Ketchikan
State of Alaska

ATTEST:

Kim Stanker
City Clerk

Delilah Walsh