

Order 70-21/22  
Passage: 8-0 on 10/4/2021

Effective 10/14/2021

KATE SNYDER (MAYOR)  
BELINDA S. RAY (1)  
SPENCER R. THIBODEAU (2)  
TAE Y. CHONG (3)  
ANDREW ZARRO (4)

**CITY OF PORTLAND**  
**IN THE CITY COUNCIL**

MARK DION (5)  
APRIL D. FOURNIER(A/L)  
PIOUS ALI (A/L)  
NICHOLAS M. MAVODONES, JR (A/L)

**ORDER APPOINTING DANIELLE P. WEST**  
**AS INTERIM CITY MANAGER**

**ORDERED**, that Danielle P. West is hereby appointed Interim City Manager for the City of Portland effective November 2, 2021; and

**BE IT FURTHER ORDERED**, that Danielle P. West shall be paid an annual salary of \$181,079 starting November 2, 2021; and

**BE IT FURTHER ORDERED**, that upon resignation of the position of Interim City Manager, Ms. West shall be entitled to resume her position as Corporation Counsel, as described in the employment contract attached hereto; and

**BE IT FURTHER ORDERED**, that the City Council hereby authorizes the Mayor to execute the employment contract for this appointment and any other related documents necessary or convenient to carry out the intent of said document and this Order.

## **INTERIM CITY MANAGER EMPLOYMENT AGREEMENT**

THIS AGREEMENT (“Agreement”) is entered into and is effective as of the 2<sup>nd</sup> day of November, 2021 (“Effective Date”) by and between the CITY OF PORTLAND, MAINE, a municipal corporation (the "City"), and DANIELLE WEST ("West"), an individual residing in Portland, Maine and a current employee of the City. The City and West are collectively referred to as the “Parties”.

### **RECITALS**

WHEREAS, the Charter and Code of Ordinances of the City of Portland establish the City Manager form of government and set forth the duties and responsibilities of the City Manager; and

WHEREAS, there is an upcoming vacancy in the position of City Manager; and

WHEREAS, the Portland City Council (the “City Council”) has determined that it is necessary and appropriate to appoint an Interim City Manager as further provided herein; and

WHEREAS, prior to the Effective Date West has been employed as the City’s Corporation Counsel; and

WHEREAS, the City Council has determined that West has the necessary specialized skills and experience with City operations and with the community to perform the functions of the City Manager position on an interim basis; and

WHEREAS, the City Council desires to employ West to serve as and perform the duties of the Interim City Manager; and

WHEREAS, West is agreeable to serve as and perform the duties of Interim City Manager under the terms and conditions of this Agreement; and

WHEREAS, the City Council desires and intends that West will have the ability to return to her position as Corporation Counsel at the end of her service as Interim City Manager, and West desires and intends to return to the position of Corporation Counsel at the end of her service as Interim City Manager;

NOW THEREFORE, the City Council and West enter into this Agreement to serve the following purposes:

1. To retain West to perform services in a professional manner and to provide her with compensation and employment benefits which will induce West to remain in the employment of the City as Interim City Manager on the terms specified herein;
2. To provide that, subject to the terms specified in this Agreement, upon cessation of her employment as Interim City Manager West will be entitled to return to the position and performance of her duties as the City's Corporation Counsel, enjoying the same benefits she would have earned and enjoyed had she remained employed as Corporation Counsel during the term of this Agreement, except and unless as specifically provided in this Agreement; and
3. To reserve to the City Council a fair and just means of (i) terminating the employment of West as Interim City Manager in the event that she, for any reason, becomes unable or unwilling to discharge fully the duties of the office of Interim City Manager, and (ii) in all events to reserve to the City Council the right and ability to terminate West's position as Interim City Manager when the position of City Manager is filled by a permanent employee or at any other time, with or without reason, as further provided in this Agreement.

## **TERMS OF AGREEMENT**

1. EMPLOYMENT. The City Council hereby employs West, and West hereby accepts employment with the City in the position of Interim City Manager, on the terms and conditions set forth herein.
  
2. SCOPE OF DUTIES AND SERVICES.
  - a. Under the terms and conditions of this Agreement, West shall provide and perform all the services and duties ordinarily performed by the City Manager under the direction and control of the City Council and as set forth in the Portland City Charter, the City Code and other applicable written policies and rules. West shall perform her obligations and responsibilities diligently within the time parameters indicated by the City Council, applying the highest degree of professionalism, ethics, integrity and competency to the discharge of her obligations.
  
  - b. West agrees to remain in the exclusive employ of the City during the term of this Agreement. West shall dedicate her full energies and qualifications to her employment as the Interim City Manager and will not engage in any other employment except as may be specifically approved in writing in advance by the City Council.
  
3. TERM. The term of this Agreement shall begin on the Effective Date and shall terminate on the date that a new city manager takes office or within thirty (30) days of the date on which Portland voters act on the recommendations of the Charter Commission's recommendations by Portland voters ("Expiration date"), unless terminated sooner by either party as provided in this Agreement. This Agreement may be extended after the Expiration Date if the Parties agree in writing to extend this Agreement under terms and conditions mutually satisfactory to each party.

4. COMPENSATION AND BENEFITS. For the services to be provided pursuant to this Agreement, West shall receive the following compensation and benefits:

- a. Compensation. West will be paid at the rate of annual base salary of \$181,079, in installments at the same intervals and time as other management employees of the City and in accordance with established City procedures. West will receive any cost-of-living adjustment that is given to other management employees while she is serving as Interim City Manager.
- b. General Benefits. Except as may be otherwise provided herein, West shall be provided the fringe benefits she has received to date as Corporation Counsel . As used herein, fringe benefits include but are not necessarily limited to vacation, sick leave, holidays, retirement, health insurance, dental insurance, long-term disability insurance and life insurance.
- c. Expense Reimbursement.
  - i. The City Council recognizes that certain general expenses, dues, subscriptions, travel, and subsistence expenses including, but not limited to, acquiring and maintaining a cell phone, may reasonably be incurred by West in her role as Interim City Manager in the performance of job-related activities, functions, meetings, professional development, and professional conferences (such as the annual International City Manager's Association). The City Council agrees to budget and pay for or reimburse West for such expenses that are reasonably and actually incurred, provided that the amount paid under this subsection (c)(i) shall be limited by the amount the City Council budgets for such expenditures.
  - ii. West shall be reimbursed actual and reasonable costs for membership and participation in and annual registration fees for any professional, community or civic organizations in which the City Council requires,

encourages or agrees with West's participation or is reasonably incurred in performance of her job-related activities including, but not limited to, annual bar registration fees, provided that any such reimbursements shall be limited by the amount the City Council budgets for such expenditures.

5. REINSTATEMENT AS CORPORATION COUNSEL. Subject to Paragraph 6, during the term of this Agreement West may, upon giving the City Council thirty (30) days' advance written notice, resign her position as Interim City Manager and return to the position of City Corporation Counsel. Upon her reinstatement as Corporation Counsel West shall enjoy those benefits set forth in and be subject to the terms and conditions of that position on the basis provided in Section 5(a) below.

a. In the event that West returns to the position of and is reinstated as the Corporation Counsel, West's salary and benefits shall be adjusted to match that which would have been in effect at the time she is so reinstated as if she had not entered into this Agreement and had, during the term of this Agreement, retained and performed the duties of her position as Corporation Counsel. Any benefits or rights that West enjoyed as the Interim City Manager shall terminate upon her resumption of the Corporation Counsel position. For example, she will not be entitled to the compensation set by this Agreement. Under such circumstances, it shall be presumed that during her service as Interim City Manager West did not and would have not received any salary increases as the Corporation Counsel, and she will upon return receive the salary that was effective when she left the position to serve as Interim City Manager. If, however, a salary increase is given to the Corporation Counsel position during the term of this agreement, West shall be entitled to receive such increase upon her return to the position of Corporation Counsel.

b. During the term of this Agreement and while West is serving as Interim City Manager, the Corporation Counsel position may be filled on a temporary basis. If the City Council determines that said position should be filled with a temporary

appointee in West's absence, West shall be entitled to recommend candidates for the appointment, and West's right to return to the position shall be communicated to the temporary appointee.

6. TERMINATION AND RESIGNATION. Notwithstanding any other provision of this Agreement, the City Council has the right, upon thirty (30) days' advance written notice, to end West's appointment as Interim City Manager at any time, with or without cause. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the City Council to terminate the services of West consistent with this Paragraph, unless said termination is for cause as specified in Section 6(b), below, in which case West may be terminated upon seven (7) days' advance written notice. The Parties agree that as Interim City Manager West serves at the will of the City Council and that this Agreement contains all the terms and conditions of West's employment as Interim City Manager.
  - a. Unless sooner terminated hereunder or extended or renewed in writing by the Parties, West's employment as the Interim City Manager shall terminate on the Expiration Date.
  - b. Except as is provided in Paragraph 6(c), upon the City Council's termination of West's employment as Interim City Manager or immediately following the Expiration Date without this Agreement having been renewed or extended, West shall have the right to be reinstated to the position Corporation Counsel under the terms and conditions set out in Paragraph 5 above.
  - c. Notwithstanding any provision of this Agreement, if West is terminated as the Interim City Manager for any one or more of the reasons set forth below, then: (i) she shall be terminated from service as Interim City Manager with seven (7) days' written notice; (ii) she shall not be entitled to be reinstated as Corporation Counsel; and (iii) she shall not be entitled to any further compensation or benefits from the City except as required by applicable Personnel Code or external law:

1. Misfeasance, malfeasance and/or nonfeasance in performance of the Interim City Manager's duties and responsibilities.
2. Being charged with or conviction or a plea of guilty or no contest to any Class A, B, C, or D crime.
3. Neglect of duty, including the inability or unwillingness to properly discharge the responsibilities of the office of Interim City Manager.
4. Violation of any substantive City policy, rule, or regulation, which would subject any other City employee to termination.
5. A finding by the City Council of any fraudulent act against the interests of the City.
6. A finding by the City Council of any act which involves moral turpitude, or which causes the City disrepute.
7. Any other act of a similar nature of the same or greater seriousness.

9. GENERAL PROVISIONS.

- a. Waiver. The waiver of any breach of any provision hereunder by either party to this Agreement shall not be deemed to be a waiver of any other provision or subsequent breach hereunder, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party marking the waiver.
- b. Construction of Terms. The language of all parts of this Agreement shall be construed according to their plain meaning and shall not be construed for or against either party. Any rule of construction to the effect that ambiguities are to

be resolved against the drafting party shall not apply in the interpretation of this Agreement or any amendment or exhibits hereto.

- c. Severability. If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be unenforceable, void or invalid, in whole or in part, for any reason, the remainder of this Agreement shall remain in full force and effect. In the event of such entire or partial invalidity, the Parties agree to enter into supplemental or other agreements to effectuate the intent and purpose of this Agreement.
- d. Controlling Law. This Agreement shall be construed in accordance with and governed by the laws of the State of Maine.
- e. Entire Agreement. This Agreement constitutes the entire Agreement between the Parties pertaining to the subject matter of the Agreement and supersedes all prior and contemporaneous agreements, representations, promises and understanding of the Parties, whether oral or in writing. No supplement, modification or amendment of this Agreement shall be binding, unless executed in writing by the Parties and this Agreement may not be altered, amended or modified by any other means. Each party waives their future right to claim, contend, or assert that this Agreement was modified, canceled, superseded or changed by any oral agreement, course of conduct, waiver or estoppel.
- f. Other Terms and Conditions of Employment. The City Council, in consultation with West, may set any other terms and conditions of employment relating to her performance, provided the terms or conditions do not conflict with the provisions of this Agreement or of the City Charter or the City Code.

Executed by the CITY this \_\_\_\_ day of \_\_\_\_\_, 2021

WITNESS

CITY OF PORTLAND

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Kate Snyder, Mayor

\_\_\_\_\_  
Print Name

Executed by DANIELLE WEST this \_\_\_\_ day of \_\_\_\_\_, 2021

WITNESS

CITY OF PORTLAND

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Danielle West

\_\_\_\_\_  
Print Name