Larkin Hoffman

Larkin Hoffman

8300 Norman Center Drive
Suite 1000
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Memorandum

To: City of Columbus City Council

From: Megan Rogers, Assistant City Attorney

Date: November 17, 2023

Re: Interim City Administrator Hiring Update

Upon receipt of City Administrator Mursko's letter of resignation, the City Council determined that it wished to hire an interim city administrator to aid Council, staff, and the public while it undertook a search for a permanent candidate. City Administrator Mursko has served the City for 24 years, sits as the City Administrator, City Clerk, Treasurer, and Zoning Administrator. The City Council simultaneously sought the guidance of Ellen Hinrichs, an organizational development and human resources consultant, to analyze the City's current staffing levels, make recommendations related to the new administrator job description and assist the City during this transition process.

The City will undertake a competitive search and interview process to fill the role of its next administrator. The City Council authorized the Personnel Committee to solicit potential interim administrator candidates from the list retained by the Minnesota League of Cities and seek recommendations from surrounding communities. After reviewing the League list and in consultation with candidates recommended by the City's consultant team, the Personnel Committee met with Mr. Jack Davis and recommended he interview with the full City Council for the interim role. The City Council interviewed Mr. Davis at a special meeting on November 7, 2023. On November 8, 2023 at its regular meeting the City Council authorized the Personnel Committee to negotiate a professional services agreement with Mr. Davis.

The Personnel Committee in conjunction with the City Attorney's office drafted a proposed agreement for Mr. Davis' consideration. Upon review of the proposed agreement, Mr. Davis has requested that the City hire him for a temporary employee position rather than as a consultant. As participant in MN PERA, Mr. Davis desires to remain within the state retirement system and has accordingly offered to reduce his requested monthly fee to ensure that the cost to the City- whether he served as an independent contractor or as an employee- would be the same.

The City Attorney's office has prepared draft versions of both a temporary employment agreement as well as an independent consultant agreement. Staff is seeking Council direction on whether to retain Mr. Davis as a temporary employee or as an independent contractor as well as whether the terms and conditions of employment/professional services meet Council expectations. These are draft documents, subject to additional attorney revision and are intended to provide an outline for the City Council discussion and direction.

PROFESSIONAL SERVICES AGREEMENT

CHARLES L. "JACK" DAVIS.

THIS AGREEMENT is made this ___ day of November, 2023 ("Effective Date") by and between **CHARLES L. "JACK" DAVIS,** an Independent Contractor, located at 29457 Dahlia St. NW, Isanti, MN 55040 ("Consultant"), and the **CITY OF COLUMBUS**, a Minnesota municipal corporation located at 16319 Kettle River Blvd. NE, Columbus, MN 55025 ("City"):

RECITALS

A. Consultant is engaged in the business of providing interim city administrator services.

B. Consultant represents that he has the professional expertise and capabilities to provide the City with the requested professional services.

C. City desires to engage Consultant to provide the temporary services described in this Agreement and Consultant is willing to provide such services on the terms and conditions in this Agreement.

NOW, THEREFORE, in consideration of the terms and conditions expressed in this Agreement, the City and Consultant agree as follows:

AGREEMENT

1. Incorporation. The foregoing recitals are hereby incorporated and made a part of this Agreement.

2. Services to be Provided. Consultant agrees to provide City with services as described in Consultant's Scope of Services attached to this Agreement as Exhibit A or any supplemental letter agreements, or both, entered into between the City and Consultant (the "Services"). The Services referenced in the attached Exhibit A or any supplemental letter agreements shall be incorporated into this Agreement by reference. All Services shall be provided in a manner consistent with the level of care and skill ordinarily exercised by professionals currently providing similar services.

3. Term. This Agreement shall commence on January 2, 2024 (the "Commencement Date") and conclude upon termination by either Party as provided in Section 9 of this Agreement. This Agreement is expected to terminate on or about May 31, 2024.

4. Duties and Authority. Consultant shall, on an interim basis, exercise the full powers and perform the duties of the position of City Administrator ("Interim City Administrator") for the City, as set forth in the City of Columbus City Code, any relevant ordinances, resolutions, or regulations, the Interim City Administrator job description attached hereto as Exhibit B ("Interim City Administrator Position") and under Minnesota law. Consultant shall exercise such other powers and perform such other duties as City Council may from

time to time assign. As determined by the City Council, Consultant shall serve as representative to any agency or organization to which the City Council may make appointments during the Term of this Agreement. Consultant shall not engage in any activity, consulting service, or enterprise, for compensation or otherwise, which is actually or potentially in conflict with or interferes with his duties and responsibilities to the City. As the Interim City Administrator, Consultant is expected to engage in those hours of work that are necessary to fulfill the obligations of the Interim City Administrator Position. The parties agree that Consultant shall work in-person at City Hall, may set his own schedule as needed to fully discharge his duties under this Agreement and shall keep the City Staff, and the City Council aware of his schedule. The Consultant shall provide reasonable written notice to the Personnel Committee when the Consultant anticipates an absence from the City for three (3) or more business days. The Consultant shall inform, in advance if possible, the Personnel Committee of any leave taken.

5. Compensation. Following execution of this Agreement by the parties, the Consultant shall be authorized to and shall commence performance of the Services on the Commencement Date, subject to the requirements and limitations on compensation provided in this Section. *Insert Hourly Rate here or request attach rate sheet to Exhibit A* Compensation to be paid hereunder shall not exceed twelve thousand dollars ($12,000.00) per month (the "Compensation"). City shall make payment, based on monthly invoices from Consultant. City's payment shall be made within 15 days after Consultant's statement. The City's review, approval, or acceptance of or payment for any services shall not be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement. Consultant represents that he is an independent contractor and not an employee of the City. Consultant shall be responsible for paying all necessary and appropriate taxes and unemployment premiums and the like which are owed as a result of sums paid by the City to Consultant under this Agreement.

6. Limited Benefit Package. Consultant understands and agrees that he is not entitled to receive benefits provided by the City to its own employees, including, but not limited to, health, life, or disability insurance, PERA, paid time off, or other benefits. Consultant waives the right to sue the City for any workers 'compensation benefits on behalf of himself or his dependents. As an interim appointment made pursuant to the terms of this Agreement, Consultant will receive only those benefits expressly provided in this Agreement. Consultant will not be provided, nor will Consultant be reimbursed for any professional development; any medical or dental coverage; or paid leave of any type except as otherwise specifically provided for herein.

a. Holidays: Consultant will be eligible for the same paid holidays as other City staff members.
b. Vacation: Consultant shall accrue vacation at a rate of 8 hours per month of service during the Term of this Agreement.
c. Sick Leave: Consultant shall receive 3 days of paid sick leave on the Commencement Date. Beginning on the third month of service, Consultant shall accrue one sick day per month. Paid sick leave under this section has no cash value and is not payable upon termination of the Agreement.

d. City Computer and Cell Phone: The City shall provide the Consultant with a City issued cell phone and laptop. Such equipment and software shall remain the sole property of the City and the City reserves the right to monitor the use of its equipment. Consultant agrees that Consultant has no privacy rights in the use of such equipment and the equipment must be returned upon termination or separation from employment.

7. **Expense Reimbursement**. Reimbursement shall be made for mileage at the IRS rate for travel on City business. The City will not reimburse the Consultant for mileage to and from the Consultant's home to Columbus City Hall. The Consultant will not be provided a City vehicle. All other expenses of the Consultant shall be built into the Consultant's fixed compensation rates, unless reimbursement is provided for an expense that received the prior written approval of the Personnel Committee, which approval may be provided via electronic mail.

8. **Evaluations**. Consultant shall report to and be evaluated by the City Council. The Consultant is appointed by and serves at the pleasure of the City Council. Nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of the City to terminate this Agreement pursuant to Section 9. Upon termination, the City shall pay Consultant for all services through the effective date of termination and Consultant agrees that he shall have no right to any additional compensation or payment. In addition, Consultant and City agree that Consultant shall not be entitled to any severance payment if this Agreement is terminated either with or without cause.

9. **Termination.** Notwithstanding any other provision hereof to the contrary, this Agreement may be terminated as follows:

a. The parties, by mutual written agreement, may terminate this Agreement at any time;

b. Consultant may terminate this Agreement in the event of a breach of the Agreement by the City upon providing thirty (30) days' written notice to the City;

c. The City may terminate this Agreement at any time at its option, for any reason or no reason at all; or

d. City may terminate this Agreement immediately upon Consultant's failure to have in force any insurance required by this Agreement.

In the event of a termination, City shall pay Consultant for Services performed to the date of termination and for all costs or other expenses incurred prior to the date of termination.

10. **Opportunity to Apply for Permanent City Manager Position.** The City intends to engage an outside consultant to perform an open search for a person to fill the City Administrator position on a permanent basis. Consultant is not prohibited from applying for the permanent position. If Consultant elects to apply, Consultant agrees to participate in the same process and in the same manner as all other applicants.

11. **Amendments**. Amendments may only be made to this Agreement in writing signed by both parties.

12. Remedies. In the event of a termination of this Agreement by City because of a breach by Consultant, City may contract with other persons or entities, or any combination thereof. The foregoing remedy provided to the City for breach of this Agreement by Consultant shall not be exclusive. City shall be entitled to exercise any one or more other legal or equitable remedies available because of Consultant's breach.

13. Records/Inspection. Pursuant to Minnesota Statutes § 16C.05, Subd. 5, the Consultant agrees that the books, records, documents, and accounting procedures and practices of the Consultant, that are relevant to Interim City Administrator position, are subject to examination by the City and the state auditor or legislative auditor for a minimum of six years. Consultant shall not use personal devices to perform the Services. Consultant shall maintain any records not otherwise preserved on City devices for a minimum of six years after final payment. The parties agree that this obligation will survive the completion or termination of this Agreement.

14. Indemnification. To the fullest extent permitted by law, the Consultant, and the Consultant's successors or assigns, agree to protect, defend, indemnify, save, and hold harmless the City, its officers, officials, agents, volunteers, and employees from any and all claims; lawsuits; causes of actions of any kind, nature, or character; damages; losses; or the costs, disbursements, and expenses of defending the same, including but not limited to attorneys' fees, professional services, and other technical, administrative or professional assistance resulting from or arising out of Consultant's (or its subcontractors, agents, volunteers, members, invitees, representatives, or employees) performance of the duties required by or arising from this Agreement, or caused in whole or in part by any negligent act or omission or willful misconduct, or arising out of the failure to obtain or maintain the insurance required by this Agreement. Nothing in this Agreement shall constitute a waiver or limitation of any immunity or limitation on liability to which the City is entitled. The parties agree that these indemnification obligations will survive the completion or termination of this Agreement.

15. Insurance. Consultant shall maintain reasonable insurance coverage throughout this Agreement. Consultant agrees that before any work related to the approved Project can be performed, Consultant shall maintain at a minimum: Worker's Compensation Insurance as required by Minnesota Statutes, Section 176.181; Professional Liability in an amount not less than $1,000,000.00 per occurrence; and Commercial General Liability in an amount of not less than $1,500,000.00 per occurrence for bodily injury or death arising out of each occurrence, and $1,500,000.00 per occurrence for property damage. To meet the Commercial General Liability, the Consultant may use a combination of Excess and Umbrella coverage. The Consultant shall provide the City with a current certificate of insurance including the following language: "The City of Columbus is named as addtiona insured with respect to the commercial general liability and umbrella or excess liability as required by the contract. The umbrella or excess liability policy follows form on all underlying coverages." Such certificate of liability shall list the City as an additional insured.

16. **Subcontracting.** The City has authorized this Agreement with the express understanding that the Consultant will be solely responsible for the Services. Consultant shall not assign, sublet, or transfer any rights under or interest in this Agreement without the written consent of the City. Any instrument in violation of this provision is null and void.

17. **Assignment.** Neither City nor Consultant shall assign this Agreement or any rights under or interest in this Agreement, in whole or in part, without the other party's prior written consent. Any assignment in violation of this provision is null and void.

18. **Independent Contractor.** Consultant shall be deemed an independent contractor. Consultant's duties will be performed with the understanding that Consultant has special expertise as to the services which Consultant is to perform and is customarily engaged in the independent performance of the same or similar services for others. The manner in which the services are performed shall be controlled by Consultant; however, the nature of the services and the results to be achieved shall be specified by City. The parties agree that this is not a joint venture and the parties are not co-partners. Consultant is not to be deemed an employee or agent of City and has no authority to make any binding commitments or obligations on behalf of the City except to the extend expressly delegated to Consultant by resolution of the City Council. All services provided by the Consultant pursuant to this Agreement shall be provided by the Consultant as an independent contractor and not as an employee of the City for any purpose, including but not limited to: income tax withholding, unemployment compensation, FICA taxes, liability for torts and eligibility for employee benefits.

19. **Compliance with Laws.** Consultant shall exercise due professional care to comply with applicable federal, state and local laws, rules, ordinances and regulations in effect as of the date Consultant agrees to provide the applicable services detailed in Exhibit A or any supplemental letter agreement. Consultant's guests, invitees, members, officers, officials, agents, employees, volunteers, representatives, and subcontractors shall abide by the City's policies, as well as all other reasonable work rules, safety rules, or policies regulating the conduct of persons on City property, at all times while performing duties pursuant to this Agreement. Consultant agrees and understands that a violation of any of these policies or rules constitutes a breach of the Agreement and sufficient grounds for immediate termination of the Agreement by the City.

20. **Entire Agreement.** This Agreement, any attached exhibits and any addenda or amendments signed by the parties shall constitute the entire agreement between the City and the Consultant, and supersedes any other written or oral agreements between the City and the Consultant. This Agreement can only be modified in writing signed by the City and the Consultant. If there is any conflict between the terms of this Agreement and referenced or attached items, the terms of this Agreement shall prevail.

21. **Third Party Rights.** The parties to this Agreement do not intend to confer on any third party any rights under this Agreement.

22. **Choice of Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the state of Minnesota. Any disputes, controversies, or claims arising out of this Agreement shall be heard in the state or federal courts of Anoka County, Minnesota, and all parties to this Agreement waive any objection to the jurisdiction of these courts, whether based on convenience or otherwise.

23. **Conflict of Interest.** The Consultant shall use reasonable care to avoid conflicts of interest and appearances of impropriety in representation of the City. In the event of a conflict of interest, Consultant shall advise the City Attorney and either secure a waiver of the conflict or advise the City that he will be unable to provide the requested services.

24. **Work Products and Ownership of Documents.** All records, information, materials and other work products, including, but not limited to the completed reports, drawings, plans, and specifications prepared and developed in connection with the provision of services pursuant to this Agreement shall become the property of the City, but reproductions of such records, information, materials and other work products in whole or in part may be retained by the Consultant. Regardless of when such information was provided, the Consultant agrees that it will not disclose for any purpose any information the Consultant has obtained arising out of or related to this Agreement, except as authorized by the City or as required by law. These obligations survive the termination of this Agreement.

25. **Agreement Not Exclusive.** The City retains the right to hire other administrative professionals and or consultants for other matters, in the City's sole discretion.

26. **Data Practices Act Compliance.** Any and all data provided to the Consultant, received from the Consultant, created, collected, received, stored, used, maintained, or disseminated by the Consultant pursuant to this Agreement shall be administered in accordance with, and is subject to the requirements of the Minnesota Government Data Practices Act, Minnesota Statutes, Chapter 13. Consultant agrees to notify the City within three (3) business days if it receives a data request from a third party. This paragraph does not create a duty on the part of the Consultant to provide access to public data to the public if the public data are available from the City, except as required by the terms of this Agreement. These obligations survive the termination of this Agreement.

27. **No Discrimination**. Consultant agrees not to discriminate in providing products and services under this Agreement on the basis of race, color, sex, creed, national origin, disability, age, sexual orientation, status with regard to public assistance, or religion. Violation of any part of this provision may lead to immediate termination of this Agreement. Consultant agrees to comply with Americans with Disabilities Act as amended ("ADA"), Section 504 of the Rehabilitation Act of 1973, and the Minnesota Human Rights Act, Minnesota Statutes, Chapter 363A. Consultant agrees to hold harmless and indemnify the City from costs, including but not limited to damages, attorney's fees and staff time, in any action or proceeding brought alleging a violation of these laws by the Consultant or its guests, invitees, members, officers, officials, agents, employees, volunteers, representatives and subcontractors.

28. **Authorized Agents**. The City's authorized agent for purposes of administration of this contract is Mayor Jesse Preiner.

29. **Notices.** Any notices permitted or required by this Agreement shall be deemed given when personally delivered or upon deposit in the United States mail, postage fully prepaid, certified, return receipt requested, addressed to:

Consultant: Charles L. "Jack" Davis, 29457 Dahlia St. NW, Isanti, MN 55040; Attn: Jack Davis; jackd24266@yahoo.com

City: City of Columbus, 16319 Kettle River Blvd. NE, Columbus, MN 55025: Attn: Mayor Jesse Preiner

or such other contact information as either party may provide to the other by notice given in accordance with this provision.

30. **Waiver**. No waiver of any provision or of any breach of this Agreement shall constitute a waiver of any other provisions or any other or further breach, and no such waiver shall be effective unless made in writing and signed by an authorized representative of the party to be charged with such a waiver.

31. **Headings**. The headings contained in this Agreement have been inserted for convenience of reference only and shall in no way define, limit or affect the scope and intent of this Agreement.

32. **Mediation.** Both parties agree to submit all claims, disputes and other matters in question between the parties arising out of or relating to this Agreement to mediation at the Conflict Resolution Center, 2101 Hennepin Avenue, Suite 100, Minneapolis, Minnesota 55405. In the event mediation is unsuccessful, either party may exercise its legal or equitable rights.

33. **Fidelity Bond.** The City shall bear the cost and responsibility to obtain any fidelity bond required of the Consultant based on the Services provided.

34. **Review by Independent Counsel.** Consultant acknowledges that the City has advised him to have this Agreement independently reviewed by an attorney of his choice.

35. **Publicity**. City and Consultant shall develop language to use when discussing the Services. Consultant agrees that any publicity regarding the Services or the subject matter of this Agreement must not be released unless it complies with the approved language. Consultant must not use the City's logo or state that the City endorses its services without the City's advanced written approval.

36. **Severability**. In the event that any provision of this Agreement shall be illegal or otherwise unenforceable, such provision shall be severed, and the balance of the Agreement shall continue in full force and effect.

37. **Signatory.** Each person executing this Agreement ("Signatory") represents and warrants that he or she is duly authorized. In the event the Consultant did not authorize the Signatory to sign on its behalf, the Signatory agrees to assume responsibility for the duties and liability of the Consultant, described in this Agreement, personally.

38. **Counterparts and Electronic Communication.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument. This Agreement may be transmitted by electronic mail in portable document format ("pdf") and signatures appearing on electronic mail instruments shall be treated as original signatures.

39. **Recitals.** City and the Consultant agree that the Recitals are true and correct and are fully incorporated into this Agreement.

[The balance of this page left blank intentionally.]

IN WITNESS WHEREOF, the City and the Consultant have caused this Professional Services Agreement to be executed by their duly authorized representatives in duplicate on the respective dates indicated below.

CITY OF COLUMBUS, MINNESOTA

DATED:_____ BY:_____
Jesse Preiner
Its: Mayor

DATED:_____ BY:_____
Elizabeth Mursko
Its: City Administrator

CONSULTANT

DATED:_____ BY:_____
Charles L."Jack" Davis
Its:_____

EXHIBIT A TO AGREEMENT WITH
CHARLES L. "JACK" DAVIS

Scope of Services:

Consultant will perform the duties of the Interim City Administrator. These duties include but are not limited to:

1. Overseeing the general administration and operations of the departments of the City;

2. Executing the policies, directives, priorities and legislative actions of the City Council;

3. Managing activities of City departments by providing instruction and guidance; assigning priorities and objectives; and motivating and supervising the City employees directly reporting to the City Consultant;

4. Monitoring the operating budget and financial condition of the City and advising the City Council of the same;

5. Maintaining communication with and cooperation of the Mayor, City Council and professional consultants for the exchange of information, development of policies, resolution of conflicts, etc.;

6. Maintaining effective working relationships with elected officials, representatives of local, state and federal agencies, local civic organizations, the media and others involved with City government;

7. Preparing a wide variety of records and forms, weekly status reports, City Council, EDA and Planning Commission agendas, policy papers, public notices, financial status reports, general correspondence, performance appraisals, press releases, etc.;

8. Supervising the administration of local elections in accordance with prescribed laws and regulations;

9. Maintaining effective public relations with the local media and the general public;

10. Planning, attending and participating in all Council, EDA, Personnel Committee and Planning Commission meetings and workshops, unless excused by the Mayor or City Council. At Consultant discretion, attend Park Board, Public Works Advisory Board, Fire Board, and other city board/committee meetings;

11. Staying informed of all federal, state and county programs that affect the city;

12. Special projects as directed by City Council.

Exhibit B
Interim City Administrator Job Description

4889-3046-4145, v. 1

TEMPORARY EMPLOYMENT AGREEMENT

THIS TEMPORARY EMPLOYMENT AGREEMENT hereinafter referred to as the "Agreement," made and entered into the _____ day of _____, 2023, by and between the City of Columbus, State of Minnesota, a municipal corporation hereinafter referred to as the "City," and Charles L. "Jack" Davis, an individual.

RECITALS

WHEREAS, a vacancy exists in the Office of City Administrator; and

WHEREAS, the City desires to secure the specialized services of a qualified person to serve as Interim City Administrator on a temporary, limited-term basis while the City seeks to fill the position of City Administrator through a recruitment and selection process; and

WHEREAS, Mr. Davis represents that he has the requisite education, experience, specialized skills, and training and is otherwise qualified to serve as the Interim City Administrator; and

WHEREAS, the City desires to employ Mr. Jack Davis ("Interim Administrator") to serve as the Interim City Administrator to the City.

NOW, THEREFORE, in consideration of these recitals, the performance by the parties of the promises, covenants, and conditions contained herein, the City and Interim Administrator agree as provided in this Agreement.

AGREEMENT

SECTION ONE: DUTIES

The City hereby agrees to appoint and employ Interim Administrator in the capacity of Interim City Administrator as of January 2, 2024. Interim Administrator shall perform the function and duties specified in the Interim City Administrator job description and to perform duties specified under the ordinances of the City of Columbus and the laws of the State of Minnesota and, such other legally permissible and proper duties and functions as the City Council shall from time-to-time assign.

Interim Administrator shall not engage in any activity, consulting service, or enterprise, for compensation or otherwise, which is actually or potentially in conflict with or interferes with his duties and responsibilities to the City. The Interim Administrator is expected to engage in those hours of work that are necessary to fulfill the obligations of the Interim City Administrator Position more fully described in the "Scope of Work" attached hereto as Exhibit A. The parties agree that the Interim Administrator shall work in-person at City Hall, may set his own schedule as needed to fully discharge his duties under this Agreement and shall keep the City Staff, and the City Council aware of his schedule.

SECTION TWO: TERM

1. Term. Unless sooner terminated, the term of this Agreement shall commence on January 2, 2024 and continue thereafter until May 31, 2024 or until otherwise terminated or ended pursuant to the provisions of this Agreement.

2. Evaluations. Interim Administrator shall report to and be evaluated by the City Council. The Interim Administrator is appointed by and serves at the pleasure of the City Council. Nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of the City to terminate this Agreement pursuant to this section. Upon termination, the City shall pay Interim Administrator through the effective date of termination and Interim Administrator agrees that he shall have no right to any additional compensation or payment. In addition, Interim Administrator and City agree that Interim Administrator shall not be entitled to any severance payment if this Agreement is terminated either with or without cause.

3. Termination. Nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of the City to terminate the services of the Interim Administrator (discharge) at any time. This Agreement may be terminated as follows:

a. The parties, by mutual written agreement, may terminate this Agreement at any time;
b. Interim Administrator may terminate this Agreement in the event of a breach of the Agreement by the City upon providing thirty (30) days' written notice to the City;
c. The City may terminate this Agreement at any time at its option, for any reason or no reason at all.

SECTION THREE: SALARY

1. Salary. The City agrees to pay the Interim Administrator for services rendered pursuant hereto an annual salary payable in installments at the same time as other employees of the City are paid. Interim Administrator's salary through the term of this contract is as follows:

From the commencement of this contract through the date of termination of this contract, the Interim Administrator's salary will be based upon a monthly salary of $10,000.00 paid in established payroll periods as set forth by the City Council from time to time for all employees. Other adjustments to salary and compensation shall be at the discretion and approval of City Council.

SECTION SIX: HEALTH, DENTAL AND LIFE INSURANCE

The Interim Administrator shall be eligible to enroll in City medical, dental, life insurance and disability insurance programs if made available to other *seasonal or temporary employees*. The City shall not subsidize the Interim Administrator's insurance coverage at the rate provided for full time, permanent employees.

SECTION SEVEN: RETIREMENT

The City is a municipality defined in Minnesota State Statutes, Chapter 475, and is a Public Interim Administrator Retirement Association (PERA) participating member. The Interim Administrator shall be eligible and may participate in the PERA retirement program the same as full time City employees.

SECTION EIGHT: OTHER TERMS AND CONTRIBUTIONS OF EMPLOYMENT

1. Fringe Benefits. Except as may be otherwise herein provided to the contrary, all provisions of the City Code and regulations and rules of the City relating to holidays and working conditions as they now exist or hereafter may be amended, also shall apply to Interim Administrator as they would to an employee of the City.

2. Vacation and Sick Leave. The Interim Administrator shall accrue vacation leave at a rate of 8 hours per month of service during the Term of this Agreement. Unused vacation leave shall be payable at a rate of 50% upon termination of the Agreement. Consultant shall receive 3 days of paid sick leave on the Commencement Date. Beginning on the third month of service, Interim Administrator shall accrue one sick day per month. Paid sick leave under this section has no cash value and is not payable upon termination of the Agreement.

3. City Computer an Cell Phone: The City shall provide the Interim Administrator with a City issued cell phone and laptop. Such equipment and software shall remain the sole property of the City and the City reserves the right to monitor the use of its equipment. Interim Administrator agrees that he has no privacy rights in the use of such equipment and the equipment must be returned upon termination or separation from employment.

4. Indemnification. The City shall defend and indemnify the Interim Administrator for damages, including punitive damages, claimed or levied against the Interim Administrator, provided that (1) he was acting in the performance of duties of his position; and (2) he was not guilty of malfeasance in office or willful neglect of duty. The City may compromise and settle, without the consent of the Interim Administrator, any claim if the City feels it is in the best interest to settle the matter. In any event, the City will pay any settlement or judgment and all costs for legal representation.

5. Bonding. The City shall pay the cost of any bonds required of the City Administrator under Minnesota law.

SECTION NINE: GENERAL PROVISIONS

1. Assignments and Subcontracts. None of the sums due, or about to become due, nor any of the work to be performed under this Agreement by Interim Administrator shall be assigned to any third party without the prior written consent of the City.

2. Applicable Law. This Agreement shall be deemed to have been entered into and shall be construed and governed, except with respect to conflict of laws, in accordance with the laws of the State of Minnesota.

3. Waivers. Failure to either party to insist, in any one or more instances, upon the performance of any of the terms, covenants, or conditions of this Agreement or to exercise any right hereunder, shall not be construed as a waiver or relinquishment of the future.

4. Severability. The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions, and this Agreement shall be construed in all respects as if such invalid or unenforceable provision or provisions were omitted.

5. Amendments. This Agreement may not be amended, modified, released, discharged, supplemented, interpreted, or changed in any manner except by written instrument signed by duly authorized representatives of both parties.

6. Headings. The headings utilized herein are provided as aids in referencing provisions of this Agreement, but shall not be utilized in interpretation, or construction of the terms and conditions herein.

7. Merger. The Agreement and any Attachment (when signed by both parties), contain the entire and only understanding or agreement between the parties in relation to the subject matter hereof. Any representations, provision, undertakings, or condition hereof not contained herein shall be of no effect and shall not be binding on either party.

8. Force Majeure. Neither party shall be liable or deemed to be in default for any delay or failure to perform under this Agreement resulting, directly or indirectly, from any cause beyond reasonable control, including, but not limited to war, fire, riot, insurrection, and acts of God.

9. Applicability of Personnel Policies and Resolutions. Except where specifically abridged or modified by this agreement, personnel policies as defined and set forth for employees of the City of Columbus shall apply to the Interim Administrator.

10. Other Terms and Conditions of Employment. Other terms and conditions of employment are as follows: (i) the City Council and the Interim Administrator may mutually agree to any other terms and conditions of temporary employment as they may mutually deem appropriate from time-to-time provided such terms and conditions are not inconsistent with the provisions of this agreement, the laws of the State of Minnesota, the ordinances of the City, or any other applicable laws; and (ii) all provisions of the City Code, and regulations and rules of the City relating to fringe benefits and working conditions as they now exist or hereafter may be amended, also shall apply to the Interim Administrator as they would to other Interim Administrators of the City, except as herein provided.

11. Opportunity to Apply for Permanent City Manager Position. The City intends to engage an outside consultant to perform an open search for a person to fill the City Administrator position on a permanent basis. The City is committed to a transparent, public, and competitive hiring process. Interim Administrator is not prohibited from applying for the permanent position. However, Interim Administrator shall have no engagement with the Personnel Committee or involvement in the permanent hiring process. Interim Administrator shall have no access to applicant data, unless such data would be made available to the public pursuant to the Minnesota

Government Data Practice Act. If the Interim Administrator elects to apply, Interim Administrator agrees to participate in the same process and in the same manner as all other applicants.

12. Notices.

a. Address of Record. Each party agrees to keep the other informed of an address of record for correspondence and notices under this Agreement, as well as relevant telephone numbers for oral notices.

b. Initial Address. The initial address of record for each party shall be:

The City:	City of Columbus 16319 Kettle River Blvd. NE Columbus, MN 55025
Copy to:	Larkin Hoffman William Griffith 8300 Norman Center Drive Minneapolis, MN 55347
Interim Administrator:	Charles L. "Jack" Davis 29457 Dahlia St. NW Isanti, MN 55040

c. Change of Address. Each party's address of record shall be that which is specified in subparagraph b. above until and unless the other party receives notification of change in writing. Each party will promptly notify the other of any such change.

d. Future Notices. If notice of a change of address is properly given in writing pursuant to this Section, all future notices hereunder shall be given to the new name and/or address specified in the most recent such notice properly given.

e. Other Required Notices. Notice required by operation of an applicable code, statute, ordinance or regulation shall be given as required therein, but a duplicate copy of such notice shall be given as specified in subparagraph f. or g. below.

f. Delivery of Notices. Notices pursuant to this Agreement may be given by deposit in the custody of the United States Postal Service, postage prepaid, certified or registered mail, return receipt requested. Alternatively, notices required pursuant to this Agreement may be personally served in the same manner as is applicable to civil judicial process.

g. Effective Date. Notice shall be deemed given as of the date of personal service or three (3) days following the date of deposit of such written notice in the course of transmission in the United States Postal Service, properly addressed and mailed as required herein.

IN WITNESS WHEREOF, the City of Columbus on a vote of its City Council has caused this Agreement to be signed and executed on its behalf by its Mayor and duly attested by its City Clerk and the Interim Administrator has signed this Agreement, both in duplicate, day and years first written above.

CITY OF COLUMBUS:

By: _____
Jesse Preiner, Mayor

By:_____
Its: City Clerk

INTERIM ADMINISTRATOR:

_____
Charles L. "Jack" Davis

EXHIBIT A TO AGREEMENT WITH
CHARLES L. "JACK" DAVIS

Consultant will perform the duties of the Interim City Administrator. These duties include but are not limited to:

1. Overseeing the general administration and operations of the departments of the City;

2. Executing the policies, directives, priorities and legislative actions of the City Council;

3. Managing activities of City departments by providing instruction and guidance; assigning priorities and objectives; and motivating and supervising the City employees directly reporting to the City Consultant;

4. Monitoring the operating budget and financial condition of the City and advising the City Council of the same;

5. Maintaining communication with and cooperation of the Mayor, City Council and professional consultants for the exchange of information, development of policies, resolution of conflicts, etc.;

6. Maintaining effective working relationships with elected officials, representatives of local, state and federal agencies, local civic organizations, the media and others involved with City government;

7. Preparing a wide variety of records and forms, weekly status reports, City Council, EDA and Planning Commission agendas, policy papers, public notices, financial status reports, general correspondence, performance appraisals, press releases, etc.;

8. Supervising the administration of local elections in accordance with prescribed laws and regulations;

9. Maintaining effective public relations with the local media and the general public;

10. Planning, attending and participating in all Council, EDA, Personnel Committee and Planning Commission meetings and workshops, unless excused by the Mayor or City Council. At Consultant discretion, attend Park Board, Public Works Advisory Board, Fire Board, and other city board/committee meetings;

11. Staying informed of all federal, state and county programs that affect the city;

12. Special projects as directed by City Council.

Exhibit B
Interim City Administrator Job Description

4886-4032-8337, v. 2