

RESOLUTION #95
(Series of 2019)

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ASPEN, COLORADO, APPROVING A CONTRACT BETWEEN THE CITY OF ASPEN AND SARA OTT, APPOINTING MS. OTT AS CITY MANAGER OF THE CITY OF ASPEN AND AUTHORIZING THE MAYOR TO EXECUTE SAID CONTRACT ON BEHALF OF THE CITY OF ASPEN, COLORADO.

WHEREAS, pursuant to Section 6.1 of the Home Rule Charter of the City of Aspen, the council, by a majority vote, shall appoint a city manager within a reasonable time whenever a vacancy exists in such position. The city manager shall be the chief administrative officer of the City;

WHEREAS, following the resignation of Steve Barwick as City Manager, City Council initiated an extensive search process to find a qualified candidate for the position of City Manager;

WHEREAS, based on the results of the search, the City Council directed staff to pursue negotiations with Sara Ott for appointment as City Manager; and,

WHEREAS, following such negotiations, a proposed employment contract was drafted. Such contract has been submitted to City Council for the appointment Sara Ott as City Manager for the City of Aspen, a true and accurate copy of which is attached hereto as "Exhibit A."

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ASPEN, COLORADO,

That the City Council of the City of Aspen hereby approves the Employment Contract by and between Sara Ott and City of Aspen, and hereby authorizes the Mayor to execute such contract, a copy of which are annexed hereto and incorporated herein, on behalf of the City of Aspen.

INTRODUCED, READ AND ADOPTED by the City Council of the City of Aspen on the 3rd of September 2019.

Torre, Mayor

I, Linda Manning, duly appointed and acting City Clerk do certify that the foregoing is a true and accurate copy of that resolution adopted by the City Council of the City of Aspen, Colorado, at a meeting held on the 3rd of September 2019.

Linda Manning, City Clerk

MEMORANDUM

TO: MAYOR and COUNCIL MEMBERS

FROM: JAMES R. TRUE

DATE: August 23, 2019

MEETING DATE: September 3, 2019

RE: Proposed City Manager Employment Agreement for Sara Ott

REQUEST OF COUNCIL: Resolution No. 95 (Series of 2019) is presented to Council for consideration of the adoption of an Employment Agreement for Sara Ott as the City Manager of the City of Aspen.

BACKGROUND:

Pursuant to a contract entered on April 9, 2019, the City retained the executive search firm Peckham & McKenney to conduct a nationwide search for a new City Manager for the City of Aspen. Pursuant to such contract, Drew Gorgey with this executive search firm held extensive community, council and employee engagement sessions on May 13 and 14 and gathered wide-ranging feedback. The ideal candidate profile was then developed and made public at: www.peckhammckenney.com. The candidate profile was used as a guide throughout the interview process including but not limited to the preliminary and finalist interviews.

Additionally, an overall recruitment schedule, listed below, was developed:

<u>Recruitment Activity:</u>	<u>Timeframe:</u>
Development of Candidate Profile	Final Draft Completed: 5/24/19
Advertisement & Recruitment	Application Filing Deadline: 7/8/19
Preliminary Interviews to be completed by Peckham & McKenney	July
Finalist Interviews	8/8/19 and 8/9/19

In conjunction with Mr. Gorgey, the below proposed finalist interview process was developed.

Finalist Interview Step:	Time:
Meet and Greet with Employees	1 hour
Community Reception	2 hours
Peer Review/Technical Interview Panel	1 hour with each candidate
City of Aspen Leadership Interview Panel	1 hour with each candidate
Presentation on Relevant Topic	20 min. with each candidate (time for questions included)
City Council Interview Panel	1 hour with each candidate

Finalist Selection:

From the initial selection process four finalist were identify and invited for in person interviews. Those four were:

- Sara Ott
- Robb Etnyre
- Katherine Lewis
- Blair King

Blair King, selected as a finalist, dropped out prior to the finalist interviews. The remainder of the candidates accepted and were interviewed pursuant to the process below.

Meet and Greet with Employees

City employees participated in a meet and greet session. Employees engaged finalists informally with their questions. The three remaining finalists were in attendance and small group conversations ensued with each finalist. This event was then followed by the Community Reception (see below). Comment cards were provided for feedback.

Community Reception

The beginning of the meeting included a five-minute presentation by each finalist. The community was invited to interact and ask questions to the finalists. A similar process to the meet and greet with employees was followed and comment cards were provided for feedback.

Community Interview Panel

The purpose of the diverse and inclusive panel was to provide Council with an assessment of each candidate's leadership and management experience and skills. The panelists were local leaders and managers.

Leadership Panel

A leadership panel was selected from City employees, including positions that report directly to the City Manager, as well as the City Attorney. This group was helpful in assessing leadership and management as well as organizational fit.

Presentation on Relevant Topic

Each finalist prepared a twenty-minute presentation on a preselected topic, followed by questions. This was presided over by City Council members but was open to the public. It was recorded and the recording was made available to the public.

City Council Interviews

Each finalist was interviewed by City Council and upon conclusion of the finalist interview process, Council discussed the candidates in a series of properly convened executive sessions.

DISCUSSION: Following interviews and discussions regarding the candidates and review of input from employees and the public, Council directed staff to negotiate with Sara Ott to determine whether a contract could be brought to Council for consideration at a public meeting. Based on direction given, the staff completed discussions with the candidate and the candidate's attorney and now submits a proposed contract, which is attached, for consideration.

It is proposed that that the contract be considered by Council at a special meeting on September 3, 2019. The contract proposed will have an effective date of September 1st, to coincide with the termination date of Ms. Ott's contract as interim city manager.

ALTERNATIVES: Council has four distinct alternatives for consideration. Council can approve Resolution #95, Series of 2019, which directs the Mayor to sign the attached Contract on behalf of the City of Aspen. Council can continue the matter and direct staff to continue negotiations on key points that it wishes to modify. Council can reject Resolution #95, and direct staff to commence negotiations with a separate candidate. Council can reject Resolution #95 and direct staff to open up the process for the solicitation of other potential candidates for the position.

RECOMMENDATION: This is a discretionary decision of City Council, staff does not have a recommendation.

EMPLOYMENT AGREEMENT

for
City Manager

This Employment Agreement for City Manager (“Agreement”) is entered into on this 3rd day of September 2019, by and between the **CITY OF ASPEN** (“City”), a municipal corporation, and **SARA G. OTT** (“Employee”).

WHEREAS, Employee is currently employed by the City as the City’s Interim City Manager (“ICM”);

WHEREAS, the City desires to permanently employ Employee to act as and perform the duties of the City Manager during the period set forth herein (hereinafter referred to as “City Manager”); and,

WHEREAS, Employee is agreeable to act as and perform the duties of the City Manager under the terms and conditions of this Agreement.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. TERM. The effective date of this Agreement shall be September 1, 2019 and the term indefinite as required by the City’s Charter. The parties acknowledge that the term of this Agreement extends beyond one fiscal year, which makes this Agreement a multiple fiscal year financial obligation for which the City would be obligated to irrevocably pledge present cash reserves for the salary and benefits. The City will budget and appropriate for the salary and benefits provided for the first full fiscal year under this Agreement and thereafter such amounts shall be subject to appropriation; however, pursuant to Paragraph 9, the Agreement may be terminated without cause. Accordingly, upon approval of this Agreement by the City, the City shall make an irrevocable pledge of City cash reserves in an amount sufficient to fund the City’s obligations under Paragraph 9 of this Agreement.

2. DUTIES. The Employee shall perform the usual and necessary duties and tasks of the City Manager for a home rule municipality, subject to the direction and control of the City Council. Without limiting the generality of the preceding, such duties and tasks shall include the following matters:

2.1 Duties. The Employee shall have charge of the administration of the City under the direction of the City Council and shall administer the City according to Aspen Municipal Code, Aspen Home Rule Charter, and other City policies, requirements, directions, regulations and guidelines. The Employee shall comply with the requirements and directions of the City Council given in its municipal corporate capacity, whether by consensus or majority vote. The Employee shall be the chief executive officer of the City; shall hire, fire, assign and direct the workforce of the City under her supervision; shall organize, reorganize and arrange the administrative and supervisory staff, as best serves the needs of the City; shall timely suggest policies, procedures, and regulations deemed necessary for best operations of the City; and shall, in general, perform all duties incident to the office of City Manager and other duties as may be prescribed by the City Council.

2.2 Services. This Agreement is intended by the parties to be a full-time agreement and the Employee shall devote her attention to the functions of City Manager at all times during the term of this Agreement. It is not contemplated that the Employee will ordinarily perform services on weekends or legal holidays. However, it is intended that the Employee shall remain available on such days to meet the responsibilities of City Manager as are necessary. Further, the Employee shall keep the Mayor and the City Council advised as to how she can be reached.

2.3 Relationship to City Council. The City Council shall promptly refer all criticisms, complaints, and suggestions that come to its attention to the Employee for study and recommendation unless the City Council determines that the welfare of the City or its staff requires action inconsistent with this provision. The Employee shall have the obligation, unless excused or on leave or vacation, to attend all City Council meetings and provide administrative recommendations on each item of business considered by each of these groups. The Employee, or the Employee's designee, shall be present at all meetings of the City Council, except at such times when the City Council is meeting in executive session for the purpose of evaluating the Employee's performance.

2.4 Outside Activities. The Employee shall devote her time, attention and energy to the business of the City. Participation in outside activities by the Employee shall be subject to notification to the City Council where the time requirements for such activities are anticipated to be substantial, for example, conferences which require the Employee's absence from the City for two or more regular business days.

2.5 Incorporation of Laws. This Agreement is subject to and includes all applicable federal and Colorado laws and regulations and, to the extent consistent with the term, salary, fringe benefits, and termination provisions herein, all duly-adopted policies, procedures and regulations of the City which are in effect or which may become in effect during the term of this Agreement; and the City Council specifically reserves the right to change such policies, procedures and regulations at any time without prior notice; provided, however, such changes shall not affect the term, salary, or termination provisions of the Agreement during its term.

3. COMPENSATION. As compensation for her services, the City shall pay the Employee an annual base salary of \$203,000. Employee's annual base salary shall be increased by the same percentage and at the same time any discretionary across-the-board increases are granted to the City's remaining employees. Any adjustments in such compensation or contribution and their effective dates shall be included in a written addendum to the Agreement signed by both parties. Deductions authorized by law, City Council policy, or at the direction of the Employee may be made from the monthly installments due the Employee pursuant to this subsection.

4. BENEFITS.

4.1 General Benefits. Except as may be otherwise provided herein, Employee shall be provided the compensation and benefits offered to all other employees as provided for in the City's Personnel Policies and Benefit Programs, including but not limited to: the Goals and Outcome Measures Program and City Employee Housing Program. As used herein, benefits include but are not necessarily limited to, personal time off, extended sick

leave, holidays, retirement, health insurance, dental insurance, disability insurance, and life insurance. Employee shall remain eligible to accrue and use credit time for any hours worked overtime because Employee is exempt from overtime under the Federal Fair Labor Standards Act.

4.2 Technology. Employee shall be provided a laptop, remote network access, and smart phone at the City's expense for the performance of work-related tasks. This shall additionally include at the City's expense the provision of technology services to the Employee to be able to be in communication when out of cell phone range should the City Council so desire. Nothing shall prohibit Employee from using this technology for personal use.

4.3 Expense Reimbursement. The City recognizes that certain general expenses, dues, subscriptions, travel and subsistence expenses are reasonably incurred by the Employee in the performance of job-related activities, functions, meetings, professional development, and professional conferences through organizations such as the International City/County Management Association, Colorado Municipal League, Colorado City/County Management Association, and the Colorado Association of Ski Towns. The City agrees to budget and pay for or reimburse the Employee for these expenses; provided, however, that the amount paid under this Paragraph 4.3 shall be limited by the amount the Council budgets for such expenditures, which shall be in a minimum amount of five thousand dollars (\$5,000). Further, the City agrees to reimburse Employee for expenses related to educational courses, short courses, executive coaching, seminars and institutes that will benefit the City and improve Employee's professional abilities; provided, that any such reimbursements may not exceed the amount the Council budgets for such expenditures, which shall be in a minimum amount of two thousand five hundred dollars (\$2,500).

4.4 Memberships. City shall reimburse Employee for membership and participation in any community or civic organizations in which the City requires or encourages Employee to participate; provided, that any such reimbursements may not exceed the amount the Council budgets for such expenditures, but shall never be less than the actual costs of membership and participation in any organization in which the City requires Employee to participate. The City shall budget a minimum of two thousand five hundred dollars (\$2,500) for such memberships and participation in the community and civic organizations.

4.5 Cash Out of Accrued Leave. Employee shall retain the rights she enjoyed as the Assistant City Manager and Interim City Manager under the City's Compensation Program in terms of the timing of her right to "cash out" accrued but unused leaves.

4.6 Extended Sick Leave and Paid Time Off. As of the effective date of this Agreement, Employee shall receive an additional one hundred twenty (120) hours of extended sick leave (ESL) in her ESL bank. Further, Employee shall accrue Paid Time Off, (PTO) at the rate of 8.62 hours per bi-weekly pay period beginning May 1, 2021, the fourth anniversary of the commencement of her employment with the City of Aspen.

4.7 Retirement. Commencing as of the effective date of this agreement,

the City shall make an annual contribution amount (payable in equal proportionate amounts each pay period) in an amount equal to eight percent (8%) of Employee's base salary payable directly to a tax-shelter annuity selected by Employee. Employee shall be deemed one hundred percent (100%) vested in her retirement plan upon the effective date of this agreement.

4.8 Housing. Within thirty (30) days of execution of this Agreement, the City Council shall take action to amend the previously executed City of Aspen Occupancy and Resale Deed Restriction, Agreement, and Covenant dated January 17, 2018 between the City and Employee (Resale Deed Restriction) with the amendments as set forth below. Such amendment to the Resale Deed Restriction shall be recorded.

4.8.1 Amending the time Employee has to sell back the unit to the City in the event employment with the City is terminated, with such new time requirement to be the current six-month timeframe or at least thirty (30) days after the end of the then current school year, whichever is longer.

4.9 Bonding. The City shall bear the full cost of any fidelity or other bond required of Employee as City Manager under any law or ordinance.

5. EVALUATIONS. The City Council and Employee shall define such goals and performance objectives which they determine necessary for the proper operation of the City or the attainment of the City Council's policy objectives, and the City Council and Employee shall further establish a relative priority among those various goals and objectives to be reduced to writing. These objectives shall be obtainable generally within the time limits as specified and within the annual operating budgets and appropriations provided. The achievement of these goals and performance objectives shall be considered part of Employee's performance duties. No later than November 30, 2019, the City Council shall establish goals and objectives for her performance hereunder. Subsequently, on an annual basis, no later than September 1 of each year of this agreement, City Council shall evaluate the performance of the Employee and establish new goals and objectives for her performance hereunder and consider any appropriate adjustments to the base salary consistent with the City's compensation program. Employee shall have the option to have such performance evaluations in open public meeting or in executive session.

6. CONSULTATION. The Employee, with the prior consent of the City Council and the City Attorney and at no cost to the City, may undertake consultation work, speaking engagements, writing and lecturing for honoraria and expenses provided that such activities do not, in the judgment of the City Council (which approval will not be unreasonably withheld), interfere with the Employee's performance of her duties under this Agreement.

7. DISABILITY. Should the Employee be unable to perform any or all of her duties by reason of illness, accident, or other causes beyond her control and such disability exists for a period of more than one month, the City may, in the discretion of the City Council, make a proportionate deduction from the Employee's salary, and if such disability continues for more than three months or is permanent or of such nature as, in the judgment of the City Council and subject to applicable state and federal laws including, without limitation, the Americans with Disabilities Act, the Family Medical Leave Act, and the Colorado Family Care Act, to make the

performance of the essential functions of her position with reasonable accommodation impossible, the City may, in the discretion of the City Council, terminate this Agreement.

8. TERMINATION. Notwithstanding the provisions of Paragraph 1 of this Agreement, this Agreement may be terminated by:

8.1 Mutual agreement of the parties.

8.2 Disability of the Employee pursuant to Paragraph 7.

8.3 Discharge for good and just cause relating to the Employee's duties. The term "good and just cause" shall include, but not be limited to, a material breach of the terms and conditions of this Agreement, unsatisfactory performance of duties such as malfeasance, misfeasance, or nonfeasance, and other good and just cause. However, the City Council shall not arbitrarily and capriciously dismiss the Employee. In the event the City Council believes that it has good and just cause for dismissal as defined herein, it shall give the Employee an enumeration of such cause in writing; a summary of the evidence, including the names of witnesses and copies of any documents supporting the alleged cause; and the opportunity for a hearing with respect to such good and just cause before the City Council or, at the City Council's option, before an arbitrator pursuant to the provisions of the paragraph below captioned Alternate Dispute Resolution. The hearing may be in open session at Employee's option. City shall pay the discharge proceedings in full with the exception of if the Employee chooses, she may, at her sole expense, be accompanied by legal counsel at any hearing, and shall pay her own attorney's fees.

8.4 Unilateral termination without cause by the City or a request from the City Council for Employee's resignation of employment as City Manager. In the event that Employee is terminated pursuant to Section 8.4, Employee shall be entitled to severance in an amount equivalent to ten (10) months' salary at her then base salary pay rate. The severance payment, along with any cash out of accrued but unused leave pursuant to Section 4.5, shall be made within twenty (20) days of termination. City shall pay for a period of ten (10) months the total premiums for medical, dental, vision, life and disability insurance for Employee and her family.

8.5 Death of the Employee.

8.6 Unilateral termination by the Employee by providing thirty (30) days' written notice.

9. INTELLECTUAL PROPERTY. Unless otherwise agreed upon in an instrument in writing, all intellectual property created by the Employee in her employment capacity shall be owned by the City. Intellectual property, regardless of whether there are any protections by patent, copyright, trademark, trade secret, or other law, includes, but is not limited to, the following: inventions, discoveries, trade secrets, trade and service marks, writings, software, literary works, programs, and spreadsheets. The Employee shall timely provide written instructions regarding the use of intellectual property in a manner so that other City employees can easily and effectively utilize such intellectual property. Notwithstanding the foregoing, the

Employee may keep copies of any speeches, presentations or other published writings that she gave or authored during the term of the Agreement and publicly use or refer to them for non-commercial purposes.

10. PROFESSIONAL LIABILITY.

10.1 Hold Harmless. The City agrees that, to the extent permitted by law, it shall defend, hold harmless and indemnify the Employee from any and all demands, claims, suits, actions, and legal proceedings at law or in equity (specifically excluding, however, any demand, claims, suits, actions, or legal proceedings brought against the Employee by or on behalf of the City, and any criminal proceedings brought against the Employee), in her individual capacity or in her official capacity as agent and employee of the City, provided the incident giving rise to the claim arose while the Employee was acting in good faith and within the scope of her employment and not willfully or wantonly.

10.2 Provision of a Defense. The obligations of the City pursuant to this Paragraph 10 shall be conditioned on prompt notification to the City by the Employee of any threatened or reasonably contemplated claim; full cooperation by the Employee with the City and its legal counsel in defending the claim; and the Employee not compromising, settling, negotiating or otherwise similarly dealing with the claim without the express consent of the City Council.

10.3 Reimbursement. In the event the City has provided a defense pursuant to this paragraph, and a court or other decision making body having jurisdiction over the matter determines that the act or omission of the Employee did not occur during the performance of her duties hereunder and within the scope of her employment or that the act or omission was willful or wanton or not in good faith, the Employee shall reimburse the City for all costs of such defense and indemnity actually incurred and paid on her behalf by the City.

10.4 No Individual Liability. In no event shall individual City Council members be individually or collectively liable or responsible to the Employee for defending or indemnifying the Employee against such demands, claims, suits, actions, and legal proceedings.

11. REIMBURSEMENT OF ATTORNEY'S FEES. The City shall reimburse the Employee up to a maximum of two thousand five hundred dollars (\$2,500) for attorney's fees expended in the negotiations of this Agreement. Employee shall provide the City with appropriate documentation of such attorney's fee. This is a one-time payment.

12. ASSIGNMENT. This Agreement shall not be assigned or delegated except with the prior written consent of the parties.

13. NOTICES. Any notice required or permitted by this Agreement shall be in writing and shall be deemed to have been sufficiently given for all purposes if sent by certified or registered mail, postage and fees prepaid, addressed to the party to whom such notice is intended to be

given at the address set forth on the signature page below, or at such other address as has been previously furnished in writing to the other party or parties. Such notice shall be deemed to have been given when deposited in the U.S. Mail.

To City: Mayor & City Council, City of Aspen
130 South Galena St.
Aspen, CO 81611

With copy to: Jim True, City Attorney
130 South Galena St.
Aspen, CO 81611
Phone (970) 920-5108
Email address: jim.true@cityofaspen.com

To Employee: Sara G. Ott
22 W Water Place
Aspen, CO 81611
Email address: sara.ott@cityofaspen.com
Phone: (970)920-5083

With copy to: Adele Reester, Esq.
Lyons Gaddis
515 Kimbark Street
Longmont, CO 80504
Email address: areester@lyonsgaddis.com
Phone: (303)776-9900

Any party may change her/its address for purposes of this section by giving the other party written notice of the new address.

14. PARAGRAPH CAPTIONS. The captions of the paragraphs are set forth only for convenience and reference, and are not intended in any way to define, limit, or describe the scope or intent of this Agreement.

15. ADDITIONAL DOCUMENTS OR ACTION. The parties agree to execute any additional documents and to take any additional action necessary to carry out this Agreement.

16. INTEGRATION AND AMENDMENT. This Agreement represents the entire agreement between the parties and there are no oral or collateral agreements or understandings. This Agreement may be amended only by an instrument in writing signed by the parties. Each party waives her/its future right to claim, contend, or assert that this Agreement was modified, changed, canceled, superseded, or changed by any oral agreement, course of conduct, waiver, or estoppel.

17. ALTERNATE DISPUTE RESOLUTION. Except as otherwise provided in the paragraph above captioned Termination, in the event of any dispute or claim arising under or related to this Agreement, the parties shall use their best efforts to settle such dispute or claim

through good faith negotiations with each other. If such dispute or claim is not settled through negotiations within 30 days after the earliest date on which one party notifies the other party in writing of its desire to attempt to resolve such dispute or claim through negotiations, then the parties agree to attempt in good faith to settle such dispute or claim by mediation conducted under the auspices of the Judicial Arbitrator Group (JAG) of Denver, Colorado or, if JAG is no longer in existence, or if the parties agree otherwise, then under the auspices of a recognized established mediation service within the State of Colorado. Such mediation shall be conducted within 60 days following either party's written request therefor. If such dispute or claim is not settled through mediation, then either party may initiate a civil action in the District Court for Pitkin County.

18. GOVERNING LAW. This Agreement shall be governed by the laws of the State of Colorado and by all duly adopted policies, rules, and regulations of the City Council now in effect or hereafter adopted by the City Council.

19. BINDING EFFECT. This Agreement shall inure to the benefit of, and be binding upon, the parties, and their respective legal representatives, successors, and assigns; provided, however, that nothing contained in this paragraph shall be construed to permit the assignment of this Agreement.

20. 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.

21. 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.

22. 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 hereto agree to enter into supplemental or other agreements to effectuate the intent of the parties and the purpose of this Agreement.

Sara Ott

CITY OF ASPEN

By _____
Torre
Mayor, City of Aspen

ATTEST:

Clerk

APPROVED AS TO FORM:

City Attorney