

Order 187-13/14
Passage: 9-0 on 4/7/2014

Effective 4/17/14

MICHAEL F. BRENNAN. (MAYOR)
KEVIN J. DONOGHUE (1)
DAVID A. MARSHALL (2)
EDWARD J. SUSLOVIC (3)
CHERYL A. LEEMAN (4)

CITY OF PORTLAND
IN THE CITY COUNCIL

JOHN R. COYNE (5)
JILL C. DUSON (A/L)
JON HINCK (A/L)
NICHOLAS M. MAVODONES, JR (A/L).

**ORDER APPROVING EXTENSION OF EMPLOYMENT AGREEMENT
FOR CITY MANAGER MARK H. REES**

ORDERED, that the City Council hereby approves the City Manager's Extension and Restatement of Employment Contract, in substantially the same form as attached hereto in Attachment 1.

**RENEWAL AND RESTATEMENT OF
EMPLOYMENT AGREEMENT**

THIS RENEWAL AND RESTATEMENT OF EMPLOYMENT AGREEMENT (hereinafter referred to as “Agreement”), is by and between the City of Portland, Maine, a municipal corporation organized under the laws of the State of Maine (hereinafter referred to as “City”), and Mark H. Rees, who has a mailing address of 42 Buckingham Road, North Andover, MA 01845 (hereinafter referred to by name or as “City Manager”).

W I T N E S S E T H:

WHEREAS, the City entered into an Employment Agreement as City Manager of the City of Portland, Maine with Mark H. Rees, effective July 20, 2011, which has recently been amended twice in minor ways, and those amendments are incorporated in the text herein; and

WHEREAS, the City desires to renew and continue the employ of Mark H. Rees as City Manager of the City of Portland, Maine, as provided for said Agreement and in the City Charter of the City of Portland; and

WHEREAS, the City, through its City Council, desires to provide for certain benefits and compensation for the City Manager and to establish conditions of employment applicable to the City Manager; and

WHEREAS, Mark H. Rees desires to accept continued employment as City Manager of the City of Portland under the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the mutual promises as set forth in this Agreement, the parties agree as follows, renewing and restating the original Employment Agreement on the terms herein stated:

Section 1. Employment and Term of Agreement

A. The City of Portland hereby hires and appoints Mark H. Rees as its City Manager, under the terms established herein, to perform the duties and functions specified in the City’s Charter and the City Code of Ordinances and to perform such other legally permissible and proper duties and functions as the City Council shall from time to time assign.

B. The City’s employment of Mark H. Rees as City Manager commenced on July 20, 2011; this Renewal shall be effective upon signing by both parties, and shall remain in effect for one additional year, that is, until July 20, 2015, or until terminated by the City or by the City Manager as provided herein. No later than three months prior to the Agreement’s expiration, that is, April 20, 2015, the City and the City Manager shall notify each other concerning whether or not each party intends to renew this Agreement, subject to negotiations on specific terms and conditions. Should the City and the City Manager both indicate an intention to renew the Agreement, negotiations on the terms of that renewed Agreement shall be started as soon as practical after April 20, 2015.

Section 2. Salary and Evaluation.

A. For the performance of services pursuant to this Agreement, the City agrees to pay the City Manager an annual base salary, as of March 1, 2014, of One Hundred and Forty Six Thousand, Five Hundred Ninety-Eight and 40/100 Dollars (\$146,598.40) payable in installments at the same time and in the same manner as other City employees are paid.

B. The City may increase said base salary and/or other benefits of the City Manager in such amounts and to such an extent as the City Council may determine desirable on the basis of an annual performance evaluation of the City Manager. Such evaluation shall be in such form as the Council deems appropriate.

C. Nothing in this Section shall require the City to increase the base salary or other benefits of the City Manager. Furthermore, the City's failure to conduct any of the scheduled evaluations shall not constitute non-compliance with a material provision of this Agreement.

Section 3. Duties and Obligations.

A. The City Manager shall have the duties, responsibilities and powers of said office under the Charter and Ordinances of the City of Portland. The City Manager agrees to perform all duties and responsibilities faithfully, industriously, and to the best of his ability and in a professional and competent manner.

B. The City Manager shall remain in the exclusive employ of the City and shall devote all such time, attention, knowledge and skills necessary to faithfully perform his duties under this Agreement. The City Manager may, however, engage in educational and professional activities and other employment activities upon receipt of approval by the City Council, provided that such activities shall not interfere with his primary obligations to the City as its City Manager. The City Manager shall dedicate no less than an average of forty (40) hours per week in the performance of his duties hereunder.

C. In no case shall the City Manager serve on the boards or be in the employ of organizations which either have a history of or are likely to be before the City, its boards or committees, for funding, permits, approvals or regulatory activities.

In the event the City Manager shall serve on any other appointed boards or elected boards of any professional organization, or serve on any committees related to his professional activities, and in the event any monies are paid, or gifts received, by the City Manager related to such service, such money or property shall be paid over to or delivered to the City, unless otherwise provided by the City Council.

D. In the event the City Manager is temporarily unable to perform his duties, he shall designate an Acting City Manager for up to sixty (60) days per the City Charter. The City Council shall appoint an acting City Manager in the event of an absence in excess of sixty (60) days.

Section 4. Automobile Allowance and Communications Equipment

The City Manager is required to be on call for twenty-four hour, 7 days per week service. In recognition thereof:

A. The City shall provide the City Manager an automobile allowance of \$450 per month.

B. The City will provide a blackberry, cell phone (or provide an allowance for the same) or other city-provided resources on the same terms as applicable to department heads.

Section 5. Dues and Subscriptions

The City agrees to pay the City Manager's professional dues for membership in the International City/County Management Association, and the Maine Municipal Association. The City shall pay other dues and subscriptions on behalf of the City Manager as are approved in the City's annual budget (on a line item basis) or as authorized separately by the City Council.

Section 6. Professional Development

The City agrees to pay reasonable and customary travel and subsistence expenses for the City Manager's travel to and attendance at the International City/County Management Association's annual conference, the Maine Municipal Association's annual conference and the Maine Town and City Management Association's annual conference. The City may choose to pay for the City Manager's attendance at other seminars, conferences, and committee meetings as it deems appropriate and approves by Council action.

Section 7. Community Involvement

The City recognizes the desirability of representation in and before local civic and other organizations, and encourages the City Manager to participate in these organizations to foster a continuing awareness of the City's activities as well as the community's attitudes and ideas, subject to the limitation in Section 3C above.

Section 8. Vacation and Sick Leave

The City Manager shall earn vacation leave annually accrued as follows: 3 weeks 1-6 years of City service; 4 weeks 7-18 years of City service; 5 weeks 19+ years of City service.

Accrual of sick and vacation leave and payouts shall be on the same terms as applicable to full time non-union employees under the City's Non-Union Personnel Policies and Procedures.

Section 9. Holidays

The City Manager is entitled to the same paid holidays as non-union City employees working a Monday-Friday work week.

Section 10. Health, Dental, Life and Income Protection, Insurance

The City agrees to provide health insurance for the City Manager in the same manner as it provides insurance for its non-union employees and shall pay the cost of life insurance in the value of twice his annual salary, such insurance to be provided through the plan applicable to non-union employees and subject to the rules governing participation in such policies. Such coverage will be effective as provided by those plans.

Should the City not be able to provide health insurance coverage immediately due to policy constraints, it will compensate the City Manager for the cost of his COBRA policy until he can be added to the City's policy.

The City Manager may participate in the City's dental and income protection insurance programs on the same terms as other non-union City employees.

Section 11. Retirement.

The City Manager shall have the option of participating in either the Maine Public Employees Retirement System consolidated plan in the City's regular plan, or in the City's qualified retirement plan for the City Manager under Section 401(a) of the Internal Revenue Code, on the same terms as the regular 401(a) qualified plan for all other employees. The City Manager must participate in one of these two plans, and may participate at his own cost and expense in the City's 457 deferred compensation plan.

Section 12. Termination by the City and Severance Pay

A. The City Manager shall serve at the pleasure of the City Council, and the City Council may terminate this Agreement and the City Manager's employment with the City at any time, for any reason or for no reason.

B. Should a majority of the entire Council (five members) vote to terminate the services of the City Manager "without cause" or for City convenience, then within ten (10) business days following such vote, the Council shall cause the City Manager to be paid any accrued and unpaid salary and benefits earned, including any accrued vacation or sick time per the City's Non-Union personnel policies, but excluding such items and allowances as are used in conducting City business such as, but not limited to, the use of the City computer, the automobile allowance and any blackberry or cell phone, prior to the date of termination based on a forty (40) hour work week. Within forty-five (45) calendar days following the vote to terminate the City Manager's employment, the Council shall cause the City Manager to be paid a lump sum severance pay equal to three (3) months of his base salary, in addition to any accrued salary and other benefits as described above, as full and complete payment and satisfaction of any claims of the City Manager of whatsoever nature arising out of this Agreement, its termination, his City employment or otherwise. As consideration for such payment, the City Manager shall, prior to

receipt thereof, execute and deliver to the City a general release of the City and its Council members and its officers, agents, and employees for all acts and actions (whether accrued or subsequently accruing) from the beginning of time until the date of release, said release to be prepared by the Corporation Counsel.

C. In the event the City Manager is terminated for “just cause,” the City shall have no obligation to pay the amounts outlined in Section 12, Paragraph B of this Agreement, other than any accrued unused vacation time. For purposes of this Agreement, “just cause” is defined and limited for purposes of this Agreement to any of the following:

1. Misfeasance, malfeasance and/or nonfeasance in performance of the 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 office.
4. Violation of any substantive City policy, rule, or regulation, which would subject any other City employee to termination.
5. A finding by the Council of any fraudulent act against the interest of the City.
6. A finding by the Council of any act which involves moral turpitude, or which causes the City disrepute.
7. Violation of the International City/County Management Association Code of Ethics.
8. Any other act of a similar nature of the same or greater seriousness.

D. In the event the Council, at any time during the employment term, reduces the salary or other benefits of the City Manager, as identified herein, in a greater percentage than an equivalent across-the-board reduction for all full-time, non-union City employees, or in the event the City allegedly refuses to comply with any other material provision of this Agreement benefiting the City Manager, the City Manager shall notify the Council in writing of the alleged violation. The Council shall have forty-five (45) days from such notice within which to cure the violation, otherwise, the City Manager may at his option, consider such violation as termination “without cause” as of the date of such alleged reduction or refusal, and the severance pay provision and other termination provisions contained herein shall become applicable at the annual salary and benefit level in effect prior to the reduction or refusal.

Section 13. Termination by the City Manager

The City Manager may terminate this Agreement at any time by delivering to the City Council a written notice of termination not later than ninety (90) days prior to the effective date of the termination. If the City Manager terminates this Agreement, then the provisions of Section 12, Paragraph B above regarding the lump sum severance payment, shall not apply. If the City Manager voluntarily resigns pursuant to this Section, the City shall pay to the City Manager all accrued compensation due the City Manager up to the City Manager's final day of employment, including any accrued unused vacation leave and a portion of unused sick leave if the City Manager has more than 3 years of service with the City. The City shall have no further financial obligation to the City Manager pursuant to this Agreement. This subsection shall not prevent the City Manager from collecting any money earned as a result of participation in the City's retirement program, which shall be governed by the applicable rules for such plan.

Section 14. Disability

If the City Manager becomes permanently disabled or is otherwise unable to perform his duties because of sickness, accident, injury, mental incapacity or health for a period of four (4) consecutive weeks beyond any accrued leave, up to a maximum of sixty (60) days, the City shall have the option to terminate this Agreement, subject to the severance pay provision outlined in Section 12, Paragraph B of this Agreement.

Section 15. Residency and Relocation Expenses

- A. The City Manager agrees to establish legal residence within the City within 15 months of his date of hire.
- B. [intentionally deleted]
- C. [intentionally deleted]

Section 15. Indemnification.

A. City shall defend, save harmless, and indemnify the City Manager against any action for any injury or damage suffered as a result of any act, event, or omission of action that the City Manager reasonably believes to be in the scope of his duties or function, unless he acted in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property. The City will compromise and settle any such claim or suit and pay the amount of any settlement or judgment rendered thereon. The City shall not be liable for the acts or omissions of the City Manager committed while acting outside the course and scope of his agreed duties or committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property. In such instance, the City Manager shall reimburse the City for any legal fees and expenses the City has incurred or otherwise paid, for or on his behalf, in connection with the charged conduct.

B. Said indemnification shall extend beyond the termination of employment and the expiration of this Agreement to provide protection for any such acts undertaken or committed in

his capacity as City Manager, regardless of whether the notice of claim or filing of a lawsuit occurs during or following employment with the City.

C. Nothing herein is intended, nor shall it be construed to waive or modify any immunity or limitation of liability available to the City and/or the City Manager under applicable state law, including but not limited to the Maine Tort Claims Act.

Section 16. Bonding

The City agrees to bear the full cost of any fidelity or other bonds required of the City Manager under any policy, regulation, ordinance or law.

Section 17. Code of Ethics

Inasmuch as the City Manager is an active full member of the International City/County Management Association (ICMA), the “Code of Ethics” promulgated by ICMA is incorporated herein, and by this reference made a part hereof. Said “Code of Ethics” shall furnish principles to govern the City Manager’s conduct and actions as City Manager of the City.

Section 18. Attorney’s Fees

If any litigation is commenced between the parties concerning any provision of this Agreement or the rights and duties of any person in relation thereto, the party substantially prevailing in such litigation will be entitled, in addition to such other relief as may be granted, to reasonable attorney’s fees and expenses incurred in connection therewith, including appellate fees and expenses.

Section 19. General Terms and Conditions

A. If any provision, or any portion thereof, contained in this Agreement is held by a court of competent jurisdiction to be unconstitutional, illegal, invalid or unenforceable, the remainder of this Agreement, or portion thereof, shall not be affected and shall remain in full force and effect.

B. The waiver by either party of a breach of any provision of this Agreement by the other shall not operate or be construed as a waiver of any subsequent breach by that party.

C. This Agreement shall be binding upon and inure to the benefit of the heirs at law or personal representative of City Manager.

D. This Agreement contains the entire Agreement of the parties. It may not be changed verbally, but only by an Agreement in writing signed by the parties.

E. Maine law shall govern this Agreement and any litigation that may arise from this Agreement, shall be filed and litigated in the state courts in Portland.

F. Upon City Manager's death, the City's obligations under this Agreement shall terminate except for:

1. Transfer of ownership of retirement funds, if any, to his designated beneficiaries;
2. Payment of accrued leave balances in accordance with this Agreement;
3. Payment of all outstanding hospitalization, medical and dental bills by City insurance policies or plans; and
4. Payment of all life insurance benefits in accordance with the life insurance plan.

G. The parties acknowledge that each has shared equally in the drafting and preparation of this Agreement and, accordingly, no court construing this Agreement shall construe it more strictly against one party than the other and every covenant, term and provision of this Agreement shall be construed simply according to its fair meaning.

H. This Agreement may be executed in duplicate or counterparts, each of which shall be deemed an original and all of which together shall be deemed one and the same instrument. No term, condition or covenant of this Agreement shall be binding on either party until both parties have signed it.

I. The effective date of this Agreement shall be the last date it is executed by either of the parties to this Agreement.

J. Unless otherwise provided herein, the City Manager shall be eligible for all benefits provided to department heads in the City's Non-Union Personnel Policies and Procedures.

Executed by the CITY this _____ day of February _____, 2014

WITNESS

CITY OF PORTLAND

By: _____

Signature

Michael Brennan, Mayor

Print Name

Executed by Mark H. Rees this _____ day of February, 2014

WITNESS

MARK H. REES

By: _____

Signature

Mark H. Rees

Print Name

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