

Order 118-17/18

Motion to amend by adding the words “Up to”: at the beginning of Section 2 ,B., 1, 2 and 3: 8-0
(Thibodeau absent) on 11/20/2017

Passage as amended: 8-0 (Thibodeau absent) on 11/20/2017

ETHAN K. STRIMLING (MAYOR)
BELINDA S. RAY (1)
SPENCER R. THIBODEAU (2)
BRIAN E. BATSON (3)
JUSTIN COSTA (4)

CITY OF PORTLAND
IN THE CITY COUNCIL

DAVID H. BRENERMAN (5)
JILL C. DUSON (A/L)
PIOUS ALI (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

**ORDER EXTENDING CONTRACT WITH JON P. JENNINGS
AS CITY MANAGER**

ORDERED, that the contract extension with the City Manager, Jon P. Jennings, is hereby approved in substantially the form attached hereto; and

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

EMPLOYMENT AGREEMENT

THIS 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 Jon P. Jennings of 714 Chandler’s Wharf, Portland, Maine 04101 (hereinafter referred to by name or as “City Manager”).

W I T N E S S E T H:

WHEREAS, the City desires to employ Jon P. Jennings as City Manager of the City of Portland, Maine, as provided for 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, Jon P. Jennings desires to accept 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:

Section 1. Employment and Term of Agreement

A. The City of Portland hereby hires and appoints Jon P. Jennings 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 Jon P. Jennings as City Manager under this Agreement shall be effective July 13, 2018, after review and approval by at least five (5) members of the City Council at a duly noticed City Council meeting. The period from July 13 of a given year under this Agreement to July 12 of the following year shall be referred to herein as a “Contract Year.” The term of this Agreement shall be three (3) Contract Years or until terminated by the City or by the City Manager as provided herein. No later than six months prior to the Agreement’s expiration, the City and the City Manager shall notify each other concerning whether or not each party desires to renew this Agreement. Should the City decide to renew the Agreement, negotiations shall be commenced no later than three (3) months prior to the Agreement’s expiration. The City may decide not to renew this Agreement for any reason or for no reason. The City Manager acknowledges and agrees that he has no right to renewal of this Agreement.

Section 2. Salary and Evaluation.

A. For the performance of services pursuant to this Agreement for the first Contract Year, the City agrees to pay the City Manager an annual base salary of One Hundred and Sixty-

Nine Thousand Eight Hundred Twelve Dollars and Eighty-Six Cents (\$169,812.86) plus the cost of living adjustment, if any, available to all other non-union City employees at the beginning of the City's 2018-19 fiscal year (the "Base Salary"), payable in installments at the same time and in the same manner as other City employees are paid. For the second and third Contract Years, the City Manager's Base Salary shall be subject to cost of living adjustments at the same time and in the same manner as all other non-union City employees.

B. Bonus. Prior to the beginning of each Contract Year, the City Council, in consultation with the City Manager, shall identify criteria that the City Manager must satisfy in order to be eligible for the bonus described in this paragraph. Such criteria are subject to the approval of a majority of the Councilors. Provided that the City Council determines, in its discretion, that the City Manager has satisfied the applicable bonus criteria in a given Contract Year, the City Manager shall receive a bonus at the end of the year in the amount set forth below:

1. Up to 3% of Base Salary at the end of the first Contract Year.
2. Up to 4% of Base Salary at the end of the second Contract Year.
3. Up to 5% of Base Salary at the end of the third Contract Year.

C. The City may increase the 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 per the City Charter.

D. Except as specifically set forth herein, 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 shall dedicate no less than an average of forty (40) hours per week in the performance of his duties hereunder. The City Manager shall not teach, consult, or conduct any other non-City connected business without first notifying the City Council in writing of his intent to do so. Any such activities shall not interfere with his primary obligations to the City as its City Manager.

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, except that he may continue to serve as President of the Board of July 4th Portland until July 4, 2015, and thereafter he may serve on that board in an ex-officio capacity.

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, 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 (24) hours a day, seven (7) days per week service. In recognition thereof:

A. The City shall provide the City Manager an automobile allowance of \$600 per month. The City Manager acknowledges and agrees that he is not and shall not be eligible for any mileage reimbursement in connection with his employment with the City during the term of this Agreement.

B. The City shall also provide computer equipment and services for home base connectivity available 24/7, a cell phone 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 Manager shall not be entitled to reimbursement of any expenses incurred for professional development or related travel and subsistence expenses under this Agreement. The Manager shall include all such expenses in his proposed annual budget for the Executive Office, which shall be subject to the City Council's approval through the course of the annual budget process.

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 25 days of vacation leave annually, which shall be available at the beginning of each year that this Agreement is in effect. At the end of each Contract Year, the City Manager may cash out up to 5 days of vacation time or carry over 5 days of vacation time into the following Contract Year; provided, however, that in no event shall the City Manager's vacation time balance exceed 30 days.

Accrual of sick leave, and payout of sick and vacation leave upon termination, resignation, or death, shall be on the same terms as applicable to full time non-union employees under the City's 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 available to non-union employees and subject to the rules governing participation in such policies. Such coverage will be effective as provided by those plans.

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.

The City shall execute the necessary agreement allowing the Manager to enroll in the ICMA Retirement Corporation's 401(a) Executive Deferred Compensation Plan. The City

agrees to contribute to such plan 13% of the Manager's Base Salary during the first Contract Year, 15% of the Manager's Base Salary during the second Contract Year, and 16% of the Manager's Base Salary during the third Contract Year, provided said amount shall not exceed the maximum dollar amount permissible under federal and state law. Payment of this sum shall be made in accordance with the City's normal salary payment schedule. The City agrees to transfer ownership of said plan to succeeding employers upon the Manager's resignation or discharge.

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 the following applies:

1. 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 cell phone, prior to the date of termination based on a forty (40) hour work week.
2. Provided that the City Manager executes and delivers 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, and in a form satisfactory to the Corporation Counsel, the City Council shall, within forty-five (45) calendar days following the vote to terminate the City Manager's employment, cause the City Manager to be paid a lump sum severance pay equal to twelve (12) months of his Base Salary if employment is terminated in the first Contract Year, thirteen (13) months of his Base Salary if employment is terminated in the second Contract Year, or fourteen (14) months of his Base Salary if employment is terminated in the third Contract Year, together with a lump sum equal to the amount of twelve (12) months of COBRA payments. The payment of the amounts described above, which the City Manager acknowledges he would not otherwise be entitled to receive, shall be in 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.

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(2) above, 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 in accordance with the City's Personnel Policies and Procedures. 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, except that the City's Manager's severance pay shall be limited to six (6) months of his salary in effect at the time of termination.

Section 15. Residency

The City Manager agrees to maintain legal residence within the City during the term of this Agreement. By this residence requirement, it is the parties' intent that the City Manager will not merely obtain and maintain a legal residence in the City within twelve (12) months, but that he will also generally be present and reside in the City seven (7) days per week. The City acknowledges, however, that the City Manager will be not be in breach of this residency requirement while occasionally travelling outside of the City for City business, for vacation, or for personal or family reasons.

Section 16. 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 may 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 17. 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 18. 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 19. 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 20. 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 _____, 2017

WITNESS

CITY OF PORTLAND

Signature

By: _____
Ethan K. Strimling, Mayor

Print Name

Executed by Jon P. Jennings this _____ day of _____, 2017

WITNESS

JON P. JENNINGS

Signature

By: _____
Jon P. Jennings

Print Name