

South Portland City Council
Position Paper of the City Manager

Subject:

ORDER #156-15/16 – Authorizing the Mayor to sign the City Manager’s Employment Agreement. Passage requires majority vote.

Position:

This item is brought forward to authorize and direct the Mayor to sign the City Manager’s Employment Agreement as established by the City Council.

Requested Action:

Council passage of ORDER #156-15/16.



City Manager



CITY OF SOUTH PORTLAND

THOMAS E. BLAKE
Mayor

JAMES H. GAILEY
City Manager

SALLY J. DAGGETT
Jensen Baird Gardner & Henry

EMILY F. CARRINGTON
City Clerk

District One
CLAUDE V. Z. MORGAN

District Two
PATRICIA A. SMITH

District Three
EBEN C. ROSE

District Four
LINDA C. COHEN

District Five
BRAD FOX

At Large
MAXINE R. BEECHER

At Large
THOMAS E. BLAKE

IN CITY COUNCIL

ORDER #156-15/16

ORDERED, that the Mayor hereby is authorized and directed to sign the attached Employment Agreement between the City of South Portland and City Manager James Gailey.

Fiscal note: Less than \$1,000

Dated: May 16, 2016

**Employment Agreement – City Manager
City of South Portland, Maine**

and

James H. Gailey

INTRODUCTION

This Agreement, made and entered into this 17th day of May, 2016, by and between the City of South Portland, Maine, a municipal corporation (hereinafter called the “City”), and James H. Gailey (hereinafter called the “Manager”), an individual who has the education, training and experience in local government management and who, as a member of the International City/County Managers Association (“ICMA”), is subject to the ICMA Code of Ethics, both of whom agree as follows:

WITNESSETH:

WHEREAS, the City Council of the City desires to appoint Manager to serve, and the City desires to employ the services of Manager, as City Manager of the City of South Portland, as provided in Section 227 of the Charter of the City of South Portland (the “City Charter”);

WHEREAS, it is the desire of the City Council to provide certain benefits, establish certain conditions of employment, and to set working conditions of the Manager;

WHEREAS, it is the desire of the City Council (1) to secure the services of the Manager and to provide inducement for him to remain in such employment, (2) to make possible full work productivity by assuring Manager’s morale and peace of mind with respect to future security, and (3) to provide a just means for terminating the Manager’s services at such time as he may be unable to fully discharge his duties, within the discretion of the City Council, due to disability, or when the City may otherwise desire to terminate his employment; and,

WHEREAS, the Manager desires to maintain employment as City Manager of the City;
NOW, THEREFORE, in consideration of the promises and of the mutual covenants and agreements herein set forth, and for other good and valuable consideration, receipt of which is hereby acknowledged, the parties hereto agree as follows:

Section 1. Duties.

The City hereby agrees to employ Manager as City Manager of the City. The Manager agrees to perform the functions and duties specified in the City Charter, City Ordinances, and the Maine General Statutes, and to perform such other legally permissible and proper duties, and reasonable functions, as the City Council shall from time to time assign to the Manager.

Section 2. Term.

A. This Agreement shall remain in effect beginning November 15, 2016 and ending November 15, 2019, unless otherwise terminated pursuant to the terms of this Agreement. No later than May 15, 2019, the parties agree to meet and discuss the possible extension of this Agreement. The parties may extend this Agreement by mutual written agreement.

B. This Agreement may be terminated and the Manager may be removed from office by the City Council for cause in accordance with the procedures set forth in Section 228 of the City Charter. In the event the Manager's employment is terminated for cause, the City's only obligation shall be to pay all compensation (including the compensation set forth in Section 228 of the City Charter) and vacation time and sick leave accrued, but unpaid, as of the date of termination; provided, however, that payment for accrued vacation time shall not exceed the value of forty (40) days and payment for accrued sick leave shall not exceed the value of ninety (90) days.

C. This Agreement may be terminated and the Manager removed from office by the City Council for convenience (i.e., without cause). In the event the City Council terminates the employment of the Manager for convenience during the term of this Agreement, the City agrees as follows:

(1) to pay the Manager a lump sum cash payment equal to six (6) calendar months of the Manager's then current salary plus one (1) additional month of then current salary for each year of service as City Manager, or part thereof, for a maximum of twelve (12) months, less applicable withholdings and deductions;

(2) to the maximum extent allowed by law, to make a contribution to the Manager's deferred compensation account on the value of the compensation set forth in subsection (1) above calculated using the rate ordinarily contributed on regular compensation;

(3) to pay the Manager for vacation time and sick leave accrued, but unpaid, as of the date of termination; provided, however, that payment for accrued vacation time shall not exceed the value of forty (40) days and payment for accrued sick leave shall not exceed the value of ninety (90) days;

(4) to pay the cost to continue health insurance for the Manager and his dependents as provided in Section 4 of this Agreement for a period of six (6) calendar months plus one (1) additional month for each year of service as City Manager, or part thereof, for a maximum period of twelve (12) months, unless the Manager accepts new employment providing comparable health insurance benefits.

The City and the Manager agree that termination of this Agreement and removal of the Manager for convenience shall not require compliance with the procedures set forth in Section 228 of the City Charter or 30-A M.R.S.A. § 2601, and that in the event of termination of the Agreement for convenience, the Manager expressly waives any rights or claims based upon Section 228 of the City Charter or 30-A M.R.S.A. § 2601.

D. The Manager may terminate this Agreement and resign from employment as Manager upon forty-five (45) days written notice to the Mayor, with a copy to the City Clerk. In the event the Manager resigns from employment, the City's only obligation to the Manager shall be to pay all compensation and vacation time and sick leave accrued, but unpaid, as of the date of resignation; provided, however, that payment for accrued vacation time shall not exceed the value of forty (40) days and payment for accrued sick leave shall not exceed the value of ninety (90) days.

Section 3. Compensation.

A. Base Salary: The City agrees to pay the Manager an annual base salary of \$123,133.40, payable in installments in accordance with the City's usual payroll practices and procedures for management employees.

B. The City shall not, at any time during the term of this Agreement, reduce the salary, compensation or other financial benefits of the Manager except to the degree of such a reduction across-the-board for all management employees of the City.

C. The City agrees to review annually the compensation of the Manager depending upon the results of the performance evaluation to be conducted of the Manager's work performance under the provisions of Section 14 of this Agreement.

D. The Manager may be provided with such additional or further compensation above the base salary as may be approved by the City Council from time to time, based upon its annual performance evaluation and review of the Manager.

Section 4. Health, Life, Dental and Disability Insurance.

A. The City agrees to provide to the Manager and his dependents the same health, life, dental and disability insurance coverage and benefits afforded to other City management employees upon commencement of employment.

B. The City shall pay the amount of premium due for term life insurance provided as part of a group life insurance program (e.g., Maine Municipal Employees Health Trust program) in the amount of three (3) times the Manager's annual base salary, including all increases in the base salary during the life of this Agreement. The Manager shall have the right to name the beneficiary of the life insurance policy.

C. The City shall provide the same long-term disability insurance coverage to the Manager as is afforded to other City management employees upon commencement of employment. If the Manager becomes temporarily or permanently disabled, the City shall provide the Manager, directly or indirectly, with those payments afforded to other City management employees. To the extent the City provides the Manager with payments, and to the extent allowed by law, the Manager shall surrender to the City any worker's compensation, accident, sickness, or other disability benefits the Manager has received from the City or any of its insurers during the initial period, up to but not exceeding the amount of payments the City has provided to the Manager.

Section 5. Deferred Compensation, Pension and Retirement Health Insurance.

A. 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 19.5% of the Manager's annual base salary, provided said amount shall not exceed the maximum dollar amount permissible under federal and state law, towards the Executive Deferred Compensation Plan. 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.

B. The City shall allow the Manager to enroll and participate in the Maine State Retirement System in accordance with the same contribution rate as afforded to all other employees of the City. The total contribution shall not exceed any maximum established by law.

Section 6. Cell Phone and Internet Service.

The City will provide the Manager with Cell Phone Hardware and Service, Computer Equipment and Services for home base connectivity available 24/7 while employed as City Manager.

Section 7. Automobile.

During the term in which the Manager is engaged in the performance of his duties and responsibilities pursuant to this Agreement, the City agrees to provide a six hundred dollar (\$600.00) monthly allowance for automobile expenses in recognition of the requirements of the position. The City is under no obligation to reimburse the Manager for any automobile costs that exceed this amount, with the exception of gasoline and tolls for business travel outside the "Greater Portland" area. Review of the adequacy of this monthly allowance will be done on an annual basis during budget review discussions.

Section 8. Dues and Subscriptions.

The City hereby agrees to budget and pay for the professional dues and subscriptions of the Manager necessary for his continuation and full participation in national, regional, state, and local associations and organizations, necessary and desirable for his continued professional participation, growth and advancement, and for the good of the City.

Section 9. Professional Development.

The City hereby agrees to pay, within the budgetary constraints of the Manager's professional development budget, the necessary expenses of the Manager's professional development to continue his professional development and to adequately pursue official functions of the City, including but not limited to attending and participating in the annual conferences of the ICMA, the Maine Municipal Association, the Maine Town and City Managers Association, and other such national, regional and state governmental groups and committees.

Section 10. General Expenses - Expense Account.

The City recognizes that certain expenses of a non-personal and generally job-affiliated nature will be incurred by the Manager, and hereby agrees to reimburse or to pay said reasonable expenses upon receipt of duly executed expense vouchers, receipts, statements, or personal affidavits from the Manager.

Section 11. Holidays and Vacation.

A. The Manager shall receive twenty-five (25) days of paid vacation time on an annual basis. The Manager shall not utilize vacation days beyond those accrued on a pro rata basis without the consent of the City Council. The Manager may carry-over accrued unused vacation time, not to exceed forty (40) days in total; provided, however, that the Manager shall

not use more than twenty (20) vacation days at one time and, if the Manager uses twenty (20) vacation days at one time, he must return to work thereafter for at least one (1) month before using any additional vacation days.

B. The Manager shall be entitled to the same paid holidays as granted to other City management employees.

Section 12. Sick Leave; Personal Leave; Educational Leave.

A. The Manager will earn and accumulate sick leave at the rate of one and one quarter (1.25) days for each full calendar month of service up to fifteen (15) paid sick days each year, accumulative to a maximum of two hundred and forty (240) days. If the Manager leaves the position, either through his own will or termination, the Manager shall be entitled to payment for all accrued but unused sick leave not to exceed the value of ninety (90) days.

B. Any personal leave of absence requested by the Manager must be approved in advance by the City Council.

C. The Manager is not entitled to any educational leave of absence.

Section 13. Hours of Work.

Both parties recognize that the job requires many hours outside the normal working hours of City Hall. It is understood that the Manager must dedicate many hours beyond the normal work week in order to provide excellent leadership in performing the job. It is further understood that in some ways the job requirement represents a twenty-four (24) hour commitment, day in and day out. Hence, the City recognizes that the Manager must devote a great deal of time outside normal office hours on business for the City, and to that end the Manager shall be allowed to establish an appropriate work schedule.

Section 14. Annual Performance Evaluation.

A. The City Council shall review and evaluate the work performance of the Manager annually. This annual review and evaluation shall be conducted in accordance with specific criteria developed by the City Council. These criteria may be added to or deleted from as the City Council may from time to time determine. At the completion of the annual review and evaluation, the City Council shall provide the Manager with a summary written statement of the findings of the City Council and shall provide the Manager with a reasonably adequate opportunity to discuss the review and evaluation, and the summary written statement of findings, with the City Council. The City Council may form a subcommittee to assist with the routine aspects of the Manager's annual performance evaluation.

B. Following the annual review of the Manager, the City Council and the Manager shall define such performance objectives as they may determine necessary for the proper operation of the City and attainment of the City Council's policy objectives, and shall further establish a relative priority among those various objectives, these prioritized objectives to be reduced to writing by the parties. The prioritized objectives shall be reasonably attainable within the time limitations specified and the annual operating and capital budgets and appropriations provided.

C. In effecting and implementing the provisions of this section, the City Council and the Manager mutually agree to abide by the provisions of applicable law.

Section 15. Indemnification.

The City agrees to indemnify the Manager as provided in the Maine Tort Claims Act, Title 14, Sections 8101 – 8118 of the Maine Revised Statutes and in Section 2-200 of the South Portland Code of Ordinances, as may be amended.

Section 16. Outside Work.

The Manager shall not spend more than an average of five (5) hours per week in teaching, consulting, or other non-City connected business, without the prior approval of the City Council.

Section 17. Bonding.

The City shall bear the full cost of any fidelity or other bonds required of the Manager under any law or ordinance.

Section 18. Residency.

The Manager shall maintain his residency in the City of South Portland during the term of this Agreement.

Section 19. Personnel Policy.

Whenever any provision of this Agreement conflicts with or is inconsistent with those provisions of the City's Personnel Policy applicable to the Manager, the provisions of this Agreement shall control.

Section 20. Other Terms and Conditions.

The City Council may fix such other reasonable terms and conditions of employment, as it may determine from time to time, relating to the Manager, provided such terms and conditions are not inconsistent with or in conflict with the provisions of the Agreement, the City Charter, or any other federal or state law.

Section 21. General Provisions.

A. The text of this written Agreement and any amendments approved by the City Council and executed by the Mayor and the Manager constitute the entire understanding between

the parties with respect to the employment of James H. Gailey as the City Manager of the City of South Portland.

B. This Agreement shall be binding upon the City and the Manager, and their heirs, successors, and assigns.

C. This Agreement may be amended at any time during its term by written agreement by both parties.

D. This Agreement shall become effective upon execution.

Section 22. Severability.

If any provision of this Agreement is found to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable.

Section 23. Notices. Notices pursuant to this Agreement shall be given by deposit in the custody of the United States Postal Service, first class, certified or registered mail, postage prepaid, addressed as follows:

- 1) City: Mayor
25 Cottage Road
South Portland, Maine 04106
- 2) Manager: City Manager
25 Cottage Road
South Portland, Maine 04106

Alternatively, notices required pursuant to this Agreement may be personally served in the same manner as is applicable to civil judicial practice or may be hand-delivered to the recipient. Notice shall be deemed given as of the date of personal service or three (3) days after the date of deposit of such written notice in the course of transmission in the United States Postal Service.

IN WITNESS WHEREOF, the City of South Portland has caused this Agreement to be signed and executed on its behalf by its Mayor, and the Manager has signed and executed this Agreement on the date first above written.

WITNESS

James H. Gailey, City Manager
CITY OF SOUTH PORTLAND, MAINE

WITNESS

Thomas E. Blake, MAYOR
CITY OF SOUTH PORTLAND, MAINE
Pursuant to vote of the City Council on
May 17, 2016