

ORDINANCE NO. 2008-92

AN ORDINANCE AUTHORIZING AND DIRECTING THE DIRECTORS OF LAW AND BUDGET AND FINANCE TO EXECUTE, ON BEHALF OF THE CITY OF KENT, A FIVE (5) YEAR CONTRACT OF EMPLOYMENT WITH DAVID RULLER FOR THE POSITION OF CITY MANAGER BEGINNING JUNE 15, 2008 TO BE EXECUTED UPON ADOPTION, AND DECLARING AN EMERGENCY

WHEREAS, the City of Kent desires to continue the employment of David Ruller as City Manager as soon as is possible; and

WHEREAS, David Ruller desires to continue being the City Manager of Kent, Ohio.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Kent, Portage County, Ohio, at least three-fourths (3/4) of all members elected thereto concurring:

SECTION 1. The Directors of Law and Budget and Finance are hereby authorized and directed to execute, on behalf of the City of Kent, a five (5) year contract of employment with David Ruller for the position of City Manager beginning June 15, 2008 to be executed upon adoption in substantial compliance with Exhibit "A", which is attached hereto and incorporated herein.

SECTION 2. That it is found and determined that all formal actions of this Council concerning and relating to the adoption of this ordinance were adopted in an open meeting of this Council and that all deliberations of this Council, and of any of its committees that resulted in such formal action, were in meetings open to the public in compliance with all legal requirements of Section 121.22 of the Ohio Revised Code.

SECTION 3. That this ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare of the residents of this City, for which reason and other reasons manifest to this Council this ordinance is hereby declared to be an emergency measure and shall take effect and be in force immediately after passage.

PASSED: 6/18/2008
DATE

MAYOR AND PRESIDENT OF COUNCIL

ATTEST: _____
CLERK OF COUNCIL

I hereby certify that Ordinance No. 2008-92 was duly enacted this 18 day of June, 2008, by the Council of the City of Kent, Ohio

CLERK OF COUNCIL

EXHIBIT "A"

CONTRACT OF EMPLOYMENT

THIS AGREEMENT, made and entered into this ____ day of _____, 2008, by and between the CITY OF KENT, OHIO, a municipal corporation, hereinafter called "Employer", as party of the first part, and DAVID RULLER, hereinafter called "Employee", as party of the second part, both of whom understand as follows:

WITNESSETH;

WHEREAS, Employer desires to continue the services of said DAVID RULLER as CITY MANAGER of the City of Kent as an employee at will, as provided by Ordinance No. 2005-38 and Ordinance No. 2008-____; and

WHEREAS, it is the desire of the Governing Board, hereinafter called "Council", to provide certain benefits, establish certain conditions of employment and to set working conditions of said Employee; and

WHEREAS, it is the desire of the Council to (1) secure and retain the services of Employee; (2) to make possible full work productivity by assuring Employee's morale and peace of mind with respect to future security; (3) to act as a deterrent against malfeasance, misfeasance, or nonfeasance on the part of Employee, and (4) to provide a procedure for terminating Employee's services at such time as he may be unable fully to discharge his duties due to age or disability or when Employer may otherwise desire to terminate his employ; and

WHEREAS, Employee desires to serve as CITY MANAGER of said City of Kent, Ohio.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties agree as follows:

SECTION 1. DUTIES

During the period of employment herein described, the Employee shall perform the duties of City Manager, as said duties are prescribed by the Charter of the City of Kent, Ohio, as the same now exists or as it may be amended subsequently, and all ordinances lawfully enacted pursuant thereto, and such other duties as the Council of the City of Kent, Ohio, may lawfully assign to the Employee.

SECTION 2. TERM

A) Nothing in this agreement shall prevent, limit or otherwise interfere with the right of the Council to terminate the services of Employee at any time, subject only to the provisions set forth in Section 4, paragraphs A and B, of this Agreement.

- B) Nothing in this agreement shall prevent, limit or otherwise interfere with the right of the Employee to resign at any time from his position with Employer, subject only to the provision set forth in Section 2, paragraph C, and Section 4, of this agreement.
- C) Employee agrees to remain in the exclusive employ of Employer beginning June 15, 2008 through June 16, 2013, neither to accept other employment nor to become employed by any other employer until said termination date, unless said termination date is affected as hereinafter provided.

The term "employed" shall not be construed to include occasional teaching, writing, or consulting performed on employee's time off.

SECTION 3. SUSPENSION OR TERMINATION

Employer may suspend the Employee with or without pay and benefits at any time and may terminate the Employee at any time during the term of this agreement, but only in accordance with Section 40 of the City Charter.

SECTION 4. TERMINATION AND SEVERANCE PAY

- A) In the event Employee is terminated by the Council or by Charter amendment, before expiration of the aforesaid term of employment or any time thereafter and during such time that Employee is willing and able to perform his duties under this agreement, then in that event Employer agrees to pay Employee a lump sum cash payment equal to six (6) months' aggregate salary, including holidays, family health insurance benefits and accrued vacation; provided, however, that in the event Employee is terminated because of his conviction of any illegal act, then, in that event, Employer shall have no obligation to pay the aggregate severance sum designated in this paragraph.
- B) In the event Employer at any time during the term of this agreement reduces the salary or other financial benefits of Employee in a greater percentage than an applicable across-the-board reduction for all employees of Employer, or in the event Employer refuses, following written notice, to comply with any other provision benefitting Employee herein, or the Employee resigns following a suggestion, whether formal or informal, by the Council that he resign, then, in that event, Employee may, at his option, be deemed to be "terminated" at the date of such reduction or such refusal to comply within the meaning and context of the herein severance pay provision.
- C) In the event Employee voluntarily resigns his position with Employer before expiration of the aforesaid term of his employment, then Employee shall give Employer two months notice in advance, unless the parties otherwise agree.

SECTION 5. DISABILITY

If Employee is permanently disabled or is otherwise unable to perform his duties because of sickness, accident, injury, mental incapacity or health for a period of four successive weeks beyond

any accrued sick leave, or for twenty working days over a thirty working day period, Employer shall have the option to terminate this agreement, subject to the severance pay requirements of Section 4, paragraph A. However, Employee shall be compensated for any accrued sick leave, vacation, holidays, compensatory time and other accrued benefits.

SECTION 6. SALARY

- A) Employee shall receive an increase in total pay of five percent (5%) payable on the same schedule as other City employees with an effective date of June 15, 2008. Three percent (3%) of said increase shall be applied to his annual salary and two percent (2%) of said increase shall go into his retirement account. Salary for the remaining years of this contract shall be determined by the parties prior to the anniversary of the employee's hiring annually.
- B) Employee shall continue to receive monies for differed compensation payable on the same schedule referred to above, to be placed in a retirement account of Employee's choosing.

SECTION 7. PERFORMANCE EVALUATION

- A) The Council shall review and evaluate the performance of the Employee on an annual basis. Further, the Council, or a designee of Council, shall provide the Employee with a summary written statement of the findings of the Council and provide an adequate opportunity for the Employee to discuss his evaluation with the Council.
- B) Within the first ninety (90) days, and thereafter, prior to Employee's hiring anniversary date, annually, the Council and Employee shall define such goals and performance objectives which they determine necessary for the proper operation of the City of Kent and in the attainment of the Council's policy objectives and shall further establish a relative priority among those various goals and objectives, said goals and objectives to be reduced to writing. They shall generally be attainable within the time limitations as specified and the annual operating and capital budgets and appropriations provided.
- C) In effecting the provisions of this Section, the Council and Employee mutually agree to abide by the provisions of applicable law.
- D) Further, Employee's salary shall be reviewed annually during the evaluation process and may be increased by the Council.

SECTION 8. HOURS OF WORK

The parties realize that the position of City Manager requires the person holding such position to work many weekends, evenings and other irregular hours at many locations outside of City Hall during which hours City Hall is not open. The parties further realize that such work during these times is of equal importance to the City Manager's normal daily duties at City Hall. Therefore, in order to encourage the Employee to undertake such work at such irregular hours and still provide the Employee with a reasonable limitation of the total number of hours which he may be required to work in any given week, it is understood and agreed that the Employee shall work whatever hours as may be necessary in order for him to fulfill the requirements of the position of City Manager, but in

any event not less than forty (40) hours per week, allowing flexibility for meals, exercise and other important personal activities.

SECTION 9. OUTSIDE ACTIVITIES

Employee shall not spend more than ten (10) hours per week in teaching, counseling or other non-Employer connected business without the prior approval of the Council.

SECTION 10. AUTOMOBILE

During the term of this Agreement the Employee shall receive an automobile allowance of \$300.00 per month. This allowance shall compensate the Employee for the use of his personal automobile in the course of City business and shall be paid in lieu of mileage or any other method of reimbursement, pursuant to City Policy on use of Personal Vehicles for City business.

SECTION 11. VACATION LEAVE

- A) For the term of this contract, the Employee shall continue to be entitled to receive twenty (20) working days of paid vacation leave each year initially vesting January 1, 2006 (the same as other senior staff) and annually thereafter; however, Employee agrees to take no more than ten (10) continuous days at any one time without permission of City Council. Up to and including fifteen (15) days of unused accrued vacation leave may be carried forward from one year into the next or "sold back" at any time during the year in which it is received for an amount equal to the number of days "sold back" multiplied by the Employee's then-current annual salary divided by 260. The Employee is encouraged to use as much as possible of his vacation leave. The balance of vacation leave which is not carried forward or "sold back" must be taken in the year in which it is earned. All vacation leave shall vest as of the first day of June of each year covered by this Agreement and any accrued leave shall be "sold back" upon termination of the Employee's employment with the City.
- B) Employee shall be credited with ten (10) days vacation leave as of this date of hire for his immediate use.
- C) Pending satisfactory job performance, Employee is eligible to receive an increase in his accrual rate of vacation time commensurate with the rate provided to the department heads as listed in Article 10, Section 5 of the City's General Compensation Plan.

SECTION 12. SICK LEAVE

The Employee shall continue to earn ten (10) hours of sick leave for each completed calendar month of service. Accrued sick leave may be accumulated without limit. Upon expiration or termination of this Agreement, the Employee shall be permitted to "sell back" fifty percent (50%) of his accrued sick leave and the remainder shall be forfeited.

SECTION 13. OTHER BUSINESS EXPENSE

Employer shall reimburse the Employee for all other employment-related expenses including, but not limited to, air travel, taxi and auto rental, lodging, meals, memberships and subscriptions to the publications of the International City Management Association, the Ohio City Management Association, registration fees for training programs offered by such organizations, and travel and incidental costs relating to attendance at such programs or the conferences and meetings of such organizations, it being specifically understood that the Employer requests that such activities be undertaken by the Employee, at his option, and shall be considered as part of the Employee's duties. The Employee shall be reimbursed for such other expenses as the City shall approve by motion passed by its City Council.

SECTION 14. GROUP INSURANCE BENEFITS

- A) Employer shall pay the full cost of providing the Employee with the present group disability, health, life, medical and dental insurance coverage which the City currently purchases for other City Employees.
- B) Employee agrees to submit once per calendar year to a complete physical examination by a qualified physician selected by the Employer, the cost of which shall be paid by the Employer. Employer shall receive a copy of all medical reports related to said examination.

SECTION 15. DUES AND SUBSCRIPTIONS

Employer agrees to budget and to pay for the professional dues and subscriptions of Employee 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 Employer.

SECTION 16. PROFESSIONAL DEVELOPMENT

- A) Employer hereby agrees to budget for and to pay the travel and subsistence expenses of Employee for professional and official travel, meetings and occasions adequate to continue the professional development of Employee and to adequately pursue necessary official and other functions for Employer, including but not limited to the Annual Conference of the International City Management Association, the state league of municipalities and such other national, regional, state and local governmental groups and committees thereof which Employee serves as a member.
- B) Employer also agrees to budget and to pay for the travel and subsistence expenses of Employee for short courses, institutes and seminars that are necessary for his professional development and for the good of the Employer.

SECTION 17. INDEMNIFICATION

Employer shall defend, save harmless and indemnify Employee against any tort, professional liability claim or demand or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of Employee's duties as City Manager. Employer will compromise and settle any such claim or suit and pay the amount of any settlement or

judgment rendered thereon.

SECTION 18. BONDING

Employer shall bear the full cost of any fidelity or other bonds required of the Employee under any law or ordinance.

SECTION 19. OTHER TERMS AND CONDITIONS OF EMPLOYMENT

The Council shall fix any such other terms and conditions of employment, as it may determine from time to time, relating to the performance of employee, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement, the City Charter or any other law. Unless otherwise specified herein, Employee shall be entitled to benefits granted to Employees covered the City's General Compensation Plan for all unclassified and various classified employees.

SECTION 20. NO REDUCTION OF BENEFITS

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

SECTION 21. RENEWAL

The Employer and Employee may meet to discuss renewal of this Agreement at any time during its term. Should the Employer not renew this contract after five (5) years, Employer shall provide Employee at least ninety (90) days notice prior to June 14, 2013, of its intent to renew, not renew, or terminate this contract.

SECTION 22. NOTICES

Notices pursuant to this Agreement shall be given by deposit in the custody of the United States Postal Service, postage prepaid, addressed as follows:

- | | | | |
|-----|------------------------|-----|--|
| (1) | EMPLOYER: | (2) | EMPLOYEE: |
| | Kent City Council | | DAVID RULLER |
| | c/o Clerk of Council | | Office of the City Manager |
| | Kent City Hall | | Kent City Hall |
| | 217 East Summit Street | | 215 East Summit Street |
| | Kent, Ohio 44240 | | Kent, Ohio 44240 |
| | | | or at his last current residence address |

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

SECTION 23. GENERAL PROVISIONS

- A) The text herein shall constitute the entire agreement between the parties.
- B) This Agreement shall be binding upon and inure to the benefit of the heirs at law and executors of Employee.
- C) This Agreement shall become effective commencing June 15, 2008.
- D) If any provision, or any portion thereof, contained in this Agreement is held unconstitutional, invalid or unenforceable, the remainder of this Agreement, or portion thereof, shall be deemed severable, and shall not be affected, and shall remain in full force and effect.

IN WITNESS WHEREOF, the City of Kent has caused this Agreement to be signed and executed on its behalf pursuant to authority and directions given by City Council in Ordinance No. 2008-___, passed June 18, 2008, the City's Directors of Budget and Finance and Law, on behalf of the City, and the Employee have caused this Agreement to be executed in duplicate at Kent, Ohio, this ____ day of _____, 2008.

FOR THE CITY OF KENT, OHIO:

BY THE EMPLOYEE:

Barbara A. Rissland
Director of Budget & Finance

David Ruller

James R. Silver
Director of Law