



CITY OF PATASKALA

RESOLUTION 2016-059

Passed November 21, 2016

**A RESOLUTION AUTHORIZING AND DIRECTING THE MAYOR TO ENTER INTO AN EMPLOYMENT AGREEMENT WITH BENJAMIN J. KING TO CONTINUE SERVING AS CITY ADMINISTRATOR**

*WHEREAS*, on July 11, 2014, the Mayor of the City of Pataskala appointed Benjamin J. King to serve as its City Administrator, pursuant to Section 5.03 of the Charter of the City of Pataskala. This appointment became effective upon approval by Council on July 21, 2014; and

*WHEREAS*, contemporaneous with this appointment, the City of Pataskala entered into an employment agreement with Mr. King to serve as its City Administrator. Nothing in this agreement was meant to, nor was it interpreted to, supersede the City Charter governing the appointment, power, duties, term, and/or removal of the City Administrator. This agreement was meant to, and was interpreted to, supplement those provisions; and

*WHEREAS*, pursuant to the agreement, Mr. King's term "expires" on December 31, 2016; and

*WHEREAS*, Council for the City of Pataskala believes Mr. King has performed exceptionally as City Administrator. His dedication to the City and its residents is remarkable. Therefore, neither Council for the City of Pataskala nor the Mayor wants to initiate termination proceedings under Section 5.03 of the City Charter. Instead, they want to execute a new agreement and continue employing Mr. King as the Pataskala City Manager.

**NOW THEREFORE BE IT RESOLVED BY THE COUNCIL OF THE CITY OF PATASKALA, COUNTY OF LICKING, STATE OF OHIO, A MAJORITY OF MEMBERS PRESENT CONCURRING THAT:**

Section 1: The Mayor is hereby authorized and directed to enter into an employment agreement, in substantially the same form and content as the agreement attached hereto as Exhibit A and incorporated herein by reference, with Benjamin J. King to continue serving as City Administrator.

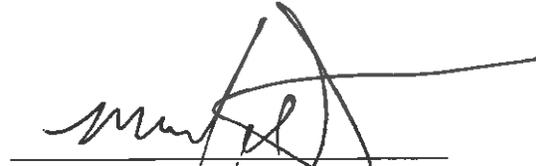
Section 2: It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Resolution were adopted in an open meeting of this Council, and that any and all deliberations of this Council and any of its committees that resulted in such formal action were in meetings open to the public, in compliance with all legal

requirements of the laws of the State of Ohio.

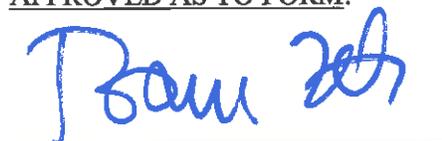
Section 3: This Resolution shall become effective from and after the earliest period allowed by the Charter of the City of Pataskala.

ATTEST:

  
Kathy M. Hoskinson, Clerk of Council

  
Michael W. Compton, Mayor

APPROVED AS TO FORM:

  
Brian M. Zets, Law Director

## EMPLOYMENT AGREEMENT

This Employment Agreement (“Agreement”) is made and entered into, by and between the City of Pataskala, Ohio, a Municipal Corporation (hereinafter referred to as “Employer”) and Benjamin J. King (hereinafter referred to as “Employee”) an individual who has the training and experience in local government management and both of whom agree as follows:

### **Section 1: Term of Agreement:**

On July 11, 2014, the Mayor of the City of Pataskala appointed Employee to serve as its City Administrator, pursuant to Section 5.03 of the Charter of the City of Pataskala (hereinafter referred to as “City Charter”). This appointment became effective upon approval by Council on July 21, 2014. Contemporaneous with this appointment, the City of Pataskala entered into an employment agreement with Employee to serve as its City Administrator. Pursuant to the agreement, Employee’s term expires on December 31, 2016. The City hereby agrees to continue employing Employee as City Administrator under the terms and conditions set forth herein.

- (1) Unless terminated or otherwise ended as provided for herein, the term of this Agreement shall be four (4) years, commencing on January 1, 2017 and ending on December 31, 2020.
- (2) Nothing in this agreement shall prevent, limit, or otherwise interfere with the right of Employee to resign at any time from his position with Employer, subject to the provisions set forth in Section 6 of this Agreement,
- (3) Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of Employer to terminate the services of Employee at any time, pursuant to the procedures set forth in the City Charter and Section 6 of this Agreement.

### **Section 2: Duties and Authority:**

The City Administrator is an exempt administrative employee whose duties shall consist of the duties set forth in Section 5.04 of the City Charter as well as any other duties that are conferred or required by the general laws of Ohio, the City Charter, or by any future ordinance, resolution, or direction of Council. These duties include, but are not limited to:

- (1) Appoint, promote and, when he deems it necessary for the good of the service, suspend or remove or otherwise discipline all subordinate employees and appointive administrative officers, except as otherwise provided for by or under the City Charter, subject to the provisions of the City Charter pertaining to the Merit System.

- (2) Direct and supervise the administration of all departments, offices and agencies of the City, except as otherwise provided by the City Charter.
- (3) Attend all Council meetings and have the right to take part in discussions but may not vote.
- (4) See that all laws, provisions of the City Charter and ordinances and resolutions of the Council, subject to enforcement by the City Administrator or by officers subject to his or her direction and supervision, are faithfully executed.
- (5) Prepare and submit the annual budget and capital program to Council.
- (6) Submit to Council, and make available to the public, a complete report on the finances and administrative activities of the City as of the end of each fiscal year.
- (7) Make such other reports as Council may require concerning the operations of municipal departments, offices, boards, commissions and agencies subject to his direction and supervision.
- (8) Keep Council fully advised as to the financial condition and future operating and capital needs of the City and make such recommendations to the Council concerning the affairs of the City as he deems necessary.
- (9) Require reports and information of subordinate officers and employees of the City as he deems necessary in the orderly operation of the City, or when requested to do so by Council or any board or commission of the City.
- (10) Execute on behalf of the City all contracts and agreements, except as otherwise provided in this Charter.
- (11) Affix to official documents and instruments of the City Administrator's Seal, which shall be the seal of the City, but the absence of the seal shall not affect the validity of any such document or instrument.
- (12) Perform such other powers, duties and functions as are conferred or required by the City Charter, by any ordinance or resolution of the Council, or by the general laws of the State of Ohio.

**Section 3: Compensation:**

(1) In year 1, Employer agrees to pay Employee an annual salary of \$100,403.00, payable in bi-weekly installments and in the manner defined in the Employee Handbook and Policy Manual for non-bargaining unit employees.

In year 2, Employer agrees to pay Employee an annual salary of \$102,411.00, payable in bi-weekly installments and in the manner defined in the Employee Handbook and Policy Manual for non-bargaining unit employees.

In year 3, Employer agrees to pay Employee an annual salary of \$104,459.00, payable in bi-weekly installments and in the manner defined in the Employee Handbook and Policy Manual for non-bargaining unit employees.

In year 4, Employer agrees to pay Employee an annual salary of \$106,548.00, payable in bi-weekly installments and in the manner defined in the Employee Handbook and Policy Manual for non-bargaining unit employees

**Section 4: Retirement:**

The Employer shall pay the employer's share of Ohio Public Employees Retirement System (OPERS) contributions (currently 14.5% of earnable wages) per all applicable Ohio Revised Code sections. In addition, the Employer shall also 'pick-up and pay' (pay directly) one-half of the Employee's legally required contribution to OPERS (currently 10% of earnable wages) . The OPERS 'pick-up' will continue so long as the Internal Revenue Service Code and OPERS allow it, and the Employee is employed as the City Administrator. The City shall withhold Employee's portion of the contribution from Employee's bi-weekly payroll, and remit both of the aforementioned retirement contributions to OPERS on behalf of Employee.

**Section 5: Other Benefits:**

(1) **Vacation Leave.** Employee shall be entitled to earn and use four (4) weeks/twenty (20) business days of paid vacation during each year of employment as City Administrator, with such vacation accrued in the same manner as other non-bargaining unit employees of the City. The Employee Handbook and Policy Manual shall govern all other terms and conditions related to vacation leave, not otherwise in conflict with this section.

(2) **Personal Leave.** On January 1<sup>st</sup> of each year, Employee shall receive, and thereafter be able to use, two (2) personal days during each year of employment as City Administrator. All received, but unused, personal leave will not be carried forward year-to-year. Employee shall forfeit all unused Personal Leave each year.

- (3) **Holidays**. Employee shall be entitled to receive and use paid annual holidays in the manner defined in the Employee Handbook and Policy Manual for non-bargaining unit employees.
- (4) **Sick Leave**. Employee shall be entitled to earn and use paid sick leave in the manner defined in the Employee Handbook and Policy Manual for non-bargaining unit employees.
- (5) **Military Leave**. Employee shall be entitled to military leave in the manner defined in the Employee Handbook and Policy Manual.
- (6) **Expenses**. Employer agrees to reimburse Employee for all employment related and non-personal expenses incurred by Employee. The Finance Director is hereby authorized to disburse such monies upon receipt of duly executed expenses or petty cash voucher, receipts, statements or personal affidavits, appropriated by City Council.
- (7) **Cellular Telephone**. Employer shall pay Employee a sum of Sixty-Five Dollars (\$65.00) per month for the purchase and use of cellular phone service. Any expenses in excess of that amount shall be the responsibility of Employee. Employee agrees to be accessible via telephone to the Mayor, City Council, and other City employees, as necessary, during and after regular work hours.
- (8) **Health, Medical, and Life Insurance**. Employee shall be entitled to participate in the health, medical, and life insurance plans offered by the City, under the same terms and conditions as Employer provides to all non-bargaining unit employees.
- (9) **Dues, Subscriptions and Professional Development**. Employer shall review and budget for payment of professional dues and subscriptions for Employee's participation in I lama, IPMA-HR, OCMA, the International City & County Management Association, and the Ohio City & County Management Association, for the continued professional participation, growth, and advancement of the interests of the City. Professional development shall include attending various national or state conferences, seminars, and/or continuing education. Employee shall be limited to only one (1) out-of-state conference per calendar year. Any additional out-of-state conference(s), within the calendar year, must be approved by City Council in advance of such conference(s).
- (10) **Civic Club Membership**. Employer recognizes the desirability of representation in and before local civic and other organizations, and Employee is authorized to become a member of such civic clubs or organizations, for which Employer shall pay all expenses up to \$500 per year. Employee shall

report to Employer on each membership that he has joined at Employer's expense.

**Section 6: Suspension, Termination; Resignation; and Severance:**

- (1) **Termination.** As set forth in Section 5.03 of the City Charter, Employee serves at the pleasure of the Mayor and the Council and may be suspended or removed by either (a) the Mayor with the consent of a majority of the members of Council or (b) an affirmative vote of two-thirds of the members of Council without the consent of the Mayor.
- (2) **Severance.** In the event the Employee is terminated by the City pursuant to Section 5.03(A) of the Charter before the expiration of the term of this Agreement and subject to the limitation set forth in subsection (3) below, Employer agrees to pay Employee, in one lump sum, an amount equal to a base of three (3) months aggregate salary and benefits plus a month for each year of service to be capped at six (6) months aggregate salary and benefits. "Three months aggregate salary and benefits" is defined as three (3) months of regular salary and earnings calculated at the rate of pay in effect upon termination and includes payout of all earned vacation, if any.
- (3) **Forfeiture of Severance Pay.** Employee forfeits, and will not receive, any Severance Pay if Employee is terminated for "just cause", which includes, but is not limited to, the following:
  - a. Illegal behavior or action by Employee;
  - b. Theft or misappropriation of City property by Employee;
  - c. Any dishonest acts of Employee relating to the City;
  - d. Cause of a material injury to the City by Employee;
  - e. Misappropriation of municipal funds, breach of fiduciary duty or non-disclosure of conflict of interest; or
  - f. Conviction of a felony and for misfeasance, malfeasance, or nonfeasance in office, or in the willful or deliberate performance of a wrongful act.
- (4) **Resignation.** In the event Employee resigns for any reason, Employee shall:
  - a. Provide a minimum thirty (30) days' notice, in writing, in advance of such resignation unless the parties mutually agree otherwise;
  - b. Not receive any Severance Pay;
  - c. Not be entitled to earn, or be compensated for, any City benefits after the effective date of his resignation unless the parties agree otherwise in writing;
  - d. Be paid for all earned, but unused Vacation Leave and Sick Leave.

**Section 7: Hours of Work:**

Employee's position is considered to be a full-time Charter appointment. Employer recognizes the performance of duties expected of this position may require irregular work hours and/or flexibility in the work schedule and/or working more than 40 hours per week. Employee shall, as necessary, devote time outside normal working hours to perform the duties set forth in Section 2 above. Employee shall be expected to attend Council meetings, Special meetings, City functions, or other events requiring the presence of the City Administrator, unless otherwise excused by the Mayor or a by a simple majority of council.

**Section 8: Performance Evaluation:**

Employer shall review and evaluate the performance of Employee at least once annually in advance of the adoption of the annual operating budget. This review and evaluation shall be in accordance with specific criteria developed by Employer and may be amended from time to time at the discretion of Employer. Employer shall provide Employee with a summary written statement of its findings and provide an adequate opportunity for Employee to discuss the evaluation with Employer.

**Section 9: Outside Employment:**

The employment provided for by this Agreement shall be Employee's exclusive source of employment.

**Section 10: Indemnification:**

Only through its insurance provider and in accordance with the terms and conditions set forth in the City's insurance policy, the City shall defend, hold harmless, and indemnify Employee against any tort, professional liability claim, demand, or other legal action, whether groundless or otherwise, arising out of an alleged act or omission in the lawful performance of his duties as "City Administrator."

**Section 11: Liability Insurance and Bonding:**

Employer will maintain liability insurance for the City Administrator and provide coverage for Employee in accordance with the terms and conditions set forth in the City's insurance policy. Employer shall bear the full cost of any fidelity or other bonds required of the Employee under any law or ordinance.

**Section 12: Other Terms and Conditions of Employment:**

- (1) Employer, only upon written agreement with Employee, 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.
- (2) Background Evaluation - Employee acknowledges Employer has the right to perform a complete background evaluation/check of Employee's criminal and personnel history.

**Section 13: Non-Disclosure and Confidential Information:**

Employee agrees that he will not, at any time during or after the term of this Agreement, use for his own benefit, either directly or indirectly, or disclose or communicate in any manner to any individual, corporation or other entity any confidential information acquired by him during his employment regarding any actual or intended business activity, service, plan or strategy of the City.

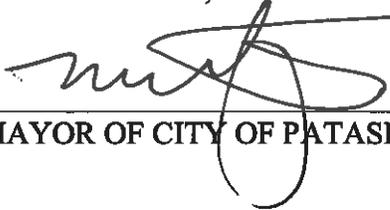
**Section 14: General Provisions:**

- (1) **Integration.** This Agreement sets forth and establishes the entire understanding between Employer and Employee relating to the employment of Employee by Employer. Any prior discussions or representations by or between the parties are rendered null and void by this Agreement.
- (2) **Binding Effect.** This Agreement shall be binding on Employer and Employee as well as their heirs, assigns, executors, personal representatives and successors in interest.
- (3) **Amendment.** The parties, only by signed written agreement, may amend any provision of this Agreement during the term of the Agreement. Such amendments shall be incorporated and made a part of this Agreement.
- (4) **Severability.** The invalidity or partial invalidity of any portion of this Agreement will not affect the validity of any other provision. In the event that any provision of this Agreement is held to be invalid, the remaining provisions shall be deemed to be in full force and effect as if they have been executed by both parties subsequent to the expungement or judicial modification of the invalid provision.

IN WITNESS WHEREOF the parties have executed this Agreement on the day last written below.

CITY OF PATASKALA, OHIO

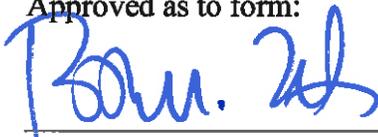
\_\_\_\_\_  
BENJAMIN KING

By:   
\_\_\_\_\_  
MAYOR OF CITY OF PATASKALA

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Approved as to form:

  
\_\_\_\_\_  
Brian M. Zets, Esq.  
Law Director

CERTIFICATE OF AVAILABLE FUNDS

I certify that the money required to meet this contract has hereby been lawfully appropriated for such purpose and is in the treasury or in the process of collection to the credit of this fund, free from any previous obligation or certification as required by Ohio Revised Code § 5705.01 to § 5705.47.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Jamie Nicholson, Finance Director