

To: Members of Council

From: Stephen J. Smith, Law Director  
Jennifer D. Readler, Assistant Law Director

Date: December 31, 2014

Re: Ordinance No. 01-15 - Appointing a New City Manager and Authorizing Execution of an Employment Agreement

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### **Summary**

Pursuant to Council's direction, attached for your consideration is Ordinance No. 01-15, authorizing the appointment of Dana L. McDaniel as the City of Dublin's new City Manager and authorizing execution of an Employment Agreement with Mr. McDaniel. The Agreement reflects the salary and benefits package as agreed upon by Council. Please note that the Agreement reflects Mr. McDaniel's start date as January 31, 2015, and, therefore, Ordinance No. 01-15 has been drafted as emergency legislation.

### **Recommendation**

Staff recommends Council dispense with the public hearing and adopt Ordinance 01-15 by emergency at the January 5, 2015 Council meeting. If you have any questions, please contact Jennifer Readler at 559-7253.

# RECORD OF ORDINANCES

Dayton Legal Blank, Inc.

Form No. 30043

Ordinance No. 01-15

Passed \_\_\_\_\_, 20\_\_\_\_

## **AN ORDINANCE APPOINTING A NEW CITY MANAGER, AUTHORIZING THE EXECUTION OF AN EMPLOYMENT AGREEMENT WITH THE CITY MANAGER, AND DECLARING AN EMERGENCY.**

**WHEREAS**, in a Special Meeting held on December 7, 2014, Council agreed upon the selection of Dana L. McDaniel as the new City Manager and authorized staff to prepare, on Council's behalf, an employment agreement with Mr. McDaniel; and

**WHEREAS**, Council is in agreement with the terms of an Employment Agreement and desires to enter into a contract with Mr. McDaniel.

**NOW, THEREFORE, BE IT ORDAINED** by the Council of the City of Dublin, State of Ohio, \_\_\_\_ of the elected members concurring, that:

Section 1. Dana L. McDaniel is hereby appointed as City Manager of the City of Dublin.

Section 2. Council hereby authorizes the Mayor, on behalf of Council, to execute and enter into an Employment Agreement with Mr. McDaniel, a copy of which is attached as Exhibit "A."

Section 3. This ordinance is declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare, in that it is in the best interest of the City of Dublin and its citizens to appoint Mr. McDaniel as the new City Manager immediately following the retirement of the current City Manager. This ordinance shall, therefore, take effect and be in force immediately upon passage.

Passed this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
Mayor – Presiding Officer

ATTEST:

\_\_\_\_\_  
Clerk of Council

## **EMPLOYMENT AGREEMENT**

THIS EMPLOYMENT AGREEMENT ("Agreement") is made and entered into this \_\_\_\_ day of January, 2015, by and between the City of Dublin, Ohio, an Ohio municipal corporation, hereinafter called "City," and Dana L. McDaniel, hereinafter called "City Manager."

### **WITNESSETH**

WHEREAS, the City desires to employ the services of Dana L. McDaniel as City Manager of the City of Dublin, as provided for in Article V of the Revised Charter of the City of Dublin ("Revised Charter"); and

WHEREAS, it is the desire of the City Council of the City of Dublin to provide certain benefits and to establish certain conditions of employment of said employee as set forth in this Employment Agreement; and

WHEREAS, Dana L. McDaniel desires to accept employment as City Manager of Dublin, Ohio pursuant to the terms and conditions set forth in this Employment Agreement.

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

#### **Section 1. Powers and Duties of the City Manager.**

A. The City hereby agrees to employ Dana L. McDaniel as City Manager of the City of Dublin to perform the functions and duties specified in the Revised Charter, and to perform such other legally permissible and proper duties and functions as the City Council shall from time to time assign, subject to this Agreement.

B. Pursuant to Section 3.03 of the Revised Charter, neither the City Council nor any of its members shall direct or demand the appointment of any person to, or removal from office by the City Manager or any of the City Manager's subordinates, or in any manner take part in the appointment or removal of officers and employees in the service of the City, except where expressly provided for by the Revised Charter or state law.

#### **Section 2. Term of Agreement.**

A. The City Manager shall serve at the pleasure of the City Council and his initial date of employment will be January 31, 2015.

B. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the City Manager to resign or retire at any time from his position with the City. However, the City Manager agrees to provide thirty (30) days' notice of his resignation and such resignation shall forfeit any right of severance, except as provided for in Section 3.D. of this Agreement. In the event the City Manager decides to retire from City service, the City Manager agrees to provide City Council with a minimum of nine (9) months of advanced notice of such retirement and such retirement shall forfeit any right of severance, except as provided for in Section 3. D. of this Agreement.

C. The City Manager agrees to remain in the exclusive employ of the City of Dublin while employed by the City of Dublin. The term "employed" however, shall not be construed to include occasional teaching, writing, speaking or consulting performed on the City Manager's time off, even if outside compensation is provided for such services. Said activities are expressly allowed, provided that in no case is any activity allowed which would present a conflict of interest with the City of Dublin. De minimis use of City equipment for such purposes is hereby authorized.

D. The City Manager shall maintain residency within the City of Dublin throughout his tenure as City Manager.

### **Section 3. Termination and Severance Pay.**

A. In the event the City Manager is terminated by the City Council and in the absence of a criminal act, then in that event the City shall pay the City Manager a lump sum cash payment equal to nine (9) months of his base annual salary. The City Manager shall also be compensated for earned sick leave, vacation, holidays, and other accrued benefits to date, in accordance with the regulations in place for all non-union management employees of the City, calculated at the rate of pay in effect upon termination.

B. In the event the City Manager is terminated by the City Council, all health, dental, and vision insurance and all other City provided benefits shall continue in full force and coverage, at City expense, for a period of nine (9) months or until other coverage is provided to the City Manager by a subsequent employer or OPERS (and is in full force and effect), whichever comes first. Said continuation of group health insurance coverage shall be in addition to any protection afforded the City Manager by the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA). Coverage under COBRA shall begin on the date all coverage extended under the severance provisions herein expires.

C. In the event the City Manager is terminated by the City Council, the City shall reimburse the City Manager for outplacement services in an amount up to \$2,000 to assist in providing for various job search expenses to be incurred by the City Manager.

D. In the event the City Council at any time reduces the salary, compensation or other benefits of the City Manager in a greater amount than an applicable across-the-board reduction for all employees of the City, or in the event the City Council fails to comply with any other provision of this Employment Agreement, or if the City Manager resigns following a suggestion by a majority of the Council, then, in that event, the City Manager may, at his option, be deemed to be "terminated" at the date of such reduction, such refusal to comply, or such resignation within the meaning and context of the herein severance pay provision, then, in that event, the City Manager may, at his option, be deemed to be terminated, as provided herein.

E. In the event the City Manager is terminated because of his conviction of any illegal act involving personal gain to himself or criminal activity (excluding traffic-related offenses), then, in that event, the City shall have no obligation to pay the aggregate severance sum designated herein.

F. For purposes of complying with Section 3 of this Agreement, appropriations held as an unencumbered fund balance in the General Fund or account of the City shall be deemed to be available and authorized for transfer to the appropriate salary and benefit expenditure accounts to insure fulfillment of this provision of the Employment Agreement.

G. Resignation or retirement by the City Manager forfeits any rights of severance under this Agreement, except as provided for in Section 3.D. of this Agreement, and for such rights as would be provided to any city employee upon resignation pursuant to the personnel policies and regulations.

H. Contemporaneously with the delivery of the severance pay set forth in this Agreement, the City Manager shall execute and deliver to the City a release, releasing the City of all claims that the City Manager may have against the City.

#### **Section 4. Salary.**

The City agrees to pay the City Manager for his services rendered pursuant hereto as City Manager an annual base salary of One Hundred Ninety Six Thousand Dollars and No Cents (\$196,000.00) payable in installments at the same time as other employees of the City are paid.

#### **Section 5. Retirement Benefits.**

The City Manager shall be covered and governed by the Ohio Public Employees Retirement System, with the City contributing its required percentage of base salary. The City Manager's share of the retirement contributions shall be paid by the City Manager. Calculations for retirement contributions shall include all compensation normally reportable to OPERS.

## **Section 6. Insurance Coverage.**

A. The City Manager shall be covered by the same health, dental, vision, and disability plans, including the Family Medical Leave Act and worker's compensation benefits, as all other non-union employees.

B. The City agrees to purchase and pay the required premiums for a group term life insurance policy, providing coverage equal in amount to that approved for all other non-union employees of the City, with the beneficiary to be designated by the City Manager.

## **Section 7. Other Benefits.**

All provisions of the Revised Charter, and rules and regulations of the City relating to fringe benefits and working conditions as they now exist or hereafter may be amended, shall apply to the City Manager as they would to all other non-union employees of the City. All benefits which vary according to tenure shall be calculated and granted in accordance with City provisions.

## **Section 8. Hours of Work.**

It is recognized that the City Manager must devote a great deal of time outside normal office hours to the business of the City, and to that end the City Manager will be allowed to take compensatory time off as he shall deem appropriate during said normal office hours.

## **Section 9. Professional Development.**

The City agrees to budget for and to pay the professional dues, subscriptions, and travel and subsistence expenses of the City Manager for professional participation and travel, meetings and occasions adequate to continue his professional development. Said participation on City time shall include, but not to be limited to the International City/County Management Association, the Ohio Municipal League, and such other national, regional, state and local governmental organizations and committees thereof which the City Manager serves as a member and/or participates, and which said membership or participation is beneficial to the City, as well as associated courses, institutes, conferences and seminars which benefit the City. The City agrees to reimburse the City Manager's expense of other memberships, registration, travel, meals or lodging in association with business-related conferences, education or other meetings, according to approved accounts in each annual budget. The City Manager shall obtain approval in advance from Council for any overseas travel.

## **Section 10. General Expenses.**

- A. The City shall provide a City-owned cell phone/PDA and laptop computer for business use of the City Manager, subject to applicable rate plans or ceilings as contracted by the City.
- B. The City shall bear the full cost of any fidelity or other bonds required of the City Manager under any law or ordinance.
- C. The City agrees to pay or reimburse all other reasonable job-related expenses up to the maximum provided for in the annual City operating budget and subject to the requirement that all such claims for payment or reimbursement be submitted on forms and/or in a manner subject to the review and approval of the Director of Finance.

## **Section 11. Performance Evaluation.**

Within the first one hundred twenty (120) days of the City Manager's employment with the City, City Council will meet with him in order to discuss and adopt a performance plan of priorities and development goals for the City Manager during the first twelve (12) months of employment. The City Manager's salary will be subject to review and merit consideration at the annual anniversary date of his hire. In conjunction with the annual performance review, City Council and the City Manager will discuss and update the City Manager's annual performance plan and annual compensation. The City Council shall increase base salary and/or other benefits of the City Manager at the time of his review, in such amounts and to such extent as the City Council may determine that it is desirable to do so, at its sole discretion, in light of performance by the City Manager. Merit increases based on annual performance evaluations and salary reviews are exclusive of any general cost-of-living increases provided to other employees. The City Manager shall receive all cost-of-living increases, if any, which the City may grant to its other employees, at the same time and in the same manner said increases are granted to those employees.

## **Section 12. Indemnification.**

The City shall defend, indemnify and hold the City Manager harmless from and against any and all torts, claims, causes of action, demands, costs, expenses or other legal action, including all attorneys' fees, whether groundless or otherwise, arising out of any alleged act or omission occurring during or arising out of the City Manager's performance of duties as City Manager. The City shall have the right to compromise and settle any such claim or suit and shall pay the amount of any settlement or judgment rendered thereon. Said indemnification shall extend beyond the City Manager's termination of employment, and the otherwise expiration of this Agreement, to provide full and complete protection to the City Manager by the City of Dublin, as described herein, for any acts undertaken or committed in his capacity as City Manager,

regardless of whether the filing of a lawsuit for such tort, claim, cause of action, demand, or other legal action occurs during or following the City Manager's employment with the City.

**Section 13. 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 the City Manager.
- C. This Agreement shall become effective upon adoption and approval by the City Council of the City of Dublin.
- 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 not be affected and shall remain in full force and effect.

**IN WITNESS WHEREOF**, the City of Dublin has caused this Agreement to be signed and executed in its behalf by its Mayor and duly attested by its Clerk of Council, and the City Manager has signed and executed this Agreement, the day and year first written above.

CITY OF DUBLIN, OHIO

CITY MANAGER

By: \_\_\_\_\_  
Mayor

\_\_\_\_\_

ATTEST:

APPROVED AS TO FORM

\_\_\_\_\_  
Clerk of Council

\_\_\_\_\_  
Stephen J. Smith, Law Director