

Introduced by: Councilmember Smith

CITY OF TAKOMA PARK, MARYLAND

RESOLUTION 2013-33

APPROVING AN EMPLOYMENT AGREEMENT BETWEEN THE CITY OF TAKOMA PARK AND BRIAN T. KENNER, AS CITY MANAGER, AND AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT

- Whereas, former City Manager Barbara B. Matthews resigned from the City of Takoma Park effective September 7, 2012 to be the City Manager of the City of Rockville; and
- Whereas, the City Council contracted with The Mercer Group, Inc. to conduct a search for a new City Manager; and
- Whereas, the City Council appointed a City Manager Selection Task Force to assist the Council with development of a position profile and qualifications, reviewing applications, and participating in interviews; and
- Whereas, the search, review and interview process resulted in the City Council's selection of Brian T. Kenner to serve as City Manager; and
- Whereas, the City Council reached agreement on or about May 13, 2013 with Mr. Kenner on the terms and conditions for his employment with the City; and
- Whereas, the City of Takoma Park now wishes to enter into a written five-year employment agreement with Mr. Kenner providing for him to be the City Manager; and
- Whereas, the Employment Agreement is attached to this resolution and incorporated by reference herein; and
- Whereas, Mr. Kenner's employment with the City will commence on June 23, 2013.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF TAKOMA PARK, MARYLAND THAT the City Council hereby approves the Employment Agreement between the City and Mr. Kenner as City Manager; and

BE IT FURTHER RESOLVED THAT the City Council authorizes the Mayor to execute said Employment Agreement on behalf of the City of Takoma Park, Maryland.

Adopted this 3rd day of June, 2013.

Attest:

Jessie Carpenter, CMC
City Clerk

EMPLOYMENT AGREEMENT

THIS AGREEMENT (“Agreement”) is made this 13th day of May, 2013, by and between the City of Takoma Park, Maryland, a political subdivision of the State of Maryland (the “City”), and Brian T. Kenner, an individual (“Employee”).

WHEREAS, the City desires to employ Brian T. Kenner as City Manager; and

WHEREAS, the City Council of the City (the “Council”) desires to establish the terms and conditions for such employment; and

WHEREAS, Employee desires to accept employment as the City Manager;

NOW, THEREFORE, intending legally to be bound, and in exchange for the mutual promises contained herein, the parties agree as follows:

1. EMPLOYMENT. The City hereby employs Employee to serve as City Manager, and Employee accepts that employment, upon the terms and conditions herein set forth.

2. TERM.

2.1. Initial Term. This Agreement shall be of a continuing nature with the parties sharing the goal that it last for five (5) years beginning June 23, 2013 and ending June 22, 2018. The parties look forward to a long-term relationship and acknowledge the International City and County Management Association ethical standard that city managers should commit to serving for a term no less than two (2) years.

2.2. Termination. Nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of the Council to terminate the employment of Employee at any time, subject only to any applicable provisions of the City Charter and Section 6 of this Agreement. Likewise, nothing in this Agreement shall prevent Employee from resigning at any time; provided that if Employee voluntarily resigns his position with the City, he shall give the Council sixty (60) days advance written notice. In the event of such a resignation, the Council may, in its sole discretion: (a) immediately relieve Employee of any further duties required pursuant to this Agreement; and (b) pay Employee the salary and benefits to which he may be entitled until the date which is sixty (60) days after the date of notice of termination.

2.3. Extensions. Prior to January 2018, the parties will meet and confer to decide whether this Agreement will be extended beyond the initial five (5) year period, the duration of any such extension to be jointly determined by the parties.

3. EMPLOYEE’S REPRESENTATIONS. Employee represents and warrants to the City that: (i) Employee will be available to work for the City from and after the date on which the Term begins; (ii) the execution, delivery and performance of this Agreement is neither prohibited by, nor constitutes a default under, any statute, law, judgment, order, decree, writ, injunction, deed, instrument, agreement, contract, lease, license or permit to which Employee is a party or by which Employee is bound; and (iii) to the best of Employee’s

knowledge, there is no litigation, proceeding or investigation by any governmental agency or professional organization, including, but not limited to, any bankruptcy proceeding, pending or threatened against Employee.

4. DUTIES. As City Manager, Employee shall perform the functions and duties specified in the City Charter, and such other legally permissible duties and functions as the Council shall from time to time assign. The Council shall direct, control and supervise Employee's work. Employee shall fully and faithfully perform all duties assigned to Employee, and shall devote his best efforts on behalf of the City. Employee shall work exclusively and actively on a full-time basis for the City. Employee shall be permitted to engage in such activities as teaching, writing, and such other activities that do not conflict with the performance of his duties hereunder and that do not conflict with the interests of the City. The Council shall be the sole judge of any conflict.

5. COMPENSATION.

5.1 Base Salary. For all of the services rendered by Employee pursuant to this Agreement, the City shall pay Employee an initial annual salary of \$167,000, which may be reviewed and adjusted by the Council from time to time.

5.2 Bonuses. Upon the satisfactory completion of year three (3) of this Agreement, the City shall pay Employee a bonus equal to five percent (5%) of his then current annual base salary. Upon satisfactory completion of year four (4) of this Agreement, the City shall pay Employee a bonus equal to six percent (6%) of his then current annual base salary. Upon satisfactory completion of year (5) of this Agreement, the City shall pay Employee a bonus equal to seven percent (7%) of his then current annual base salary. Satisfactory completion of a year means that Employee remains employed for the entire contract year, and neither party has provided notice of termination during such year.

5.3 Amounts Withheld. The City may withhold from Employee's compensation, and from any other amounts paid to or for the benefit of Employee, all sums authorized by Employee or required to be withheld by law, court decree, and executive order, including (but not limited to) such things as income taxes, employment taxes, and employee contributions to fringe benefit plans sponsored by the City and/or State.

6. FRINGE BENEFITS.

6.1 Health and Welfare Benefits. The City will pay one hundred percent (100%) of the cost for Employee and his eligible dependents to obtain Employee's choice of group medical, dental, and vision insurance through the health and welfare plans sponsored by the City.

6.2 Retirement. The City is a participating governmental unit in the State Retirement System. Employee will participate in that system on the terms established by the State Retirement Agency.

6.3 Matching Contributions To 457 Plan. The City will match Employee's elective deferrals to the City's 457 plan up to two percent (2%) of eligible

compensation and the maximum amount permitted by law. Each matching contribution will be subject to a five (5) year vesting schedule. Twenty percent (20%) of each matching contribution will vest for each year of service completed after the date of the contribution.

6.4 Disability and Life Insurance. Employee will participate in the City's group Long Term Disability (LTD) plan. The City will pay one hundred percent (100%) of the cost of the LTD benefits. Employee is eligible to participate in the City's group Short Term Disability (STD) plan, effective July 1, 2013. If Employee elects to STD benefits, he will be responsible for paying the associated cost on the same terms as other management employees of the City. The City will also provide life and accidental death and dismemberment insurance on the same basis it provides these benefits to other management employees of the City.

6.5 Vehicle. Employee shall be provided twenty-four (24) hour use of a City owned automobile for business purposes and commuting. Insurance, maintenance, and fuel expenses related to work shall be paid by the City.

6.6 Reimbursement of Expenses. The City shall reimburse Employee for Employee's reasonable expenses incurred in connection with the City's business. Employee shall comply with City policy and procedure regarding expense reimbursements and provide the City with substantiation of expenses upon request.

6.7 Professional Development. The City agrees to budget and pay the professional membership dues and professional development costs of Employee necessary for Employee to fully participate in the International City and County Management Association and attend one national and one state-wide conference of municipal management professionals per year.

6.8 Paid Leave.

6.8.1 Vacation. Employee will be credited eight (8) days of vacation upon commencement of employment. Vacation shall then accrue at a rate of 12 days annually and be administered in accordance with City policy. Upon completion of Employee's first year of employment with the City, Employee will accrue vacation leave equivalent to an employee with 6 years of service.

6.8.2 Sick. Sick leave be provided and administered in accordance with City policy.

6.8.3 Personal. Employee shall have three (3) personal days to be used by the end of calendar year 2013. Thereafter, five (5) personal days will be credited each January and must be used by the end of the calendar year. They may not be carried over from year to year.

6.8.4 Holiday. Employee shall be paid for the holidays recognized by the City.

6.9 Relocation. If Employee relocates to the City during his first year of employment, the City will pay up to \$10,000 for Employee's bona fide and reasonable relocation expenses.

6.10 Other Benefits. Except as specifically provided for herein, Employee shall be provided at least the same benefits provided to executive management staff of the City.

7. TERMINATION AND SEVERANCE PAY.

7.1 Termination Without Cause. Employee serves at the pleasure of the Council, and this Agreement may be terminated at any time by the Council with or without cause. If Employee is terminated by the Council without cause before the expiration of the five (5) year term of this Agreement, then Council will give Employee six (6) months advance notice of that decision, or at the Council's sole discretion, it may continue Employee's base salary and health benefits only for six (6) months in lieu of such notice. If the Council provides pay in lieu of notice, Employee shall immediately stop providing services to the City and shall not report to work unless requested to do so by the City.

7.2 Termination For Cause. If Employee is terminated for cause, including but not limited to his conviction of any illegal act or a determination by the Council that he has engaged in behavior clearly detrimental to the City, Employee shall be paid salary and accrued benefits through the date of termination, and he shall not be entitled to notice or any other pay or benefits. Prior to any Council decision to terminate Employee for cause, Employee will receive notice and an opportunity to be heard.

7.3 Termination Upon Death. Employee's employment by the City will terminate automatically and immediately upon Employee's death.

7.4 Termination Upon Disability. The Council may terminate this Agreement if Employee is disabled or unable to perform the duties hereunder for sixty (60) consecutive days. In such event, Employee will be paid salary and accrued benefits through the date of termination and Employee shall not be entitled to notice, severance pay or the continuation of benefits. Notwithstanding anything herein contained to the contrary, the City will at all times comply, to the extent it is required to do so, with the Americans with Disabilities Act, the Family and Medical Leave Act and any other applicable state or federal employment law.

7.5 Suspension. If Employee has been criminally charged or it is alleged that Employee has engaged in misconduct clearly detrimental to the City, the Council may, by majority vote, suspend Employee with full pay and benefits, pending prompt investigation and resolution, if it finds that continuation in office pending the determination of these charges would compromise the public trust.

7.6 Offset. In the event of any termination, the City may offset, against any amount it owes Employee, any amount which Employee owes the City. Employee expressly authorizes the City to withhold any such amounts from his final paycheck.

8. PERFORMANCE EVALUATIONS. The Council will evaluate Employee's performance after the first six (6) months of service and annually thereafter. This review and evaluation shall follow criteria established by the Council. The primary purpose of such review and evaluation is to facilitate open and frank discussion, define roles and expectations, identify performance strength and weaknesses, and to provide Employee an opportunity to take affirmative action to address weaknesses and areas needing improvement.

9. INDEMNIFICATION. Employer shall defend, save harmless and indemnify Employee up to the limits and pursuant to the scope of its Primary Liability Insurance Policy with The Local Government Insurance Trust 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 during the scope of Employee's duties as City Manager. Pursuant to the insurance parameters above, the City will compromise and settle any such claim or pay the amount of any settlement or judgment rendered thereon.

10. BONDING. The City shall bear the cost of any fidelity bond or other bonds required of Employee by law.

11. OTHER TERMS AND CONDITIONS. The Council may fix and 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 provisions of this Agreement, the City Charter, or any other law. However, all provisions of the City Charter, and regulations, rules, and policies of the City relating to any paid leave, retirement and pension system contributions, holidays, and other fringe benefits and working conditions as they now exist or hereafter may be amended, also shall apply to Employee as they would to any other management level employees of the City.

12. ARBITRATION. Any differences, claims, or matters in dispute arising between the parties out of this Agreement or connected herewith shall be submitted by them to arbitration by the American Arbitration Association or its successor and the determination of the arbitrator shall be final. The arbitrator shall be governed by the rules and regulations of the American Arbitration Association or its successor, and the pertinent provisions of the laws of Maryland, relating to arbitration. The expense of the arbitration shall be borne by the City, except each party shall be responsible for its own attorneys' fees.

13. MISCELLANEOUS. The laws of the State of Maryland applicable to contracts made to be performed in the State of Maryland will govern the validity and construction of this Agreement. The parties submit to the jurisdiction and venue of the courts of the State of Maryland. Whenever used herein, the singular includes the plural and the plural includes the singular. The use of any gender, tense or conjugation includes all genders, tenses and conjugations. The Section headings have been included for convenience only, are not part of this Agreement, and are not be taken as an interpretation of any provision thereof. This Agreement may be amended, waived, changed, modified or discharged only by a writing signed by the parties. The waiver by any party of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by any party.

IN WITNESS WHEREOF, the City of Takoma Park, Maryland has caused this Agreement to be signed and executed on its behalf by its City Council and duly attested by the City Clerk, and Employee has signed and executed the Agreement, both in duplicate, this date

Brian T. Kenner

Bruce R. Williams

Employee

Mayor

ATTEST:

Witness

Jessie Carpenter, City Clerk

APPROVE AS TO FORM:

Witness

Kollman & Saucier, P.A.