



ST. CHARLES  
SINCE 1834

### AGENDA ITEM EXECUTIVE SUMMARY

Title: Recommendation to approve a **Resolution** Authorizing and Directing the Mayor to Execute and the City Clerk to Attest to the Execution of a Certain Employment Agreement with Mark W. Koenen as City Administrator

Presenter: Mayor Raymond P. Rogina

*Please check appropriate box:*

Government Operations

Government Services

Planning & Development

City Council (8/19/13)

Estimated Cost:

Budgeted:

YES

NO

If NO, please explain how item will be funded:

**Executive Summary:**

This resolution authorizes the Mayor and City Clerk to approve an Employment Agreement between the City of St. Charles and Mark Koenen as the City Administrator.

**Attachments:** *(please list)*

Resolution

Employment Agreement by and between the City of St. Charles and Mark Koenen

**Recommendation / Suggested Action** *(briefly explain):*

Recommendation to approve a **Resolution** Authorizing and Directing the Mayor to Execute and the City Clerk to Attest to the Execution of a Certain Employment Agreement with Mark W. Koenen as City Administrator.

*For office use only*

*Agenda Item Number:* 1A

**City of St. Charles, Illinois**  
**RESOLUTION NO. 2013- \_\_\_\_\_**

**A RESOLUTION AUTHORIZING AND DIRECTING THE MAYOR TO  
EXECUTE AND THE CITY CLERK TO ATTEST TO THE EXECUTION OF  
A CERTAIN EMPLOYMENT AGREEMENT WITH MARK W. KOENEN AS  
CITY ADMINISTRATOR**

**Presented and passed by the  
City Council on \_\_\_\_\_**

BE IT RESOLVED by the CITY COUNCIL OF THE CITY OF ST. CHARLES, KANE  
AND DU PAGE COUNTIES, ILLINOIS as follows:

Section 1: That the Mayor is hereby authorized and directed to execute on behalf of the City of St. Charles that certain Employment Agreement with Mark W. Koenen, in substantially the form attached hereto and incorporated herein as Exhibit "A", by and on behalf of the CITY OF ST. CHARLES.

Section 2: That, on behalf of the City of St. Charles, the City Clerk is hereby authorized and directed to attest the Mayor's execution of said Employment Agreement.

Section 3: That this Resolution shall be in full force and effect from and after its adoption and approval as provided by law.

**Presented** to the City Council of the City of St. Charles, Illinois this 19th day of August, 2013.

**Passed** by the City Council of the City of St. Charles, Illinois this 19th day of August, 2013.

**Approved** by the Mayor of the City of St. Charles, Illinois this 19th day of August, 2013.

\_\_\_\_\_  
Mayor Raymond Rogina

Attest:

\_\_\_\_\_  
City Clerk

**Council Vote:**

Ayes: \_\_\_\_\_

Nays: \_\_\_\_\_

Abstain: \_\_\_\_\_

Absent: \_\_\_\_\_

## Exhibit A

### EMPLOYMENT AGREEMENT

This Agreement (the "Agreement") is made and entered into by and between the City of St. Charles, State of Illinois, a municipal corporation ("Employer,") and Mark W. Koenen, ("Employee") this \_\_\_ day of August, 2013; the Employer and Employee are sometimes hereinafter collectively referred to as the Parties.

#### SECTION I. DUTIES

The Parties agree that Employee is to be employed and appointed as City Administrator of the City of St. Charles to serve at the pleasure of the Mayor and City Council, subject to the terms and conditions of the St. Charles Municipal Code (the "Code") and this Agreement. Employee shall perform the functions and duties specified in Section 2.10.125 of the Code as the same may be amended, from time to time, by the Mayor and City Council and shall further perform other legally permissible duties and functions, as the Mayor and/or the City Council shall assign.

#### SECTION II. TERM

- A. Nothing in the Agreement shall prevent, limit or otherwise interfere with the right of the Employer to terminate the services of Employee at any time, subject only to the provisions of Section 2.12.031 of the Code and in a manner consistent with Section III, Paragraphs A. and B., of this Agreement. Absent such termination, this Agreement shall be in full force from the date of acceptance by the Mayor and City Council and execution by the Mayor, attested by the City Clerk, and signed by the Employee, and shall remain in effect through the end of such Mayor's term of office, *i.e.*, through the latter of the first Tuesday in May, 2017, or the date the Mayor elected to office in April, 2017 assumes office.
- B. The Parties hereby agree that the Employee shall be employed for an additional thirty (30) days beyond the term of this Agreement as specified in Section II A. above. In the event the Employer and Employee do not, prior to the expiration of said additional thirty (30) day period, agree on terms of a new Employment Agreement for an additional period of at least twelve (12) months, then this Employment Agreement shall terminate and the Employer shall have no further financial obligation to the Employee other than those benefits provided under the provisions of the Employer's Code, ordinances, rules, regulations and policies of the Employer as further described in Section X.

In the event a new Agreement is negotiated and signed after this Agreement has expired, but prior to the expiration of the thirty (30) day

period referenced above, the Employee's employment shall continue upon the terms and conditions of this Agreement until a new Agreement is entered into or said thirty (30) days has passed.

- C. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the Employee to resign at any time from the position of City Administrator with Employer, subject only to provision set forth in Section III. A. 2. of this Agreement.
- D. Subject to the Employee's right to resign as provided in Section II C. above, Employee agrees to remain in the employ of Employer until June 1, 2017, and shall not accept other employment nor become employed by any other employer until this Agreement is terminated in accordance with its terms.

The covenant contained in this Subsection II. D. shall not be deemed to preclude Employee from occasional teaching, writing, consulting, or military reserve service when performed on Employee's time off.

### SECTION III. TERMINATION AND SEVERANCE PAY

#### A. Termination

- 1. The Employer may terminate Employee at any time. In the event that the Employer no longer wishes to retain the professional services of Employee, a written and dated notification of termination shall be provided to Employee.
- 2. The Employee may terminate this Agreement at any time. In the event Employee voluntarily resigns his position with Employer before this Agreement is otherwise terminated as herein provided, Employee shall give Employer not less than thirty (30) days advanced written notice, unless the Parties otherwise agree. Upon the effective date of the Employee's resignation, the Employee shall be entitled only to such benefits as may have been previously accrued pursuant to this Agreement together with those benefits which are consistent with the provisions of the Employer's Code, ordinances, rules and regulations. Specifically, the Employee shall not receive any portion of the Severance Pay as herein otherwise described.

#### B. Severance Pay

- 1. As used herein, the term "Severance Pay" shall mean and be deemed to include Employee's aggregate salary (less legally required deductions and other customary set-offs) together with a continuation of all employment benefits then available to exempt employees per the City's Personnel Policy Manual and this

Agreement including, without limitation, Sick Leave Accrual, Vacation Leave Accrual, Holidays, Personal Leave, Health Insurance (provided at the Employee's then current rate of contribution), Dental Insurance (provided at the Employee's then current rate of contribution), life insurance, pension contributions (Illinois Municipal Retirement Fund), and Employee's retirement savings plan. Severance Pay shall not be deemed to include any vehicle allowance.

2. In the event that the Employer terminates Employee pursuant to Section III. A. 1., the Employer shall be obligated to pay to the Employee the Severance Pay. The Severance Pay shall be equal to payment of salary and benefits defined in Section III B. 1. above for a period of 6 months subject to the limitations otherwise set forth in this Agreement. The maximum amount of Severance Pay which may be paid to the Employee will be equal to six (6) months of his compensation and benefits as defined by, and limited to, the definition of Severance Pay set forth above. The rate of compensation and benefits comprising the Severance Pay shall be the rate of compensation and benefits in effect as of the effective date of the Employee's termination. The payment of Severance Pay shall commence immediately upon termination or the expiration of this Agreement and shall be paid in bi-weekly payments in the same manner as pertains to all other exempt employees of the City.

Should Employee secure other employment during the period within which the employee is entitled to receive Severance Pay, the Employee shall be obligated to immediately notify the Employer of such employment and the amount of compensation and benefits being received by the Employee in Employee's new position. Subject to the following limitations, Employee's right to receive Severance Pay, and the Employer's obligation to make Severance Pay payments, shall cease as of the date on which Employee's new employment is to commence provided that the Employee shall be employed at a rate of compensation and benefits which, in the aggregate, are equal to or exceed the Employee's rate of compensation and benefits as of the date of Employee's termination or the expiration of this Agreement. Should that date fall within any payment period applicable to the payment of the Severance Pay, such payment shall be prorated proportionately. The Severance Pay provisions contained herein are intended to provide the Employee with sufficient economic security during the time within which he is seeking alternative employment.

Notwithstanding the foregoing, should Employee obtain employment at levels of compensation and benefits lower than

those being paid to the Employee at the time of Employee's termination or the expiration of this Agreement, then the Employer shall continue to be obligated to pay to the Employee a portion of the Severance Pay equal to the difference between the Employee's Severance Pay (the aggregate of both Employee's rate of compensation and benefits) and the lower level of aggregate compensation and benefits being paid to the Employee in Employee's new position.

However, and notwithstanding the foregoing, the Employer shall not be obligated to provide Employee with Severance Pay if Employee's employment is terminated for any of the following reasons:

- a. Should the Employee be convicted of, or plead guilty to, any illegal act involving personal gain to the Employee related to his duties as City Administrator; or
- b. Should the Employee be convicted of, or plead guilty to, any felonious act; or
- c. Should the Employee engage in any misconduct involving moral turpitude; or
- d. Should the Employee engage in gross misconduct; or
- e. Should the Employee engage in gross negligence.

Before making any final determination that the Employee is ineligible for Severance Pay for any of the reasons set forth above, the Employer shall notify the Employee of the fact that his termination is under consideration and as to which one or more of the five specific grounds herein identified, if any, are relied upon by the Employer as justification for the non-payment of the Severance Pay. The Employee shall be afforded a reasonable opportunity to be heard in a closed session meeting of the City Council to the extent permitted or required by law.

The Employee shall not be due any Severance Pay in the event that the Employee terminates employment pursuant to Section III. A. 2.

#### SECTION IV. SALARY

The Employee is currently employed by the Employer in the capacity of City Administrator at a salary of \$170,000 and is further provided with benefits as outlined in city policy. Employee's annual salary review shall be made at the same time as similar consideration is given to other non-union employees generally and the salary shall be increased in the same manner and at least in the same proportion to that provided to other exempt City employees. Employee's next salary review will be on or about May 1, 2014.

SECTION V. RESIDENCY

In compliance with the requirements of the Code, the Employee currently resides within the corporate limits of the City of St. Charles. Throughout the Employee's employment with the Employer, the Employee shall maintain a residence within the corporate limits of the City of St. Charles.

SECTION VI. PERFORMANCE EVALUATION

- A. Annually, the Mayor (with City Council and Employee input) shall define goals and performance objectives for the Employee that are determined necessary for the proper operation of the City of St. Charles and the attainment of the City Council's policy objectives and shall further establish a prioritization among those various goals and objectives.
- B. In effecting the provisions of this Section, the Employer and Employee mutually agree to abide by the requirements of all applicable laws.

SECTION VII. HOURS OF WORK

It is recognized that Employee must devote a great deal of time outside of the City's normal business hours. With that in mind, the Employer agrees that the Employee will be allowed to take reasonable time off during normal business hours provided that such time off does not interfere with the performance of his duties.

SECTION VIII. VEHICLE ALLOWANCE

Employer agrees to pay Employee a vehicle allowance to compensate Employee for the business use of his personal vehicle. Such car allowance shall be \$600 per month, paid twice per month. Employer may increase the vehicle allowance in such amounts and to such extent as the Employer may determine appropriate as part of the Employee's annual review.

## SECTION IX. OTHER BENEFITS

In addition to the elements of Employee compensation identified in this Agreement, Employee shall be entitled to all other benefits provided under the provisions of the Employer's Code, ordinances, rules, regulations and policies of the Employer including, but not limited to, medical insurance, dental insurance, life insurance, vacation and sick leave, retirement and pension system contributions, holidays and other fringe benefits, and working conditions as they now exist or as the same may hereafter be amended to the extent such benefits may apply to all other exempt employees of Employer with the following exceptions:

1. Employer agrees to provide payment toward a deferred compensation plan for Employee. Employer agrees to annually pay an amount equal to five percent (5%) of the Employee's annual base salary into said plan. All of the Employer's contributions will be vested to the Employee from his initial date of employment with the Employer.
2. The Employer acknowledges that the Employee is in the process of completing a Master's of Business Administration. The Employer agrees to continue to pay for this degree work. However, the scope of this benefit shall be limited to the payment of tuition for five (5) courses of study during the term of this Employment Agreement.

## SECTION X. INDEMNIFICATION

Employer shall indemnify, defend and save harmless the Employee from and 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 within the scope of Employee's performance of his duties as City Administrator. Employer will pay the amount of any settlement or judgment rendered thereon together with any costs of defense including reasonable attorneys' fees and cost. This covenant to indemnify, defend and hold harmless shall not apply to acts outside the scope of Employee's employment nor to conduct which is intentional, malicious, or as may otherwise be prohibited by law.

## SECTION XI. BONDING

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

## SECTION XII. OTHER TERMS AND CONDITIONS OF EMPLOYMENT

The Employer shall fix any other terms and conditions of employment relating to the employment or performance of Employee, provided such terms and conditions are not inconsistent with or in conflict with the provisions of the Code or this Agreement.

## SECTION XIII. NO REDUCTION OF BENEFITS

Employer shall not at any time during the term of this Agreement reduce the Employee's salary or other benefits provided to the Employee pursuant to this Agreement or the Code, ordinances, rules or regulations of the Employer. Notwithstanding the foregoing, the Employer may reduce Employee's salary only in the same manner and proportionally to the same extent as provided by the Employer in any across-the-board reduction imposed on all other employees.

## SECTION XIV. GENERAL PROVISIONS

- A. Modification. No modification or waiver of this Agreement or of any covenant, condition or provision of this Agreement shall be valid unless in writing and duly executed by the Parties.
- B. Severability. All terms, conditions and provisions of this Agreement are severable and in the event any of them shall be held to be unenforceable, this Agreement shall be interpreted as if such term, condition, or provision were not contained in the Agreement.
- C. Choice of Law. This Agreement is made and entered into in the State of Illinois, and the law of the State of Illinois shall govern the Agreement's validity and interpretation and Parties' performance of their respective duties and obligations under the Agreement.
- D. Entire Agreement. This written Agreement embodies the whole agreement between the parties and there are no inducements, promises, terms, conditions, or obligations made or offered by either Employer or Employee other than those contained in this Agreement.

IN WITNESS WHEREOF, The City of St. Charles has caused this agreement to be signed and executed on its behalf by its Mayor, and duly attested by its City Clerk, and the Employee has signed and executed this Agreement both in duplicate, as of the date set forth below.

\_\_\_\_\_

\_\_\_\_\_  
Raymond P. Rogina

Mayor

Dated: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
Mark W. Koenen

City Administrator

Dated: \_\_\_\_\_

\_\_\_\_\_

Attest:

\_\_\_\_\_  
Nancy Garrison

City Clerk

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

**APPROVED AS TO FORM:**

\_\_\_\_\_  
City Attorney

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