

ORDINANCE 2021-17

AN ORDINANCE OF THE CITY OF CRESCENT SPRINGS, KENTUCKY, AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT WITH THE CITY ADMINISTRATOR REGARDING HIS EMPLOYMENT, INCLUDING A SEVERANCE AGREEMENT IN THE EVENT THAT THE CITY ADMINISTRATOR IS TERMINATED WITHOUT CAUSE

BE IT ORDAINED, BY THE CITY OF CRESCENT SPRINGS, KENTUCKY,

Section I

Ordinance 2020-2 authorized the Mayor to employ a fulltime City Administrator, at compensation as set forth in Ordinance 2017-4. The duties of the City Administrator are herein incorporated as if fully set forth herein.

Section II

In other cities throughout Northern Kentucky, cities have entered into contractual agreements with City Administrators in order to give assurance to the City Administrator and to retain employment. Because of the status of the position of City Administrator, and to give adequate assurances to the City Administrator of his employment, and after reviewing the proposed Agreement to be signed between the City, through the Mayor, and the City Administrator, and after considering the necessity of continued employment of the City Administrator for the benefit of the citizens of the City of Crescent Springs, Kentucky,

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF CRESCENT SPRINGS, KENTUCKY, that the Mayor is hereby authorized to enter into a contract with the City Administrator, and said Agreement is incorporated herein by reference as it fully set forth, including the severance Agreement in the event that the City Administrator is terminated without cause.


Section III

All Ordinances or part of Ordinances in conflict herewith are, to the extent of such conflict, are hereby repealed. This Ordinance shall be effective from its passage and publication according to law.

CITY OF CRESCENT SPRINGS,
KENTUCKY

BY: 
JUSTIN HARTFIEL, Mayor

ATTEST:



April C. Robinson, City Clerk/Treasurer

Date of First Reading: October 25, 2021

Date of Second Reading and Enactment: November 1, 2021

EMPLOYMENT AGREEMENT

Between

**CITY OF CRESCENT
SPRINGS**

And

MIKE DALY

**EMPLOYMENT AGREEMENT
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Introduction

This Agreement, made and entered into this ^{1st} day of November, 2021, by and between the City of Crescent Springs, Kenton County, Kentucky, a Home Rule city, ("Employer") and Mike Daly ("Employee") an individual who has the education, training and experience in local government management to complete the duties of City Administrative Officer.

Furthermore, it is the desire of the Employer to [1] secure and retain the services of Employee and to provide inducement for him to remain in such employment, [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 or dishonesty for personal gain on the part of Employee, and [4] to provide a just means for terminating Employee's services at such time as he may be unable fully to discharge his duties or when Employer desires to terminate his employment.

Employer and Employee agree as follows:

Section 1: Duties and Authority

Employer agrees to employ Mike Daly as City Administrator of the City of Crescent Springs to perform the functions and duties specified in the job description of the City of Crescent Springs Personnel Policies and Procedures Manual and to perform other legally permissible and proper duties and functions. Employee agrees he will make a good faith effort with due diligence to perform the essential functions of his position. Employee understands and agrees that he is an employee at will and this agreement does not change that status in any way whatsoever.

Section 2: Compensation

A. Base Salary: Employer agrees to pay Employee a salary as specified in Ordinance 2017-4, payable in installments at the same time and in the same manner that the other management employees of the Employer are paid.

B. This Agreement shall be automatically amended to reflect any salary adjustments that are provided or required by Employer's compensation policies.

C. Employer agrees that it will periodically review Employee's performance and consider adjusting Employee's salary on favorable review of performance and approval of the City of Crescent Springs.

Section 3: Health and Life Insurance Benefits

A. Employer agrees to provide and to pay the premiums for medical, life and dental insurance for Employee and his dependents equal to that which is provided to all other employees of Employer.

Section 4: Vacation, Sick and Personal Leave

A. Employee shall be entitled to receive sick leave as stated for all full-time employees of the City of Crescent Springs, as stated in the Employee Handbook. For the purposes of calculating vacation leave, commencing January 1 of each year, employee shall receive three weeks of vacation.

B. Employee is entitled to accrue all unused vacation, sick and personal leave, and in the event Employee's employment is terminated, either voluntarily or involuntarily, Employee shall be compensated for all accrued vacation time, to the extent as stated in the Employee Handbook.

C. Employer shall annually credit Employee with one (2) days of personal leave.

Section 5: Automobile

The Employer will have the option of providing an automobile and/or paying the standard travel rate as determined by the Internal Revenue Service.

If the Employer provides a city owned vehicle from existing inventory for the use by the City Administrator, Employee agrees and understands that he must maintain a log to detail the personal use of the vehicle, which includes the mileage incurred for commuting back and forth from residence to the City Building. The personal use of the city owned vehicle will be added to the W-2 of the Employee each year. Nothing in this paragraph will subtract from the compensation that will be paid to Employee as otherwise set forth in this Agreement. In addition, the Employer agrees to maintain insurance on the vehicle used by the Employee.

Alternatively, if the Employee uses a personal vehicle, the Employer agrees to reimburse the Employee for the business mileage on the personal vehicle at the rate determined by the Internal Revenue Service for that time. In the event that the personal vehicle is used, no additional notations will be made on the Employee's W-2. Employee will maintain a log for the use of the personal vehicle for business purposes. Employee will only be reimbursed for the mileage incurred for business purposes.

Section 6: Retirement

Employer agrees to enroll Employee into CERS of Kentucky and to make all the appropriate contributions on Employee's behalf.

Section 7: General Business Expenses

A. Employer agrees to budget for and to pay for professional dues and subscriptions of Employee necessary for continuation and full participation in national, regional, state, and local professional associations, bar associations, and organizations necessary and desirable for Employee's continued professional participation, growth, and advancement, and for the good of Employer.

B. Employer agrees to budget annually not less than the amount presently provided for in the current fiscal year budget for travel and subsistence expenses of Employee for professional and official travel, meetings, and occasions to adequately continue the professional development of Employee and to pursue necessary official functions for

Employer, the Kentucky League of Cities conference, and such other national, regional, state, and local governmental groups and committees in which Employee serves as a member.

C. Employer also agrees to budget annually an amount not less than what is presently allocated in the current fiscal year budget for travel, fees and subsistence expenses of Employee for continuing legal education, institutes, and seminars that are necessary or beneficial for Employee's professional development and for the good of Employer.

D. Employer recognizes that certain expenses of a non-personal but job related nature may be incurred by Employee, and agrees to pay said general expenses. The City's authorized official is authorized to disburse such monies upon receipt of duly executed expense or petty cash vouchers, receipts, statements or personal affidavits.

Section 8; Technology:

A. Employer shall provide for Employee a computer, software, (in his office at the city building), and a "smart phone" for Employee to perform the customary and necessary duties of the job and to maintain communication.

B. Employer shall provide Employee , if available, with the means, ability and equipment to connect Employee's home computer to Employer provided office computer and pay for same, including customary service, subscription and/or maintenance fees.

Section 9: Termination

For the purpose of this agreement, termination shall occur when:

A. Employer terminates Employee in accordance with all applicable laws of the Commonwealth of Kentucky.

B. Employer, citizens or legislative acts to amend any provisions of the personnel policies and procedures manual, city code of ordinances, enabling legislation or similar documentation, rules, regulations or statutes pertaining to the role, powers, duties, authority, responsibilities of Employee's position that substantially changes the form of government, Employee shall have the right to declare that such amendments constitute termination.

C. Employer reduces the base salary, compensation or any other financial benefit of Employee, such action shall constitute a breach of this Agreement and will be regarded as a termination.

D. Employee resigns following an offer to accept resignation, whether formal or informal, by Employer, then Employee may declare a termination as of the date of the suggestion,

E. Breach of contract declared by either party with a 30-day cure period for either Employee or Employer. Written notice of a breach of contract shall be provided in accordance with the provisions of Section 18.

Section 10: Severance

For the purpose of this Agreement Severance shall be paid to Employee, when employment is terminated in accordance with Section 9, as follows.

A. If Employee is terminated without cause, Employer shall provide a minimum severance payment equal to six (6) months salary at Employee's rate of pay at the time of termination. This severance shall be paid equal monthly installments concurrent with the first City payroll of each month unless otherwise agreed to by Employer and Employee. Any severance pay would not be subject to pension withholding or Employer pension match unless required by State or Federal statute. **In exchange for the receipt of the severance compensation, Employee agrees that he shall not institute and action against the City, and that acceptance of the severance is consideration for a complete and total release of the City Employer, and Employee may raise no complaint or action against the Employer in any forum.**

B. If Employee is terminated with cause. Including but not limited to, a conviction of a felony or a misdemeanor involving theft, deception or abuse directly relating to the Employee's position as City Administrator then Employer is not obligated to pay severance under this section. Notwithstanding, the Employee shall be entitled to receive compensation for all accrued sick leave, vacation leave, and personal leave earned, but not used, by Employee.

Section 11: Resignation

In the event that Employee voluntarily resigns his position with Employer, Employee shall provide a minimum of 30 days notice unless the parties agree otherwise. Employee shall remain on the job and perform all the duties of City Administrator during said 30 day period and employee shall not use any accrued paid vacation during said 30 day period unless the parties otherwise agree in writing. The amount of salary associated with any unused paid vacation and existing as of the last day upon which Employee performed the duties of City Administrator shall be computed and paid to Employee in a lump sum.

Section 12: Performance Evaluation

Employer may initially review the performance of Employee after completion of a six-month period and thereafter in June of each year subject to a process, form, criteria, and format for the evaluation which shall be mutually agreed upon by Employer and Employee. The process at a minimum shall include the opportunity for both parties to: (1) prepare a written evaluation, (2) meet and discuss the evaluation, and (3) present a written summary of the evaluation results. The final written evaluation should be completed and delivered to Employee within 30 days of the evaluation meeting.

Section 13: Hours of Work

It is recognized that Employee must devote time outside the normal office hours on business for Employer, and to that end Employee shall be allowed to establish an appropriate and flexible work schedule. If the City provides compensatory time to its employees, then Employee shall be entitled to be subject to the same policy. Vacation leave, personal leave and compensatory time off are subject to the prior approval of the Mayor, or his or her designee, said approval not to be unreasonably withheld.

Section 14: Outside Activities

The employment provided for by this Agreement shall be the Employee's sole employment. The parties recognize that certain outside consulting or teaching opportunities provide indirect benefits to Employer and the community, Employee may elect, with the approval of the Mayor or his or her designee, to accept limited teaching, consulting or other business opportunities with the understanding that such arrangements shall not constitute interference with nor a conflict of interest with his or her responsibilities under this Agreement.

Section 15: Indemnification

Beyond that required under federal, state or local Law, 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 Administrator or resulting from the exercise of judgment or discretion in connection with the performance of program duties or responsibilities, unless the act or omission involved willful or wanton conduct. Employee may request and Employer shall not unreasonably refuse to provide independent legal representation at Employer's expense and Employer may not unreasonably withhold approval for legal representation or outside counsel unless the City's insurance carrier will provide such defense counsel. Employer also has the right to select the legal representation or outside counsel if not provided by the City's insurance carrier. Legal representation, provided by Employer for Employee, shall extend until a final determination of the legal action including any appeals brought by either party. Employer shall indemnify Employee against any and all losses, damages, judgments, _ interest, settlements, fines, court costs and other reasonable costs and expenses of legal proceedings including attorneys fees, and any other liabilities incurred by, imposed upon, or suffered by such Employee in connection with or resulting from any claim, action, suit, or proceeding, actual or threatened, arising out of or in connection with the performance of his duties; unless the act or omission involved willful or wanton conduct. Any settlement of any claim must be made with prior approval of the Employer in order for indemnification, as provided in this Section, to be available.

Employee recognizes that Employer shall have the right to compromise unless, said compromise or settlement is of a personal nature to Employee. If Employee refuses to settle and Employer desires to settle, all rights of indemnification shall cease and terminate.

Further, Employer agrees to pay all reasonable litigation expenses of Employee throughout the pendency of any litigation to which the Employee is a party, witness or advisor to the Employer. Such expense payments shall continue beyond Employee's service to the Employer as long as litigation is pending. Further, if Employee is no longer employed by Employer, Employer agrees to pay Employee reasonable consulting fees and travel expenses when Employee serves as a witness, advisor or consultant to Employer regarding pending litigation,

Section 16: Bonding

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

Section 17: Other Terms and Conditions of Employment

Employer, only upon 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 of Crescent Springs Personnel Policies and Procedures or any other ordinance or statute.

Section 18: Notices

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

EMPLOYER: City of Crescent Springs
Mayor
739 Buttermilk Pike
Crescent Springs, KY 41017

EMPLOYEE: Mike Daly
28 Bivouac Ave
Ft. Thomas, KY 41075

Alternatively, notice 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 the date of deposit of such written notice in the course of transmission in the United States Postal Service.

Section 19: General Provisions

A. 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 merged into and rendered null and void by this Agreement. The parties by mutual written agreement may amend any provision of this agreement during the life of the agreement. Such amendments shall be incorporated and made a part of this agreement in writing.

B. Binding Effect. This Agreement shall be binding on Employer and Employee as well as their heirs, assigns, executors, personal representatives and successors in interest.

C. Effective Date. For the purposes of Termination and Severance, this Agreement shall become effective upon the enactment of appropriate legislative action and the execution of this Agreement by both parties.

D. 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.

E. To the extent that any conflict exists between the Employee Handbook and this Agreement, the Employee Handbook shall control to the extent allowed by Ordinance, or other statute.

IN WITNESS WHEREOF, the City of Crescent Springs, Kentucky, the Mayor and City Council have caused this Contract to be signed and executed on its behalf by its Mayor and duly attested to by the City Clerk, and the Employee has signed and executed this agreement, this 1st day November, 2021.

Section 20: Signatures

By affixing signatures hereto, Employer and Employee agree to the terms contained herein.

By affixing signature hereto, Mayor Justin Hartfiel is indicating that he is legally authorized to act on Employer's behalf.

Employer:

Justin Hartfiel
Justin Hartfiel, Mayor
City of Crescent Springs, Kentucky

11-1-2021
Date

Employee

Mike Daly
Mike Daly

11-1-2021
Date

Attest:

April C Robinson
April Robinson
City Clerk/Treasurer