

**RESOLUTION 20-138**

**A RESOLUTION OF THE CITY OF PANAMA CITY BEACH, FLORIDA, APPROVING THE RECOMMENDATION OF LYNNE FASONE AS CITY CLERK AND THE AGREEMENT FOR AN ANNUAL SALARY OF \$82,000.**

**BE IT RESOLVED** that the appropriate officers of the City approves the recommendation of Lynne Fasone as City Clerk and approves and to the extent necessary ratifies the City Clerk Employment Agreement, between the City and Lynne Fasone, relating to the terms and conditions of her employment as City Clerk, providing for an annual salary of Eighty Two Thousand Dollars (\$82,000.00) together with benefits as more particularly described in the body of the Agreement, in substantially the form attached and presented to the Council today, with such changes, insertions or omissions as may be approved by the City Manager, whose execution of such agreement shall be conclusive evidence of such approval.

**THIS RESOLUTION** shall be effective immediately upon passage.

**PASSED** in regular session this 23<sup>rd</sup> day of July, 2020.

**CITY OF PANAMA CITY BEACH**

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

  
Mark Sheldon, Mayor

**ATTEST:**

  
\_\_\_\_\_  
Jo Smith, Interim City Clerk

## EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT (hereinafter referred to as "Agreement"), is by and between the City of Panama City Beach, Florida, a Florida municipal corporation (the "City") and Lynne Fasone (sometimes "Lynne Fasone" or the "City Clerk").

### WITNESSETH:

WHEREAS, the City desires to employ Lynne Fasone as City Clerk of the City, as provided for in Article 3 of the City's Charter; and

WHEREAS, the City, through its City Council, desires to provide for certain benefits and compensation for the City Clerk and to establish conditions of employment applicable to the City Clerk; and

WHEREAS, Lynne Fasone desires to accept employment as City Clerk of the City under the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual promises and benefits set forth in this Agreement, the parties agree as follows:

#### **Section 1. Employment.**

A. The City hereby hires and appoints Lynne Fasone as its City Clerk, under the terms established herein, to perform the duties and functions specified in the City's Charter and the City Code of Ordinances and to perform such other legally permissible and proper duties and functions as the City Council shall from time to time assign.

B. The City's employment of Lynne Fasone as City Clerk shall become effective September 8, 2020. This Agreement shall remain in effect until terminated by the City or by the City Clerk as provided herein.

#### **Section 2. Salary and Evaluation.**

A. For the performance of services pursuant to this Agreement, the City agrees to pay the City Clerk an annual salary of \$82,000, payable in installments at the same time as other City employees are paid.

B. After the first year of the contract, should the general staff receive a cost of living increase, the City Clerk will receive the same increase at the same time as the other staff.

C. The City may also wish to increase said base salary or other benefits, or both, of the City Clerk in such amounts and to such an extent as the City Council may determine desirable on the basis of an annual performance evaluation of the City Clerk. Such evaluation shall be in such form as the Council deems appropriate and shall be made in October of each year in which this Agreement is effective.

D. Following the annual evaluation process the City Attorney shall provide the City Clerk with a written summary statement of the Council's findings, comments, and proposed new objectives. Thereafter, the City Clerk shall be provided the opportunity to discuss the evaluation with the Council.

E. Nothing in this Section shall require the City to increase the base salary or other benefits of the City Clerk. Furthermore, the City's failure to conduct any of the scheduled evaluations shall not constitute non-compliance with a material provision of this Agreement.

**Section 3. Duties and Obligations.**

A. The City Clerk shall have the duties, responsibilities and powers of said office under the Charter and Ordinances of the City. The City Clerk agrees to perform all duties and responsibilities faithfully, industriously, and to the best of her ability and in a professional and competent manner.

B. The City Clerk shall remain in the exclusive employ of the City and shall devote all such time, attention, knowledge and skills necessary to faithfully perform her duties under this Agreement. She shall not serve or become employed by any other entity while this agreement is in effect. The City Clerk may, however, engage in educational and professional activities upon receipt of approval by the City Council, provided that such activities shall not interfere with her primary obligation to the City as its City Clerk. The City Clerk shall dedicate no less than an average of forty (40) hours per week in the performance of her duties hereunder.

C. In the event the City Clerk shall serve on any appointed boards or elected boards of any professional organization, or serve on any committees related to her professional activities, in the event any monies are paid, or gifts received, by the City Clerk related to such service, such money or property shall be paid over to or delivered to the City, unless otherwise provided by the City Council.

**Section 4. Communications Equipment**

The City shall provide the City Clerk with a city cell phone and pay the minimum monthly charge for service. The City Clerk shall pay any additional charges incurred due to personal use by reimbursing the City promptly.

**Section 5. Dues and Subscriptions**

The City agrees to pay the City Clerk's professional dues for membership in one Florida local government clerk's association, one national local government clerk's association, and such other professional dues and subscriptions on behalf of the City Clerk as may be approved in the City's annual budget (on a line item basis) or as authorized separately by the City Council.

**Section 6. Professional Development**



The City agrees to pay reasonable and customary travel and subsistence expenses for the City Clerk's travel to and attendance at least one annual, professional conference of Florida local government clerks or national government clerks. The City may choose to pay for the City Clerk's attendance at other seminars, conferences, and committee meetings as it deems appropriate and approved by Council action.

**Section 7. Community Involvement**

The City recognizes the desirability of representation in and before local civic and other organizations and encourages the City Clerk to participate in these organizations to foster a continuing awareness of the City's activities as well as the community's attitudes and ideas.

**Section 8. Vacation and Sick Leave**

The City Clerk shall earn leave at a rate equivalent with department head with the ten (10) years of service. The City Clerk may not take leave greater than ten (10) consecutive working days without the consent of the City Council. Accrual and pay-out of accumulated leave shall be governed by the same policies as those that govern other City employees.

**Section 9. Holidays**

The City Clerk is entitled to the same paid holidays as the general City staff.

**Section 10. Health, Dental, Life and Disability Insurance**

The City agrees to provide, or make available, health insurance and other benefits to the City Clerk on the same terms and conditions as are established from time to time for all City employees generally.

**Section 11. Retirement.**

The City and the City Clerk agree that the City Clerk may participate in the General Employees' Retirement Fund under the terms and conditions as may from time to time be established for that Fund.

**Section 12. Termination by the City and Severance Pay**

A. The City Clerk shall serve at the pleasure of the City Council and shall not be a member of the City's Civil Service, and the City Council may terminate this Agreement and the City Clerk's employment with the City at any time, for any reason or for no reason.

B. Should a majority of the entire Council (three members) vote to terminate the services of the City Clerk "without cause", then within ten (10) business days following such vote, the Council shall cause the City Clerk to be paid any accrued and unpaid salary and benefits earned (including personal time off, holiday time and insurance but excluding such items and allowances

as are used in conducting City business such as, but not limited to, the use of the City computer and cell phone allowance) prior to the date of termination based on a forty (40) hour work week. Within forty-five (45) calendar days following the vote to terminate the City Clerk's employment, the Council shall cause the City Clerk to be paid a lump sum severance pay equal to eight (8) weeks of her salary as full and complete payment and satisfaction of any claims of the City Clerk of whatsoever nature arising out of this Agreement or otherwise. As consideration for such payment, the City Clerk shall, prior to receipt thereof, execute and deliver to the City a general release of the City and its Council members and its officers, agents, and employees for all acts and actions (whether accrued or subsequently accruing) from the beginning of time until the date of release, said release to be prepared by the City Attorney.

C. In the event the City Clerk is terminated for "just cause," the City shall have no obligation to pay the amounts outlined in Section 12, Paragraph B of this Agreement. For purposes of this Agreement, "just cause" is defined and limited for purposes of this Agreement to any of the following:

1. Misfeasance, malfeasance and/or nonfeasance in performance of the City Clerk's duties and responsibilities.
2. Conviction or a plea of guilty or no contest to a misdemeanor or felony crime, whether or not adjudication is withheld.
3. Neglect of duty, including the inability or unwillingness to properly discharge the responsibilities of office.
4. Violation of any substantive City policy, rule, or regulation, which would subject any other City employee to termination.
5. The commission or counsel of any fraudulent act against the interest of the City.
6. The commission or counsel of any act which involves moral turpitude, or which causes the City disrepute.
7. Violation of the International City/County Management Association Code of Ethics.
8. Any other act of a similar nature of the same or greater seriousness, including those listed in the definition of "Misconduct" contained in Section 443.036(29) Florida Statutes (2019).

Prior to the termination for just cause under this subparagraph, the City shall furnish to the City Clerk a written notification of the grounds for discharge. The City Clerk shall have the right to meet with the Mayor and City Attorney, with an advisor or counsel of her choosing to assist or represent her at that meeting, to rebut, refute or otherwise explain the charges of cause against her. If that meeting fails to resolve the matter, the City Clerk shall have the right to appear before the City Council with an advisor or counsel of her choosing to assist or represent her at that meeting,



to rebut, refute or otherwise explain the charges of cause against her. The City, acting through its City Council, shall then have the sole and absolute discretion to decide whether to terminate this agreement for cause and conclude the City Clerk's employment. Should a court of competent jurisdiction determine that just cause for termination did not exist, the City Clerk's termination shall be deemed conclusively to have been for convenience, without cause, and the City Clerk's sole remedy shall be receipt of severance pay as provided herein, plus interest at the annual rate provided for judgments computed from the day which is 45 days after the date of termination until the day payment is made.

D. In the event the Council, at any time during the employment term, reduces the salary or other benefits of the City Clerk, as identified herein, in a greater percentage than an equivalent across-the-board reduction for all full-time City employees, or in the event the City allegedly refuses to comply with any other material provision of this Agreement benefiting the City Clerk, the City Clerk shall notify the Council in writing of the alleged violation. The Council shall have forty-five (45) days from such notice within which to cure the violation, otherwise, the City Clerk may at her option, consider such violation as termination "without cause" as of the date of such alleged reduction or refusal, and the severance pay provision and other termination provisions contained herein shall become applicable at the annual salary and benefit level in effect prior to the reduction or refusal. This shall be the City Clerk's sole remedy in the event of a breach or other violation by the City of a material covenant in this agreement, the City Clerk acknowledging and agreeing that as an employee serving the public at the will and pleasure of the City Council pursuant to the Charter and laws governing the City, he has no property or liberty interest in her employment with the City beyond the eight week period of severance pay.

**Section 13. Termination by the City Clerk**

The City Clerk may terminate this Agreement at any time by delivering to the City Council a written notice of termination not later than ninety (90) days prior to the effective date of the termination. If the City Clerk terminates this Agreement, then the provisions of Section 12, Paragraph B above (severance pay), shall not apply. If the City Clerk voluntarily resigns pursuant to this Section, the City shall pay to the City Clerk all accrued compensation due the City Clerk up to the City Clerk's final day of employment, including any accrued personal time off. The City shall have no further financial obligation to Employee pursuant to this Agreement. This subsection shall not prevent the City Clerk from collecting any money earned as a result of participation in the City's retirement program.

**Section 14. Disability**

If the City Clerk becomes permanently disabled or is otherwise unable to perform her duties because of sickness, accident, injury, mental incapacity or health (but excluding death), for a period of four consecutive weeks beyond any accrued leave, the City shall have the option to terminate this Agreement, subject to the severance pay provision outlined in Section 12, Paragraph B of this Agreement.

**Section 15. Relocation and Moving Expenses**



A. The City Clerk shall be reimbursed for moving expenses to relocate herself and her family. Moving expenses shall be limited to the cost of packing, unpacking, insurance, storage, and moving the household goods and personal effects of the City Clerk from her place of residence to the City. Excluding for reimbursement as provided in subsection B, reimbursement shall be made upon the City Clerk's production of documents establishing that the services were provided by the lowest of (3) estimates and the production of receipts to document the expenditure. Reimbursement for relocation moving expenses shall not exceed \$10,000.00.

B. Vehicle mileage related to the City Clerk's relocation shall be reimbursed at the Internal Revenue Service Standard Mileage Rate for business travel. Meal reimbursement for meals incurred during travel shall be limited to \$80 per day. Lodging during relocation shall be reimbursed based upon receipts to document the expenditure.

C. The City agrees to pay the City Clerk up to Two Thousand, Five Hundred Dollars (\$2,500) per month for a period of three (3) months to reimburse her for the costs of relocating herself and her family to a new residence in Florida, to cover or be applied to the cost of temporary lodging. The City Clerk shall be reimbursed only when she can produce receipts to document the expenditure.

D. Should the City Clerk voluntarily terminate this Agreement within two years of her employment with the City, she will reimburse the City a prorated share of any expenses paid under this section based on the number of months remaining in the twenty-four month period. A pro-rate share of the total relocation expenses paid by the City will be returned to the City that equals the percentage of months remaining in the first twenty-four months commencing from the first date of employment. By way of illustration, if the City Clerk resigns 12 months after her first date of employment, the City Clerk shall reimburse the City fifty percent (50%) of the total expenses reimbursed under this section 15. Reimbursement under this subsection (D) shall not apply if the City Clerk's termination of this agreement is due to death or permanent disability.

#### **Section 16. Indemnification.**

A. City shall defend, save harmless, and indemnify the City Clerk against any action for any injury or damage suffered as a result of any act, event, or omission of action that the City Clerk reasonably believes to be in the scope of her duties or function, unless she acted in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property. The City will compromise and settle any such claim or suit and pay the amount of any settlement or judgment rendered thereon. The City shall not be liable for the acts or omissions of the City Clerk committed while acting outside the course and scope of her agreed duties or committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property. In such instance, the City Clerk shall reimburse the City for any legal fees and expenses the City has incurred or otherwise paid, for or on her behalf, in connection with the charged conduct.

B. Said indemnification shall survive the termination of employment and the termination or expiration of this Agreement to provide protection for any such acts undertaken or



committed in the City Clerk's capacity as a City employee, regardless of whether the notice of claim or filing of a lawsuit occurs during or following employment with the City.

**Section 17. Bonding**

The City agrees to bear the full cost of any fidelity or other bonds required of the City Clerk under any policy, regulation, ordinance or law.

**Section 18. Code of Ethics**

The "Code of Ethics" promulgated by the Florida Association of City Clerks is incorporated herein, and by this reference made a part hereof. Said "Code of Ethics" shall furnish principles to guide the City Clerk's duties, responsibilities, conduct and actions as City Clerk of the City.

**Section 19. Attorney's Fees**

If any litigation is commenced between the parties concerning any provision of this Agreement or the rights and duties of any person in relation thereto, the party prevailing in such litigation will be entitled, in addition to such other relief as may be granted, to reasonable attorney's fees and expenses incurred in connection therewith, including appellate fees and expenses.

**Section 20. General Terms and Conditions**

A. If any provision, or any portion thereof, contained in this Agreement is held by a court of competent jurisdiction to be unconstitutional, illegal, invalid or unenforceable, the remainder of this Agreement, or portion thereof, shall not be affected and shall remain in full force and effect.

B. The waiver by either party of a breach of any provision of this Agreement, or the failure to demand strict compliance with any provision, shall not operate or be construed as a waiver of any subsequent breach of the same or any other provision, or as a modification of the same or any other provision.

C. This Agreement is a personal agreement between the City and the City Clerk and may not be voluntarily assigned or involuntarily transferred.

D. This Agreement contains the entire Agreement of the parties. It may not be changed verbally, but only by an Agreement in writing signed by the parties.

E. Florida law shall govern this Agreement and any litigation that may arise from this Agreement, shall be filed and litigated in the 14<sup>th</sup> Judicial Circuit, in and for Bay County, Florida.

F. Upon City Clerk's death, the City's obligations under this Agreement shall terminate except for the following which shall be for the benefit of the City Clerk's personal representative or heirs:





1. Transfer of ownership of retirement funds, if any, to her designated beneficiaries;
2. Payment of accrued leave balances in accordance with this Agreement;
3. Payment of all outstanding hospitalization, medical and dental bills in accordance with City's insurance policies or plans; and
4. Payment of all life insurance benefits in accordance with the City's insurance policies or plans.

G. The parties acknowledge that each has shared equally in the drafting and preparation of this Agreement and, accordingly, no court construing this Agreement shall construe it more strictly against one party than the other by reason of authorship, and every covenant, term and provision of this Agreement shall be construed simply according to its fair meaning.

H. This Agreement may be executed in duplicate counterparts, each of which shall be deemed an original and all of which together shall be deemed one and the same instrument. No term, condition or covenant of this Agreement shall be binding on either party until both parties have signed it.


I. The effective date of this Agreement shall be the last date it is executed by either of the parties to this Agreement.

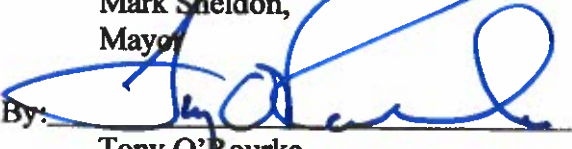


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Executed by the CITY this 23<sup>rd</sup> day of July, 2020.

CITY OF PANAMA CITY BEACH

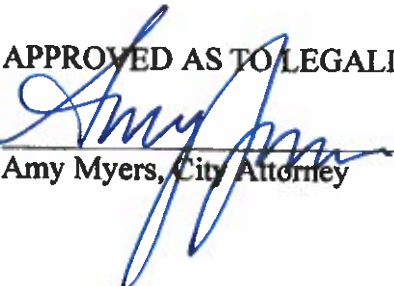
By:   
Mark Sheldon,  
Mayor

By:   
Tony O'Rourke,  
City Manager

ATTEST:

  
Jo Smith, Interim City Clerk

APPROVED AS TO LEGALITY AND FORM:

  
Amy Myers, City Attorney

Executed by the CITY CLERK this 19<sup>th</sup> day of July, 2020.

Witnesses:

  
Signature

David Bickham  
Print Name

  
Lynne Fasone

  
Signature

Gina Bhorick  
Print Name