

RESOLUTION 21-148

**A RESOLUTION OF THE CITY OF PANAMA CITY BEACH,
FLORIDA, APPROVING AN AGREEMENT WITH DREW WHITMAN
FOR HIS EMPLOYMENT AS CITY MANAGER.**

BE IT RESOLVED that the appropriate officers of the City are authorized to accept and deliver on behalf of the City that Agreement between the City and Drew Whitman, relating to the terms and condition of his employment as City Manager, providing for an annual salary of \$150,000 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 Interim City Manager and Mayor and whose execution shall be conclusive evidence of such approval.

THIS RESOLUTION shall be effective immediately upon passage.

PASSED in regular session this 22nd day of April, 2021.

CITY OF PANAMA CITY BEACH

By: 
Mark Sheldon, Mayor

ATTEST:


Lynne Fasone, 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 Drew Whitman (sometimes "Whitman" or the "City Manager").

WITNESSETH:

WHEREAS, the City desires to employ Drew Whitman as city manager 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 Manager and to establish conditions of employment applicable to the City Manager; and

WHEREAS, Drew Whitman desires to accept employment as City Manager 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 Council hereby hires and appoints Drew Whitman as its City Manager, 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 appointment of Drew Whitman as City Manager shall become effective April 22, 2021. This Agreement shall remain in effect until terminated by the City or by the City Manager 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 Manager an annual salary of \$150,000, payable in installments at the same time as other City employees are paid.

B. Should the general staff receive a cost of living increase, the City Manager 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 Manager in such amounts and to such an extent as the City Council may determine desirable on the basis of a annual performance evaluation of the City Manager. Such evaluation shall be in such form as the Council deems appropriate and shall be made in City's fourth fiscal quarter (July through September) of each year in which this Agreement is effective.

D. Following the annual evaluation process the City Attorney shall provide the City Manager with a written summary statement of the Council's findings, comments, and proposed new objectives. Thereafter, the City Manager 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 Manager. 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 Manager shall have the duties, responsibilities and powers of said office under the Charter and Ordinances of the City. The City Manager agrees to perform all duties and responsibilities faithfully, industriously, and to the best of his ability and in a professional and competent manner.

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

C. In the event the City Manager shall serve on any appointed boards or elected boards of any professional organization, or serve on any committees related to his professional activities, in the event any monies are paid, or gifts received, by the City Manager 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.

D. In the event the City Manager is temporarily unable to perform his duties and in the absence of an acting Assistant City Manager, he shall designate an Acting City Manager.

E. The City Manager is required to be on call for twenty-four hour service, 365 days a year, including reasonable availability by telecommunication during holidays and vacations.

F. Whitman is hereby authorized to carry a concealed firearm pursuant to 18 U.S. Code Section 926C.

G. The parties acknowledge that at the time of this Agreement, Whitman's brother is employed by the City in its Public Works Department. To eliminate the possibility of nepotism or appearance of impropriety that may arise from Whitman's performance of his mandatory duties relating to employment decision under Section 3-5 of the City's Charter, Whitman agrees that:

1. To the extent permissible under the law and Charter of the City, supervision of the Public Works department, and recommendations regarding its administration, shall be delegated by Whitman to an Assistant City Manager.

2. Upon the joint recommendation of the Public Works Director and Assistant City Manager that it is in the best interests of the City that Whitman's brother should be subject to discipline, demotion, suspension or removal, Whitman will honor and act upon that recommendation.

Section 4. Automobile Allowance and Communications Equipment

The City Manager is required to be on call for twenty-four hour service. In recognition thereof:

A. The City shall grant to the City Manager an automobile allowance of \$450 per month, and the City Manager shall purchase, maintain and insure said vehicle.

B. The City shall provide the City Manager with a city cell phone and pay the minimum monthly charge for service. The City Manager 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 Manager's professional dues for membership in one Florida local government managers' association, FBI National Academy Associates (FBINAA), and such other professional dues and subscriptions on behalf of the City Manager 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 Manager's travel to and attendance at least one annual, professional conference of Florida local government managers. The City may choose to pay for the City Manager's attendance at other seminars, conferences, and committee meetings as it deems appropriate and approves 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 Manager 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 Manager shall earn vacation and sick leave at a rate equivalent with a department head with the maximum level of service. Accrued annual leave may be used at the time(s) he chooses in communication with the City Council. The City Manager 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 Manager 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 Manager 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 Manager agree that the City Manager may participate in the General Employees' Retirement Fund under the terms and conditions as may from time to time be established for that Fund.

The City acknowledges that at the time of drafting this Agreement, Whitman is currently in the City's DROP program, and a participant in the City's Police Retirement Fund, which together place limitations on Whitman's ability to receive retirement benefits once he becomes a General Employee. The City agrees to promptly consider in good faith a proposal to modify the Police (and Firefighters) Retirement Fund by Ordinance to allow him (and other public safety employees) to receive retirement benefits accrued in those capacities while subsequently employed by the City as a general employee. If adopted, such amendment to the terms and conditions of the Fund shall be applicable to the City Manager.

Section 12. Termination by the City and Severance Pay

A. The City Manager 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 Manager's employment with the City at any time, for any reason or for no reason.

B. Termination Without Cause. Should a majority of the entire Council (three members) vote to terminate the services of the City Manager "without cause", then within ten (10) business days following such vote, the Council shall cause the City Manager 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 the automobile 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 Manager's employment and upon request by the City Manager within the same timeframe, the Council shall cause the City Manager to be paid a lump sum severance pay equal to twenty (20) weeks of his salary as full and complete payment and satisfaction of any claims of the City Manager of whatsoever nature arising out of this Agreement or otherwise. As consideration for such payment, the City Manager 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. Termination for Just Cause. In the event the City Manager 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 Manager'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 (2021).
9. The provision of favoritism or preferential treatment to Whitman's brother, as long as both are employed by the City.
10. The commission of an adverse employment action against the Assistant City Manager which is determined by the City Council to have been unwarranted.

Prior to the termination for just cause under this subparagraph, the City shall furnish to the City Manager a written notification of the grounds for discharge. The City Manager shall have the right to meet with the Mayor and City Attorney, with an advisor or counsel of his choosing to assist or represent him at that meeting, to rebut, refute or otherwise explain the charges of cause against him. If that meeting fails to resolve the matter, the City Manager shall have the right to appear before the City Council with an advisor or counsel of his choosing to assist or represent him at that meeting, to rebut, refute or otherwise explain the charges of cause against him. 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 Manager's employment. Should a court of competent jurisdiction determine that just cause for termination did not exist, the City Manager's termination shall be deemed conclusively to have been for convenience, without cause, and the City Manager'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 Manager, 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 Manager, the City Manager 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 Manager may at his 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 Manager's sole remedy in the event of a breach or other violation by the City of a material covenant in this agreement, the City Manager 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 his employment with the City beyond the twenty week period of severance pay.

Section 13. Termination by the City Manager

The City Manager 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 Manager terminates this Agreement, then the provisions of Section 12, Paragraph B above (severance pay), shall not apply. If the City Manager voluntarily resigns pursuant to this Section, the City shall pay to the City Manager all accrued compensation due the City Manager up to the City Manager'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 Manager from collecting any money earned as a result of participation in the City's retirement program.

Section 14. Disability

If the City Manager becomes permanently disabled or is otherwise unable to perform his duties because of sickness, accident, injury, mental incapacity or health (but excluding death), for a period of four consecutive weeks beyond any accrued leave and after exhaustion of any leave authorized by the City's sick leave pool, 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. Indemnification.

A. City shall defend, save harmless, and indemnify the City Manager against any action for any injury or damage suffered as a result of any act, event, or omission of action that the City Manager reasonably believes to be in the scope of his duties or function, unless he 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 Manager committed while acting outside the course and scope of his 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 Manager shall reimburse the City for any legal fees and expenses the City has incurred or otherwise paid, for or on his 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 Manager'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 16. Bonding

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

Section 17. Code of Ethics

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

Section 18. 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 19. 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 Manager 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 14th Judicial Circuit, in and for Bay County, Florida.

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

1. Transfer of ownership of retirement funds, if any, to his 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.

Executed by the CITY this 22nd day of April, 2021.

CITY OF PANAMA CITY BEACH

By: [Signature]
Mark Sheldon, Mayor

By: [Signature]
Al E. Shortt, Interim City Manager

ATTEST:

[Signature]
Lynne Fasone, City Clerk

APPROVED AS TO LEGALITY AND FORM:

[Signature]
Amy Myers, City Attorney

[Signature]
J. Cole Paris

Executed by DREW WHITMAN this 2 day of MAY, 2021.

Witnesses:

[Signature]
Signature
Drew Whitman
Print Name

[Signature]
Drew Whitman

[Signature]
Signature
Elise R. Jetton
Print Name