

**RESOLUTION 20-43**

**A RESOLUTION OF THE CITY OF PANAMA CITY BEACH,  
FLORIDA, APPROVING AN AGREEMENT WITH ANTHONY  
O'ROURKE 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 Anthony O'Rourke, relating to the terms and condition of his employment as City Manager, providing for an annual salary of \$170,000 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 Acting City Manager and Mayor and whose execution shall be conclusive evidence of such approval.

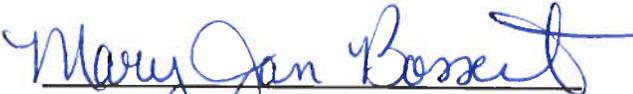
THIS RESOLUTION shall be effective immediately upon passage.

**PASSED** in regular session this 9<sup>th</sup> day of January, 2020.

**CITY OF PANAMA CITY BEACH**

By:   
Mike Thomas, Mayor

**ATTEST:**

  
Mary Jan Bossert, 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 Anthony O'Rourke (sometimes "Tony O'Rourke" or the "City Manager").

### W I T N E S S E T H:

WHEREAS, the City desires to employ Tony O'Rourke 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, Tony O'Rourke 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 hereby hires and appoints Tony O'Rourke 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 employment of Tony O'Rourke as city manager shall become effective January 15, 2020. 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 \$170,000, 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 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 semi-annual performance evaluation of the City Manager. Such evaluation shall be in such form as the Council deems appropriate and shall be made in January and July of each year in which this Agreement is effective.

D. The City Manager's first evaluation shall be based on a work plan that includes, but shall not be limited to, specific strategic accomplishments and objectives that shall become the basis for future semi-annual evaluations and shall be cooperatively determined and adjusted from time to time as determined by the City Council with the input of the City Manager. The City Council shall further establish a relative priority and weight among the annual performance plan objectives. The essential elements of the first year work plan shall include the following:

1. Conduct an ICMA Citizen's Survey and Benchmark Report
2. Employee Survey
3. Strategic Plan FY 2021-2026
4. Annual Business Plan FY 2021
5. Five Year Financial Plan FY 2021-2026
6. Organizational Quality Initiative Plan
7. Organizational Management and Process Review

E. Following the semi-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.

F. 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, 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.

#### **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, 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 leave at a rate equivalent with department head with the maximum level of service. 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 the City Manager has requested that the vesting period for the General Employees' Retirement Fund be shortened for Non-Civil Service Employees to allow him to vest in the Fund upon completion of five (5) years of service. The City agrees to consider such a proposal by Ordinance in good faith and, 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. 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, 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. 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 (2019).

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 three month 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, 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 Manager shall be reimbursed for moving expenses to relocate himself and his 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 Manager from his place of residence to the City. Reimbursement shall be made upon the City Manager'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 \$17,500.00.

B. The City Manager shall be reimbursed one (1) round trip airfare from the City Manager's place of residence to the City and other ancillary travel expenses to allow the City

Manager's spouse to visit Panama City Beach between January 15, 2020 and May 1, 2020 to seek permanent housing.

C. For the six months immediately following the execution of this contract, the City agrees to pay the City Manager up to Two Thousand, Five Hundred Dollars (\$2,500) per month to reimburse him for the costs of relocating himself and his family to a residence within the City, to cover or be applied to the cost of temporary lodging. The City Manger shall be reimbursed only when he can produce receipts to document the expenditure.

D. Should the City Manager voluntarily terminate this Agreement within two years of his employment with the City, he 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 Manager resigns 12 months after his first date of employment, the City Manager 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 Manager's termination of this agreement is due to death or permanent disability.

#### **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 14<sup>th</sup> 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.

[Remainder of page intentionally blank.]

Executed by the CITY this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

CITY OF PANAMA CITY BEACH

By: \_\_\_\_\_  
Mike Thomas,  
Mayor

By: \_\_\_\_\_  
Holly J. White,  
Acting City Manager

ATTEST:

\_\_\_\_\_  
Mary Jan Bossert, City Clerk

APPROVED AS TO LEGALITY AND FORM:

\_\_\_\_\_  
Amy Myers, City Attorney

Executed by the CITY MANAGER this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

Witnesses:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Tony O'Rourke

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

## Proposed First-Year Plan for City of Panama City Beach

Tony O'Rourke

The following is a proposed plan of action for my first year as City Manager of the City of Panama City Beach for City Council review and revision. This plan puts into context the performance measures in my proposed first year work plan, which is included in my proposed City Manager contract.

### Listening and Understanding (90 days)

The first phase of any transition is to first listen and learn and not presume what the needs and expectations of a community and organization are. I would need to get a very diverse orientation and briefing on the community's challenges, opportunities and priorities. To that end, I would start by reviewing in-depth the City's financial, planning and operations documents and meet with many community and regional stakeholders. In addition, I would recommend both a citizen and employee survey be conducted to get a comprehensive and evidenced-based understanding of the needs, challenges, expectations and overall assessment of the community and city organization.

In the first weeks I would request a series of meetings with the Mayor, City Council members, Department Directors and front-line staff to gain their perspective on the past, present and future of Panama City Beach. I would request the Mayor and each City Council member make a list of 10 to 15 individuals and/or organizations I should meet with to get a better understanding of the variety and scope of issues in both the community and city organization. Most importantly is the need to talk to a true cross-section of the community and organization to understand diverse views and perspectives about Panama City Beach and the future the community desires.

My learning and listening would not end after this initial 90 days. I would consistently get feedback from the community and organization as well as have weekly meetings with the Mayor, Town Council members, Department Directors and key stakeholders. I would also propose organizing and meeting separately with both a small, but diverse, group of Panama City Beach stakeholders and city organization employees, on a monthly basis to stay in tune with both the community and organizations needs and expectations.

These regular meetings are critical to keep a pulse of the community and organization and to ensure a constant exchange of information, ideas, and plans. I am a big proponent of "no surprises" and consistent communication would minimize the chances of "surprises" and maximize collaboration and alignment of critical operations, projects, and issues.

### Data Analysis – Strategic Plan Development (91-150 days)

Once information and data is collected from the community and organization assessment phase, I would meet with the Mayor and City Council to develop a Strategic Plan. The

Strategic Plan would be a 3-5 year over-arching roadmap to guide City Council policy-making and resource allocations to move the community forward and achieve its mission and vision. The Strategic Plan would review the community's strengths, weaknesses, opportunities and challenges. The Plan would establish a unity of purpose and common vision, core strategic priorities, select key intended outcomes, and establish performance measures to monitor and measure Plan progress. In sum, the Strategic Plan would examine the present, envision the future, choose how to get there, and make it happen.

Upon the Mayor's, City Council's and community's review and modification, the Strategic Plan would be brought back to the City Council for formal adoption.

The Strategic Plan will require the Mayor, City Council and staff to consider the Plan when developing policies, delivering services, and processing requests for fiscal resources.

#### Alignment (151-240 days)

Upon the Mayor and City Council adoption of the Strategic Plan, I would focus on aligning the Strategic Plans strategic priorities and key intended outcomes with the organizations culture and structure. The following critical steps outline how words would be moved to actions and ensure alignment of the City's policies, budget, and department and staff annual performance plans to the Strategic Plan.

- Create an Annual Business Plan with specific, action-oriented goals, work activities, and performance measures for every City department in alignment with the Strategic Plan.
- Focus Mayor and City Council policy initiatives and discussions on the Strategic Priorities.
- Link senior management and employee performance evaluations and rewards with the Strategic Plan Priorities and Annual Business Plan.
- Monitor the Strategic Plan and Annual Business Plan performance measures to hold everyone accountable for making measurable progress in achieving the Strategic Plan's key intended outcomes and performance measures.
- Communicate quarterly on the plans progress to the Mayor and City Council and the public through a Strategic Plan Progress Report.
- Periodically review the Strategic Plan with the Mayor and City Council to ensure that it continues to focus City government on the issues most important to the community.

#### Public Engagement (ongoing)

Public engagement and input is essential to meeting the needs and expectations of the community. Government officials do not have monopoly on good ideas. It is therefore imperative to involve and engage the public to create a broader marketplace of ideas and approaches to enhance the quality of life and stewardship of the Panama City Beach community.

As I have experienced in other communities I believe Panama City Beach is blessed with very passionate and talented citizens who would be a huge asset to address community issues and move the community forward. To that end I would propose working with the City Council to create Citizen Advisory task forces focused on both current and projected community issues.

To get a baseline of community and regional understanding on issues, and mentor future community leaders, the City may want to create a Leadership Panama City Beach program in partnership with the Panama City Beach Chamber and Visit Panama City Beach. The program would be designed to orient citizens to the basics of Panama City Beach and Bay County government, community history, and key community and regional issues. This would give all the citizen participants a common base line of information and history before collaborating together on community and regional issues.

#### **Strengthen Key Partnerships (ongoing)**

Panama City Beach is interdependent with the regions natural environment, tourist-based economy, workforce supply and demand, housing market, military installations and transportation system. Its challenges and opportunities do not begin or end at its city boundaries. Accordingly, the City must continue to place a premium on both public and private sector partnerships to address its challenges and optimize its opportunities. To that end, I would continue to build on the City's partnerships with Bay County, State of Florida, FEMA, United States military, Panama City Beach Chamber of Commerce, Visit Panama City Beach, neighboring and regional communities, local private businesses, and non-profit organizations. In sum, the City should continue to leverage its finite resources to achieve mutually beneficial outcomes with regional public and private sector partners