

City of Palm Coast, Florida Agenda Item

Agenda Date : April 5, 2022

Department MAYOR AND CITY COUNCIL	Amount
Division	Account
	#
Subject RESOLUTION 2022-XX APPROVING THE CITY MANAGER'S CONTRACT WITH MS. DENISE BEVAN	
Presenter : Mayor and City Council	
Background : UPDATE TO THE MARCH 22, 2022 SPECIAL BUSINESS MEETING This item was heard by City Council at their March 22, 2022 Special Business Meeting. City Council tabled this item to allow for further review by City Council. ORIGINAL BACKGROUND FROM THE MARCH 22, 2022 SPECIAL BUSINESS MEETING At the February 15, 2022 Business Meeting, the City Council voted unanimously to appoint Ms. Denise Bevan as the new City Manager. Ms. Bevan accepted. City Council approved the City Attorney, the City Clerk, and Mayor Alfin (as the Council liaison) to negotiate the terms of the contract to be brought back to Council for consideration at a future business meeting. Attached for Council reference is a salary comparison chart from the Florida League of Cities and the draft contract negotiated with Ms. Bevan.	
Recommended Action : ADOPT RESOLUTION 2022-XX APPROVING THE CITY MANAGER'S CONTRACT WITH MS. DENISE BEVAN	

Municipality	County	Region	Form of Government	2019 Population	Survey Respondent?	What is your municipality's current annual salary for the position of mayor?	What is your municipality's current annual salary for the position of commissioner/councilperson?	If applicable, what is your municipality's current annual salary for the position of manager?
Homestead	Miami-Dade	Southeast	Council-Manager	76,236	1	\$6,000.00	\$4,800.00	\$200,000.00
Boynton Beach	Palm Beach	Southeast	Council-Manager	77,696	1	\$23,823.00	\$19,853.00	\$235,000.00
Deerfield Beach	Broward	Southeast	Council-Manager	79,497	1	\$38,500.00	\$32,132.00	\$200,000.00
Melbourne	Brevard	Central	Council-Manager	83,349	1	\$10,350.00	\$7,475.00	\$189,680.00
Largo	Pinellas	Central	Council-Manager	83,737	1			
Palm Coast	Flagler	Central	Council-Manager	86,768	1	\$11,400.00	\$9,600.00	\$145,000.00
Fort Myers	Lee	Southwest	Council-Manager	87,871	1	\$42,411.20	\$32,635.20	\$205,253.40
Plantation	Broward	Southeast	Council-Strong Mayor	90,354	1	\$123,481.00	\$31,397.00	
Deltona	Volusia	Central	Council-Manager	91,520	1	\$14,187.42	\$10,520.38	\$150,001.28
Sunrise	Broward	Southeast	Council-Manager	93,365	1	\$47,352.00	\$47,352.00	\$216,011.00
Miami Beach	Miami-Dade	Southeast	Council-Manager	93,988	0			
Boca Raton	Palm Beach	Southeast	Council-Manager	94,488	1	\$38,000.00	\$28,000.00	\$281,255.00
Davie	Broward	Southeast	Council-Manager	104,249	1	\$12,828.00	\$12,828.00	\$258,000.00
Lakeland	Polk	Central	Council-Manager	107,552	1	\$44,599.00	\$29,733.00	\$214,271.00
Pompano Beach	Broward	Southeast	Council-Manager	112,058	1	\$40,216.80	\$37,535.47	\$262,159.04
Miami Gardens	Miami-Dade	Southeast	Council-Manager	114,284	0			
West Palm Beach	Palm Beach	Southeast	Council-Strong Mayor	115,176	1	\$150,000.00	\$35,000.00	\$249,000.00
Palm Bay	Brevard	Central	Council-Manager	115,322	1	\$23,145.00	\$11,572.00	\$165,000.00
Clearwater	Pinellas	Central	Council-Manager	116,585	1	\$28,097.00	\$23,414.00	\$209,753.00
Coral Springs	Broward	Southeast	Council-Manager	129,067	1	\$23,501.17	\$18,800.46	\$228,093.50
Gainesville	Alachua	Northeast	Council-Manager	133,068	1	\$44,209.91	\$34,736.22	\$255,000.00
Miramar	Broward	Southeast	Council-Manager	138,837	1	\$43,411.00	\$34,175.00	\$225,000.00

Total:			21,208,589	2,225,067	20	\$765,512.50	\$461,558.73	\$3,888,477.22
Percentage:			statewide population	10.5%	91%			
Average:			10,469,162			\$40,290.13	\$24,292.56	\$216,026.51
Median:			unincorporated popl.			\$38,000.00	\$28,000.00	\$215,141.00

Florida:	21,208,589
Incorporated:	10,739,427
Unincorporated:	10,469,162

Population Data: University of Florida, Bureau of Economic and Business Resesarch, April 2019 Estimates
Note: revenue & expenditure data for Altha, Esto, Gretna, Hampton and Lazy Lake were not yet available.

RESOLUTION 2022-____
CITY MANAGER CONTRACT

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALM COAST, FLORIDA, APPROVING THE TERMS AND CONDITIONS OF THE CONTRACT WITH DENISE BEVAN FOR CITY MANAGER; AUTHORIZING THE MAYOR TO EXECUTE THE CONTRACT; PROVIDING FOR SEVERABILITY, PROVIDING FOR CONFLICTS, PROVIDING FOR IMPLEMENTING ACTIONS, AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, at the February 15, 2022 Business Meeting, City Council selected Ms. Denise Bevan as the City Manager of the City of Palm Coast; and

WHEREAS, Ms. Denise Bevan desires to enter into a contract with the City of Palm Coast to be the City Manager; and

WHEREAS, City Council of the City of Palm Coast desires to enter into a contract with Ms. Denise Bevan as the City Manager.

NOW, THEREFORE, IT IS HEREBY RESOLVED BY THE CITY OF PALM COAST, FLORIDA:

SECTION 1. APPROVAL OF CONTRACT. The City Council of the City of Palm Coast hereby approves the terms and conditions of the contract with Ms. Denise Bevan, as the City Manager, as attached hereto and incorporated herein as reference by Exhibit “A.”

SECTION 2. AUTHORIZATION TO EXECUTE. The Mayor is hereby authorized to execute the necessary documents.

SECTION 3. SEVERABILITY. It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases of this Resolution are severable, and if any phrase, clause, sentence, paragraph or section of this Resolution shall be declared unconstitutional by the valid judgment or decree of a court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Resolution.

SECTION 4. CONFLICTS. All resolutions or parts of resolutions in conflict with any of the provisions of this Resolution are hereby repealed.

SECTION 5. IMPLEMENTING ACTIONS. The City Mayor is hereby authorized to take any actions necessary to implement the action taken in this Resolution.

SECTION 6. EFFECTIVE DATE. This Resolution shall become effective immediately upon its passage and adoption.

DULY PASSED AND ADOPTED by the City Council of the City of Palm Coast, Florida, on the 5th day of April 2022.

ATTEST:

CITY OF PALM COAST

VIRGINIA A. SMITH, CITY CLERK

DAVID ALFIN, MAYOR

APPROVED AS TO FORM AND LEGALITY:

NEYSA BORKERT, CITY ATTORNEY

Attachment: Exhibit A-Bevan Contract

PALM COAST CITY MANAGER
EMPLOYMENT AGREEMENT

THIS PALM COAST CITY MANAGER EMPLOYMENT AGREEMENT, hereinafter referred to as “Agreement”, is made and entered into on the 22nd day of March, 2022, by and between the **CITY OF PALM COAST**, a municipality and political subdivision of the State of Florida, by and through its City Council, hereinafter referred to as “City”, and, **Denise Bevan**, hereinafter referred to as “City Manager”, both of whom constitute the “Parties” hereto.

WITNESSETH:

WHEREAS, the City is desirous of obtaining the employment of Denise Bevan as its City Manager upon the terms and conditions, and with the compensation and benefits, set forth in this Agreement; and

WHEREAS, Denise Bevan has indicated her willingness to accept the responsibilities and render specific performance to the City as City Manager; and

WHEREAS, both Parties understand that it is mutually beneficial to have a contract of employment between the City and the City Manager setting forth agreements and understandings which: (1) provide the inducement for Denise Bevan to accept the job of City Manager, (2) make possible full work productivity by assuring Denise Bevan’s morale and peace of mind with respect to future security, and (3) provide a just means for terminating the City Manager’s services at such time as the City may desire to terminate her employment.

NOW, THEREFORE, in consideration of the mutual covenants and promises which the Parties set forth below, the City and the City Manager agree as follows:

1. **EMPLOYMENT OF CITY MANAGER.** The City hereby employs Denise Bevan as its City Manager and Denise Bevan hereby accepts such employment upon the terms and conditions set forth herein. Denise Bevan is a current resident of Palm Coast, as required by Article V, Section 2(b) of the City of Palm Coast Charter.
2. **TERM OF AGREEMENT.** The term of the City Manager’s employment is indefinite subject to the conditions herein.
3. **EFFECTIVE DATE.** The effective date of this Agreement is March 22, 2022.
4. **DUTIES.** The City Manager will perform all duties normal and customary for the position of a City Manager, plus all duties imposed on her by the City’s Charter, applicable laws, ordinances, regulations, policies of the City Council, and all other proper and legally permissible duties as she may be directed to perform by the City

Council. The City Manager agrees to perform the functions of her office in a loyal, efficient, competent and professional manner at all times.

5. **COMPENSATION.**

- a. Beginning March 22, 2022, the City Manager shall receive an annual salary of \$175,000.00 (“Base Salary”) which shall be paid in accordance with the City’s pay schedule for all employees. Annual adjustments will be in accordance with the annual performance review as stated in Paragraph 9.
- b. The City will contribute, immediately upon employment, on a per payroll basis, to the City’s Defined Contribution compensation plan 401(a), for so long as the City Manager is employed by the City, a sum equal to seventeen percent (17%) of the City Manager’s base salary, in accordance with the plan documents, as may be amended from time to time, not to exceed the maximum allowable by law. The City Manager shall be 100% vested in all funds contributed to the 401(a).
- c. In addition to the 401(a) plan, the City offers a 457(b) deferred compensation plan and provides for a 2% match of an employee’s contribution provided the employee contributes a minimum of 2% of their salary. The City’s retirement plans will be administered in accordance with the plan documents. In the event of a conflict between this Agreement and the plan documents, the plan documents shall govern.
- d. The City Manager’s compensation shall include a monthly car allowance of \$500.
- e. The City Manager shall be provided a data/phone device or stipend, as may be amended from time to time in accordance with City policy.
- f. Beginning on October 1, 2022, the City Manager shall receive annual cost of living increases at the same times and in the same percentage as other City of Palm Coast employees receive for the term of this Agreement. Further, the City Manager shall receive merit increases consistent with those approved by the City Council for City of Palm Coast employees generally.

6. **BENEFITS.** City Manager shall receive and continue to be eligible for the City’s group health and benefits program (the Plan) at the benefit levels as the Assistant City Manager and other City department heads as provided by the City’s Personnel Policies and Procedures, the Charter, or City ordinances. The Plan currently includes medical/health insurance plan, short-term disability, long-term disability, dental, life insurance, and vision insurance. The City agrees to pay the full premiums for the City

Manager and her eligible dependents. Workers' compensation coverage is currently effective and shall remain so until termination of this Agreement. In the event of a conflict between this Agreement and the Plan or respective plan documents, the Plan and plan documents, as may be amended from time to time, shall govern.

- a. Vacation leave shall continue to accrue, on a per pay period basis, as other City department heads as provided by the City's Personnel Policies and Procedures, the Charter, or City ordinances. The City shall pay the City Manager for any accumulated and unused paid leave upon termination of this Agreement up to 320 hours.
- b. Sick leave shall continue to accrue, on a per pay period basis, as other City department heads as provided by the City's Personnel Policies and Procedures, the Charter, or City ordinances. However, upon termination of this Agreement, the City will pay the City Manager up to a maximum of 320 hours.
- c. The City Manager's vacation and sick time previously earned shall not lapse and shall continue to accrue during her term as City Manager.

7. **TERMINATION OF EMPLOYMENT.** This Agreement may be terminated as follows:

- a. This Agreement may be terminated by a majority vote of the full City Council for cause, as per the City Charter. In this Agreement, "Cause" is defined to mean a conviction of a felony; an intentional act of felonious embezzlement or theft from the City that occurs in the course of the City Manager's employment with the City; continued willful failure to substantially perform her duties as City Manager (other than as a result of incapacity due to physical or mental illness); or willful conduct that is determined to be materially injurious to the City by the City Council. For purposes of this Agreement, an act, or failure to act, shall not be deemed willful or intentional, as those terms are utilized herein, unless it is done, or omitted to be done, by the City Manager in bad faith or without a reasonable belief that her action or omission was in the best interest of the City. If the City Council terminates City Manager for cause pursuant to this paragraph 7.a., the City Manager's sole remedy is an action in a court of appropriate jurisdiction and venue. If said court determines that the City Council did not properly terminate City Manager for cause under this Agreement, the Parties agree that such termination from employment shall be deemed a termination without cause, and the provisions of paragraph 8.a. will apply.
- b. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the City Council by a majority vote of the full City

Council as per the City Charter, to terminate the employment of the City Manager without cause at any time, subject to the Severance Pay provisions as set forth in paragraph 8 of this Agreement.

- c. The City Council may only terminate this Agreement in a manner prescribed by the City Charter.
- d. The City Manager may terminate this Agreement at any time, but only after providing written notice to the City of her intent to terminate, and delivering the notice to the City Council not less than thirty (30) days before the proposed date of termination. City Council may agree to a lesser notice period if warranted.
- e. In the event that the City Manager is charged, by indictment or information, with a felony crime, the City, at its sole discretion, may suspend the City Manager from her duties with pay immediately. Upon a conviction of any such charge, this Agreement, at the sole discretion of the City, may be terminated and the City Manager discharged from her duties consistent with the terms of this Agreement.
- f. If the City Council, citizens or legislature acts to amend any provisions of the Palm Coast Charter or Code of Ordinances pertaining to the role, powers, duties, authority, responsibilities of the City Manager's position that substantially changes the form of government, the City Manager shall have the right to declare that such amendment constitutes termination.

8. **SEVERANCE PAY.**

- a. In the event employment is terminated under Section 7.b. without cause, the City agrees to pay the City Manager as follows:
 - i. In accordance with City policy, time accrued by the City Manager, and other accrued benefits due the City Manager under the terms of this Agreement.
 - ii. The City shall pay severance in one lump-sum, inclusive of all forms of compensation, hereinafter referred to as "Severance Salary Pay", within forty-five (45) days from the date of separation if the City Manager agrees in writing to hold the City harmless and release the City from all liability relative to the termination of employment.
 - iii. Severance Salary Calculation. If terminated at any time after Effective Date of this Agreement, the City pays the City Manager the equivalent of one hundred percent (100%) of

twenty weeks base salary compensation minus all applicable taxes and deductions.

- iv. In order to maintain health and dental insurance, the City will provide a lump sum, equivalent to the continuation cost of 12 (twelve) months of coverage at the premium rate in effect at the time of termination. The City Manager may elect to use the lump sum for the purchase of continuation under COBRA, or may elect to purchase other coverage of her choosing. Coverage offered under COBRA shall be equal to those offered by the City to full-time employees, and may be amended from time to time.
 - v. All retirement benefits and the deferred compensation plan remain the property of the City Manager in accordance with the plan documents.
- b. If this Agreement is terminated for "Cause" as defined in Paragraph 7.a., the City will have no obligation to pay Severance Salary as set forth in Paragraph 8.a.iii. However:
- i. The City will pay, in accordance with City policy, accrued vacation, not to exceed 320 hours and up to 320 hours of accrued sick leave, plus all retirement benefits and other accrued benefits as are due to the City Manager under the terms of this Agreement;
 - ii. All retirement benefits and deferred compensation plan(s) shall remain the property of the City Manager.
- c. Severance Salary Pay will not be paid if the City Manager voluntarily resigns or retires from employment. In those circumstances, the City Manager shall be entitled to:
- i. In accordance with City policy, accrued vacation, not to exceed 320 hours for vacation and up to 320 hours for accrued sick leave, plus all retirement benefits and other accrued benefits as are due to the City Manager under the terms of this Agreement.
 - i. All retirement benefits and deferred compensation plans which remain the property of the City Manager.
 - ii. In the event of retirement, the City Manager shall be eligible for all such City programs as are available to other general-employee retirees of the City.

9. **PERFORMANCE EVALUATION.** The City, acting through the City Council, has the authority at City Council's discretion to review and evaluate the performance of the City Manager annually on the anniversary date of the execution of this Agreement or shortly thereafter but no later than October 1. The review and evaluation criteria will be based upon the Powers and Duties of the City Manager outlined in the City Charter. The City's evaluation of the City Manager shall be provided to the City Manager in writing within 30 days of the review and evaluation of the City Manager's performance.

10. **PROFESSIONAL ASSOCIATIONS AND DEVELOPMENT.**

- a. The City agrees to budget and pay for ordinary professional dues and subscriptions of the City Manager which are necessary for her participation in national, regional, state and local associations, and organizations necessary and desirable for her continued professional participation, growth and advancement.
- b. The City agrees to budget and pay for travel expenses of the City Manager pursuant to City policy, as it may be amended from time to time, while on authorized City business or while attending functions as the representative of or on behalf of the City.
- c. The City agrees to budget and pay for travel and living expenses of the City Manager for short courses, institutes, seminars, and conferences including, but not limited to ICMA and FCCMA annual conferences that are necessary for her professional development and for the benefit or the City as budgeted, consistent with then-current City policy governing such travel expenses.

11. **LEGAL REPRESENTATION.** At the City's expense, it will provide City Manager with legal representation, through the office of the City Attorney unless a conflict exists, when City Manager is party to litigation based upon her position or employment with the City or litigation based upon alleged acts or omissions arising out of or in the course and scope of her employment at the City. Such legal representation will also be provided in instances where litigation has commenced after termination of employment until the litigation has ended. The City shall have the authority to settle any such claim or litigation within the scope of the City Manager's employment and pay the amount of the settlement or judgement rendered thereon. The legal representation described herein does not include litigation arising from dismissal of the City Manager from employment by the City Council.

12. **INDEMNIFICATION.** The City shall defend, hold harmless and indemnify the City Manager against any tort, professional liability claim, demand, or other legal action, whether groundless or otherwise, arising from any act, either alleged or real, or

omission which may occur within the scope of the City Manager's employment and performance as City Manager to the extent allowed by law. The City may compromise and settle any claim or suit and pay the amount of any settlement or judgment rendered thereon, together with attorneys' fees associated therewith.

13. **BONDING.** The City shall bear the full cost of any fidelity or other bonds required of the City Manager under any law or ordinance.

14. **NO REDUCTION OF BENEFITS.** The City shall not, at any time during the term of this Agreement, reduce the salary, compensation, or other financial benefits of the City Manager, except to the degree an across-the-board reduction applies to all other employees of the City.

15. **SEVERABILITY.** All agreements and covenants herein are severable, and in the event that any of them shall be held invalid by a court of competent jurisdiction, this Agreement shall be interpreted as if such invalid agreements or covenants were not contained herein.

16. **COMPLETE AGREEMENT IN WRITTEN DOCUMENT.** This written Agreement embodies the whole Agreement between the Parties, and there are no inducements, promises, terms, conditions, or obligations made or entered into by either the City or the City Manager other than contained herein. This Agreement shall inure to the benefit of the estate of the City Manager.

17. **MODIFICATION AND AMENDMENT.** Except as otherwise provided herein, this Agreement may not be modified or waived unless in writing and duly executed by both Parties to this Agreement, and any amendments hereto or waiver of material requirements herein shall be binding against the City only if expressly approved by the City Council with the same formality as the adoption of this Agreement.

18. **GOVERNING LAW.** This agreement shall be governed by the laws of the State of Florida and by the Ordinances, Resolutions, and Policies of the City not prohibited thereby.

19. **VENUE.** For any actions concerning this agreement venue shall be in the Seventh Judicial Circuit in and for Flagler County, Florida.

20. **COSTS AND ATTORNEY'S FEES.** In the event the City or City Manager brings an action to enforce this Agreement by court proceeding or otherwise, then the prevailing party shall be entitled to recover from the other party all costs incurred, together with reasonable attorney's fees at all levels, including appeals.

IN WITNESS WHEREOF, the Parties have made and executed this Agreement on the respective dates under each signature. Palm Coast, through its City Council, authorized the City to execute this Agreement on the ____ day of _____, 2022.

CITY OF PALM COAST, FLORID

By: _____
David Alfin, Mayor

Date: _____

ATTEST:

City Clerk

By: _____
Virginia A. Smith, City Clerk

Date: _____

CITY MANAGER

By: _____
Denise Bevan

Date: _____