

RESOLUTION 2019-____
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 MATTHEW MORTON 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 March 12, 2019 Special Meeting, City Council selected Matthew Morton as the City Manager of the City of Palm Coast; and

WHEREAS, the Matthew Morton 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 Matthew Morton 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 Mr. Matthew Morton, 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 All resolutions or parts of resolutions in conflict with any of the provisions of this Resolution are hereby repealed.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 Manager 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 19th day of March 2019.

CITY OF PALM COAST, FLORIDA

ATTEST:

MILISSA HOLLAND, MAYOR

VIRGINIA A. SMITH, CITY CLERK

Attachment: Exhibit A –Contract with Matthew Morton as City Manager

Approved as to form and legality

William E. Reischmann, Jr., Esq.
City Attorney

**PALM COAST CITY MANAGER
EMPLOYMENT AGREEMENT**

This Agreement is made and entered into on the _____ day of _____, 2019, 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, Matthew Morton, hereinafter referred to as "City Manager", both of whom constitute the "Parties" hereto.

WITNESSETH:

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

WHEREAS, Matthew Morton has indicated his 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 Matthew Morton to accept the job of City Manager, (2) make possible full work productivity by assuring Matthew Morton'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 his 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 Matthew Morton as its City Manager and Matthew Morton hereby accepts such employment upon the terms and conditions set forth herein. Matthew Morton is not a current resident of Palm Coast, but agrees to make every effort to relocate, but no later than six months from the Effective Date.
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 is April 8, 2019.
4. **DUTIES.** The City Manager will perform all duties normal and customary for the position of a City Manager, plus all duties imposed on him by the City's Charter, applicable laws, ordinances, regulations, policies of the City Council, and all other proper and legally permissible duties as he may be directed to perform by the City Council. The City Manager agrees to perform the

functions of his office in a loyal, efficient, competent and professional manner at all times.

5. **COMPENSATION.**

- a. Beginning April 8, 2019, the City Manager shall receive an annual salary of \$145,000.00 ("Base Salary") which shall be paid in accordance with the City's pay schedule for all employees. Annual adjustments provided to all other employees as part of the budget process that are not merit based shall be provided at the same percentage as all other employees of City Manager's base salary.
- 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 thirteen percent (13%) 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 \$400.00.
- e. The City Manager shall be provided a data/phone stipend, as may be amended from time to time in accordance with City policy. Current stipend amounts provided are: cellular-\$35/month and \$200 equipment reimbursement provided once every twenty-four months upon submission of appropriate documentation of purchase.

6. **BENEFITS.** Except as hereinafter provided, in accordance with City policy, the City Manager will be eligible to participate in the City's group health and benefits program (the Plan) beginning the first day of the month following 30-days of employment. This program will include the same benefits as is offered to all other City employees and may be subject to change. 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 his eligible dependents. Workers' compensation coverage is effective as of the date of employment. In the event of

a conflict between this Agreement and the respective plan documents, the plan documents, as may be amended from time to time, shall govern.

- a. Vacation leave is accrued, on a per pay period basis, at 15 days annually. Any hours accumulated over 320 hours is subject to the annual leave provisions of the Personnel Policies and Procedures. 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 is accrued, on a per pay period basis, at 12 days annually. Sick leave can continue to be accumulated. However, upon termination of this Agreement, the City will pay the City Manager up to a maximum of 320 hours.
- c. The City shall make a one-time initial credit of five (5) days to the City Manager's vacation leave bank, in addition to the regular accrual amount.

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

- a. This Agreement may be terminated by the City Council for cause. 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 his 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 his action or omission was in the best interest of the City. If the City Council terminates City Manager for cause pursuant to this paragraph 7a, 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 8a will apply.
- b. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the City to terminate the employment of the City Manager without cause at any time, subject to the Severance Pay provisions as set forth in this Agreement. The City Council may only terminate this Agreement in a manner prescribed by the City Charter.

- c. The City Manager may terminate this Agreement at any time, but only after providing written notice to the City of his intent to terminate, and delivering the notice to the City Council not less than thirty (30) days before the proposed date of termination.
- d. 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 his duties with pay. 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 his duties consistent with the terms of this Agreement.

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, 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 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 his 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, shall review and evaluate the performance of the City Manager annually on the anniversary date of the execution of this Agreement or shortly thereafter. The review and evaluation criteria will be based upon mutually agreed upon criteria and methods established by the City Manager and the City Council. 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 his participation in national, regional, state and local associations, and organizations necessary and desirable for his 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, and seminars that are necessary for his professional development and for the benefit of the City as budgeted, consistent with then-current City policy governing such travel expenses.

11. **MOVING AND RELOCATION EXPENSES**

- a. City Manager agrees to establish residence within the municipal boundaries of the City of Palm Coast within six months of April 8, 2019, and thereafter to maintain residence within the City of Palm Coast.
- b. City shall pay directly for the expenses of moving City Manager and his family and personal property, and one vehicle, from Duvall, Washington to Palm Coast. Said moving expenses include packing, moving, storage costs, unpacking, and insurance charges. City Manager shall obtain and provide the Employer three (3) written quotations for such expenses. The City shall pay the lowest bid for the moving expenses to move the City Manager to Palm Coast.
- c. City shall provide the City Manager \$6,000.00, in addition to moving expenses, to facilitate the relocation and other facets of the transition process.

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.

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SIGNATURE PAGE TO FOLLOW

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 _____, 2019.

CITY OF PALM COAST, FLORIDA

By: _____
Milissa Holland, Mayor

Date: _____

ATTEST:

City Clerk

By: _____
Virginia A. Smith, City Clerk

Date: _____

CITY MANAGER (effective 4/8/2019)

By: _____
Matthew Morton

Date: _____