



**CITY COUNCIL**

April 11, 2022

***Special Meeting***

1. Call to Order - 5:15 P.M. – City Hall Council Chambers
2. Recitation - Pledge of Allegiance to the Flag of the United States of America
3. Roll Call
4. New Business – Consideration and possible approval of City Manager employment contract
5. Miscellaneous Public Comment
6. Adjournment

**Alternatively, join the meeting via the Zoom platform**

<https://us02web.zoom.us/j/87612710978>

Meeting ID: 876 1271 0978

+1 646 558 8656 US (New York)

Persons with disabilities who require assistance in order to participate in the electronic public meeting should contact the City Clerk at the earliest opportunity by emailing [aterry@petoskey.us](mailto:aterry@petoskey.us) or by calling 231-347-2500 to request assistance.

Persons interested in addressing the City Council during the meeting under public comment period can press the “raise hand” button or send a chat message in Zoom or by phone press \*9.

Public meetings are being monitored and violations of statutes will be prosecuted.



**BOARD:** City Council

**MEETING DATE:** April 11, 2022      **DATE PREPARED:** April 6, 2022

**AGENDA SUBJECT:** City Manager Employment Agreement

**RECOMMENDATION:** That City Council approve the proposed agreement

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**Background** The City Attorney, MML Recruiter and Director of Finance have negotiated a City Manager employment agreement with Shane Horn. The agreement is now being presented to City Council for consideration.

**Excerpts from the agreement**

Annual salary of \$152,000

Moving and relocation expenses reimbursed up to the amount of \$10,000

Paid Vacation of 4 weeks annually

Standard City Benefits:

Personal leave time 56 hours annually

Floating holidays 24 hours annually

Life insurance \$25,000

Short term disability policy

Retirement – 401 Pension Plan 14% City contribution

Vehicle allowance - \$500 per month

Cellphone reimbursement \$40 per month

Severance pay – 6 months salary

**Recommendation** For City Council to approve the proposed City Manager employment agreement.

at  
Enclosure

**EMPLOYMENT CONTRACT  
BETWEEN  
THE CITY OF PETOSKEY  
AND  
SHANE HORN**

THIS EMPLOYMENT CONTRACT (“Agreement”) is made and entered into this \_\_\_\_ day of April, 2022, by and between the CITY OF PETOSKEY, a Michigan municipal corporation, (“City”), with offices at 101 East Lake Street, Petoskey, Michigan 49770 and SHANE HORN, (“Employee” or “City Manager”), whose current address is 9250 Salem Woods Drive, Lakeland, TN 38002.

WHEREAS the parties have negotiated all of the terms and conditions of the Employee’s employment with the City and desire to memorialize this in writing.

In consideration of the mutual promises contained within, the parties agree to the following terms and conditions of employment:

**ARTICLE I  
EMPLOYMENT**

The City Manager is appointed by the City Council. Under the City Charter, the City Manager serves at the will and the pleasure of the City Council. The Employee is an “employee at will” and nothing herein shall be construed to create a “just cause” employment contract. The City Council has offered to appoint Employee as its City Manager to perform the duties described in ARTICLE III of this Agreement, subject to the terms and conditions set forth in this Agreement, and the Employee accepts such offer, subject to the terms and conditions set forth in this Agreement.

**ARTICLE II  
TERM OF CONTRACT**

2.1 The term of employment under this Agreement shall commence on or before June \_\_\_\_ 2022 (“Commencement Date”), and shall continue until terminated by either party.

2.2 The term of this Agreement is not limited to a particular period of time, but shall continue so long as Employee continues to be employed by City as its City Manager and this Agreement may, from time to time, be amended or modified by the parties by written amendments signed by both parties.

2.3 Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the City to terminate the services of the City Manager, with or without cause, subject to the provisions hereinafter set forth.

2.4 Employee understands that he may resign from employment as City Manager, subject to the provisions of ARTICLE VII.

**ARTICLE III  
DUTIES**

3.1 Charter and Council Assigned Duties. Effective the Commencement Date, Employee is employed as City Manager of the City of Petoskey to perform the functions and duties specified in Chapter Five of the Charter of the City of Petoskey, the City Code and the Zoning Code, and to perform such other legally permissible and proper duties and functions as the City Council may, from time to time assign. The Employee shall at all times, perform such duties in an efficient and conscientious manner, exercising his discretion, judgment and authority in the best interests of the City.

3.2 Boards and Commissions. From time to time, the City Council may appoint the Employee to serve or, as a result of his employment as City Manager, the Employee may serve in other offices or on other boards, commissions and other bodies with the approval of City Council, the Employee acknowledges and agrees that his terms of such offices or on such bodies shall be co-terminus with his employment as City Manager, such that the termination of his employment as City Manager, whether by the Employee's resignation or by City Council action, shall serve as his resignation from all other such offices and bodies.

3.3 Notice to Council of Absence. The City Manager shall give reasonable advance notice to the City Staff and to the Mayor of the City (or his or her designee) whenever he intends to be out of the office for a period longer than 2 previously scheduled work days.

3.4 Exclusive Employment. Employee's employment as City Manager shall be Employee's exclusive employment, and Employee shall devote his full energies and efforts to the performance of his duties as City Manager. Employee agrees to remain in the exclusive employ of the City while this Agreement is in effect. Except as otherwise provided in this Agreement, the Employee shall not during the term of this Agreement be engaged in any other business activity or accept any employment, whether or not such business activity is pursued for gain, profit, or other pecuniary advantage, without prior approval of the City Council.

3.5 Compliance. The Employee shall in the performance of his duties comply with all applicable laws, rules, regulations, orders, directives and resolutions of any agency or entity of competent jurisdiction.

3.6 Hours. The parties realize that the position of City Manager requires the City Manager holding such position to work weekends, evenings, and other irregular hours at locations other than the City's administrative offices and during hours that the City offices are not open. It is understood and agreed that the City Manager shall work whatever hours that may be necessary in order for him to fulfill the requirements of the position of City Manager, as described herein and otherwise, but in any event, no less than forty (40) hours per week.

**ARTICLE IV  
EVALUATION**

4.1 Annual Evaluation. The City Council will review the performance of the City Manager as City Manager and of the performance of his duties under this Agreement on an annual basis. Such evaluations will be in accordance with specific criteria developed jointly by

the City and the Employee. To the extent permitted by law, the Employee may request the evaluation be conducted in an executive or closed session. At that time, contract issues may be addressed and this Agreement amended as mutually agreed upon. The City Council shall have the right, in addition, to evaluate the Employee at any other time during the term of this Contract based upon the foregoing criteria.

## **ARTICLE V COMPENSATION**

5.1 Effective the Commencement Date, the Employee shall receive an annual salary of One Hundred Fifty-two Thousand dollars (\$152,000) payable bi-weekly or in other installments that are consistent with the City's regular payroll practices and procedures. For the first calendar year of employment, the annual salary shall be prorated for the number of weeks worked..

5.2 The compensation for subsequent years shall be mutually agreed upon between the Employee and the City Council.

5.3 Moving and Relocation Expenses. The City shall reimburse Employee for actual moving and relocation expenses not to exceed Ten Thousand Dollars (\$10,000) to assist Employee in moving to Petoskey to assume his job duties. This is a one-time benefit, which Employee agrees to reimburse City for in full, if he voluntarily leaves the position of City Manager before he has completed 12 months of employment.

## **ARTICLE VI BENEFITS**

6.1 City Manager shall be entitled to health insurance and all other benefits afforded from time to time to other non-union supervisory City employees as identified in the City's Personnel Policy Handbook. Currently such benefits include the following;

6.1.a. Employee will be entitled to take four (4) weeks of paid vacation per calendar year. For the first calendar year of employment, the vacation will be prorated based on the number of weeks worked. Forty (40) hours of vacation days may be carried over into the subsequent calendar year. Employee will not be compensated for unused vacation time.

6.1.b. Employee will be entitled to 56 hours of personal leave time (PLT) annually. The City will buy back unused PLT remaining as of December 1 at employee's current wage rate.

6.1.c. City will provide the same short-term disability insurance policy for Employee that is available to all City staff.

6.1.d. The City will provide term life and accidental death and dismemberment insurance coverage in the amount of \$25,000.

6.1.e. The City will provide reimbursement for a cell phone, per City policy, which currently is in the amount of \$40/month.

6.2 Retirement. The City Manager of the City is eligible for benefits under the City's International City Managers Association (ICMA) 401 Pension Plan and 457 Deferred Compensation Plans. The City will provide the City Manager with ICMA retirement benefits equal to fourteen percent (14%) of the Employee's base compensation. The Employee may, at his discretion, elect to assign a percentage of the ICMA compensation to either a 401 Pension Plan or 457 Deferred Compensation Plan.

Employee may also elect to make additional voluntary contributions to an ICMA 457 Deferred Compensation Plan on a pretax basis through a payroll deduction.

6.3 Seminars and Dues. The City will pay for the costs of seminars and meetings attended by the City Manager that pertain to work-related subjects, subject to prior budgetary approval by the City Council. The City also agrees to pay annual dues for the City Manager's membership in the International City Management Association and the Michigan Local Government Management Association.

6.4 Vehicle. The City will pay the City Manager a vehicle allowance of up to Five Hundred dollars (\$500.00) per month for use of an automobile utilized in the performance of City Manager functions during the time he is actively working during the term of his Agreement as City Manager. This payment is in lieu of mileage or any other method of reimbursement. The City manager shall use his vehicle for all City business that he performs. City Manager at all times shall have a valid, unrestricted driver's license. City Manager is required to obtain a Michigan Driver's License upon establishing residency in Michigan.

## **ARTICLE VII TERMINATION**

7.1 Notice by City Manager. This Agreement may be terminated by the Employee at any time; provided, however, that the Employee shall give the City a minimum of sixty (60) days notice in advance. No severance pay will be due or payable to the Employee if the Employee terminates employment or is unable to continue to work or perform job duties as a result of medical reasons.

7.2 Notice by City Council of At-Will Termination. This section does not apply if the Employee is terminated for just cause. This Agreement may be terminated by the City Council at any time; provided if the Employee is willing and able to perform the duties of City Manager, then and in such event, the City agrees to pay the Employee severance pay, equal to a portion of Employee's base salary, after deducting payroll taxes and other required and/or employee authorized deductions. Severance pay means six (6) months of base salary.. The City shall not, however, be required to pay any severance payments to Employee until such time that he executes a full and complete release in a form acceptable to the City. City will also continue Employee's Health Insurance benefits as currently available to other City Employees for the six month period, provided Employee timely elects continuation health coverage in the manner provided by the COBRA notice that he will receive.

7.3 Termination for Just Cause. Just Cause is defined as: (a) the Employee's conviction for a felony or misdemeanor (b) for conduct demonstrating willful or wanton disregard of an employer's interests and found to be a deliberate violation of the standards of behavior which the employer has a right to expect of his or her employee; or (c) carelessness or negligence to a degree that manifests culpability, wrongful intent, or evil design. When employment is terminated for cause, or when the Employee voluntarily resigns, then the City shall have no obligation to provide any severance pay.

## **ARTICLE VIII LIABILITY AND INDEMNIFICATION**

8.1 Liability. The City shall hold the Employee harmless from, indemnify him for and defend him against any threatened, pending or completed claim, demand, suit, settlement, judgment award or civil, criminal, administrative or investigative proceeding or action which results from the employee's acting within the scope of his authority during his employment with the City. The Employee shall cooperate and provide all reasonable assistance in liability matters involving the City. In the event of the failure of the Employee to provide such cooperation or correct such failure after written notice, the City shall be under no obligation to indemnify or hold the Employee harmless as provided above. This section shall survive the termination of this Agreement.

8.2 Liability Insurance. The City shall maintain liability insurance during the term of Employee's employment which provides coverage for the Employee when he is acting within the scope of his authority. The City may, at its sole discretion, compromise, settle, and pay such claim before or after the commencement of any action.

8.3 Bonding. The City shall pay the full cost of any fidelity or other bonds required of the Employee under any law or ordinance.

## **ARTICLE IX MISCELLANEOUS**

9.1 Assignment. Neither party may assign its rights, duties or interests in this Agreement without the prior written consent of the other parties.

9.2 Amendments. This Agreement contains all of the terms and conditions of the contractual relationship between the parties, and no amendments or additions to this Agreement shall be binding unless they are in a writing entitled "Amendment to Employment Contract between the City of Petoskey and Shane Horn" and signed by both parties.

9.3 Binding Effect. This Agreement shall be binding upon the parties, their legal representatives, successors, and assigns.

9.4 Representations and Warranties. City Manager represents and warrants to the City that he is free to enter into this Agreement and that he has no prior or other obligations or commitments of any kind to anyone that would in any way hinder or interfere with his acceptance of, or the full, uninhibited and faithful performance of his employment under or the exercise of his best efforts as an employee of the City.

9.5 Entire Agreement. This Agreement abrogates and takes the place of all prior employment contracts and/or understandings that may have been made by the City.

9.6 Headings. The captions or headings of this Agreement are for convenience only and in no way define, limit, or describe the scope or intent of this Agreement or any of its sections, nor do they in any way affect this Employment Agreement.

9.7 Notices. Any notices shall be made in writing to the current addresses known to the parties, as indicated by notice, and shall be made by personal delivery or by postage prepaid United States first-class mail and shall be deemed completed when actually received or, if by first-class mail, three (3) business days after mailing.

9.8 Jurisdiction and Venue. This Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Michigan. The parties agree Jurisdiction and Venue of any actions arising out of this Agreement, is proper in Emmet County.

9.9 Severability. The invalidity of all or any part of any sections, subsections, or paragraphs of this Agreement shall not invalidate the remainder of this Agreement or the remainder of any paragraph or section not invalidated unless the elimination of such subsections, sections, or paragraphs shall substantially defeat the intents and purposes of the parties.

**IN WITNESS WHEREOF**, the parties have executed this Agreement as of the Effective Date set forth on the first page of this Agreement.

**CITY  
CITY OF PETOSKEY**

By:

Date signed:

\_\_\_\_\_  
John Murphy, Mayor

By:

Date signed:

\_\_\_\_\_  
Alan Terry, City Clerk

**EMPLOYEE**

Date signed:

\_\_\_\_\_  
SHANE HORN