

## **TOWN MANAGER EMPLOYMENT AGREEMENT**

THIS TOWN MANAGER EMPLOYMENT AGREEMENT (this "Agreement") is made and entered into this 13th day of July, 2021, by and between the TOWN OF FRISCO, COLORADO, a home rule municipality, hereinafter called the "Town," and Anthony O'Rourke, hereinafter called "Manager."

### **WITNESSETH:**

WHEREAS, the Town desires to employ the services of Manager as Town Manager of the Town of Frisco, Colorado as provided by the Frisco Charter; and

WHEREAS, it is the desire of the Town to provide certain benefits, establish certain conditions of employment and to set working conditions of Manager; and

WHEREAS, Manager desires to accept employment as Town Manager of the Town of Frisco.

NOW, THEREFORE, IN CONSIDERATION of the mutual covenants herein contained, the parties agree as follows:

#### **1.0     Employment and Duties.**

1.1     Town hereby agrees to employ Manager, and Manager hereby accepts employment, as Town Manager of the Town of Frisco, to perform the functions and duties specified in the Charter of the Town of Frisco and to perform such other legal and proper duties and functions as the Town Council shall assign.

1.2     The parties agree that the terms of this Agreement do not supersede the provisions of the Home Rule Charter of the Town of Frisco, and to the extent they do conflict with the Home Rule Charter, the Home Rule Charter shall prevail. The parties also agree that to the extent this Agreement is in conflict with the provisions of the Frisco Town Code or Personnel Code, this Agreement shall prevail.

1.3     The Town Manager shall have the authority and responsibility to carry out the duties of the position as generally described in the Home Rule Charter of the Town of Frisco, Title VII, Town Administration. The Town Manager shall keep the Mayor and Town Council informed of proposed changes to organizational operations.

#### **2.0     Termination of Employment Agreement and Term of this Agreement.**

2.1     The term of this Agreement shall commence as of August 2, 2021 and shall continue for an indefinite period, Manager to hold office at the pleasure of a majority of the Town Council, until this Agreement is terminated as provided herein or by mutual agreement of the parties.

2.2 Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the Town Council to terminate the services of Manager at any time and for any reason, subject only to the provisions set forth in § 3.0, paragraphs 3.1 and 3.3 of this Agreement.

2.4 Nothing in this Agreement shall prevent, limit or otherwise interfere with Manager's right to resign at any time, subject only to the provisions set forth in § 3.0, paragraph 3.4 of this Agreement.

### 3.0 Termination and Severance Pay.

3.1 If the Manager's employment is terminated by the Town Council within the first 365 days of the Manager's employment, and such termination is during such time as Manager is willing and able to perform the duties of the Town Manager, then in that event the Town agrees to continue payment of salary and all benefits hereunder and pursuant to the Personnel Code for a period of three (3) months from the effective date of termination. In the event that the Manager's employment is terminated by the Town Council after the Manager has been employed for 365 days, and such termination is during such time as Manager is willing and able to perform the duties of the Town Manager, then in that event the Town agrees to continue payment of salary and all benefits hereunder and pursuant to the Personnel Code for a period of six (6) months from the effective date of termination. Any provision of this paragraph 3.1 notwithstanding, in the event that Manager is terminated for Cause, the Town shall have no obligation for severance benefits or pay as described herein. As used herein, "Cause" shall mean (a) conduct by Manager that is fraudulent or dishonest, (b) Manager's conviction or no-contest plea of any felony or crime involving moral turpitude under any federal or state law, or (c) failure by Manager in any material way to fulfill or comply with his obligations under this Agreement.

3.2 Acceptance of severance pay and benefits as described in paragraph 3.1 by Manager shall constitute a release in full by Manager of any and all claims Manager may have against the Town Council of the Town of Frisco, the individual members of the Town Council of the Town of Frisco acting in their official capacity, and the Town of Frisco, as a result of the termination of his employment.

3.3 In the event the Town at any time during the employment term reduces the salary or other financial benefits of Manager in a greater percentage than an applicable across the board reduction for all employees of the Town, or in the event that the Town refuses, following written notice, to comply with any other provision benefiting Manager herein, or Manager resigns following a suggestion, whether formal or informal, by the Town Council that he resign, then, in that event, Manager may at his option, be deemed to be terminated without Cause as of the date of such reduction or event.

3.4 In the event Manager wishes to resign his position with the Town and remain in good standing, Manager shall give the Town 45 days written notice in advance, unless the parties otherwise agree.

3.5 In the event that Manager does not comply with the residency requirement as set forth in the Town Charter and § 14.0 of this Agreement, Manager shall be deemed to be terminated with Cause and the terms of § 14.0 and its paragraphs shall apply.

3.6 Manager's employment may be terminated sixty days after Manager becomes totally and permanently disabled. As used herein, "totally and permanently disabled" shall be defined as: (a) if Manager is receiving total permanent disability payments pursuant to any disability program under which he is covered, whether owned by the Town or otherwise; or (b) in the absence of such disability program, if (i) Manager's attending physician certifies that Manager is unable to perform his duties as set forth herein for the Town and that such condition is total and permanent; or (ii) in the event that Manager does not timely consult such attending physician and the Town reasonably believes Manager to be so disabled, the Town may obtain such examination from a properly qualified physician who shall conduct such examinations as are appropriate to determine whether or not Manager is so totally and permanently disabled. If Manager is terminated because he is totally and permanently disabled due to an event occurring within the scope of his employment, he shall be entitled to severance pay as provided in paragraph 3.1. If Manager is terminated because he is totally and permanently disabled due to an event occurring outside the scope of his employment, he shall receive no severance benefits or pay.

#### 4.0 Salary.

4.1 Town agrees to pay Manager for his services rendered pursuant hereto an annual base salary of One Hundred Fifty-Five Thousand Dollars (\$155,000.00), payable in installments at the same time as other employees of the Town are paid.

4.2 The Town agrees to consider increases to Manager's annual base salary and/or other benefits in such amounts and to such extent as the Town Council, in its sole discretion, may determine to be desirable on the basis of an annual salary review of Manager. Such review shall occur contemporaneously with Manager's performance review. Manager will neither be guaranteed nor limited by any market-adjusted salary increases given to other Town employees. Any part of the foregoing notwithstanding, Manager's first performance review shall occur in January of 2022, and it and each subsequent such review shall include a salary review and shall occur in January of each calendar year thereafter.

#### 5.0 Full-time Employment and Hours of Work.

5.1 It is recognized and understood that Manager must devote additional time outside normal office hours to the business of the Town, and therefore Manager will be allowed to take compensatory time off as he shall deem appropriate provided, however, that such compensatory time shall not adversely affect Manager's job performance or Town activities. No monetary compensation shall be made to Manager for accrued and unused compensatory time.

5.2 Manager shall not engage in any non-Town employment activities for compensation without the express written consent of the Town Council. It is the intent of the parties that this Agreement is for full-time employment. Participation in professional

organizations and voluntary programs are encouraged provided they are consistent with the responsibilities of the Town Manager for the Town.

## 6.0 Benefits.

6.1 Except as provided or specifically addressed in this Agreement, Manager shall receive the benefits granted all regular, full-time employees, subject to any limitations or restrictions thereon applicable to all regular, full-time employees, including by illustration only, health, dental, vision, long term disability and life insurance; retirement; sick leave; annual and holiday leave; and other group benefit programs extended to employees for their voluntary participation.

6.2 Manager will be entitled to accrue and use annual leave in accordance with the Town's Personnel Code, provided, however, that: (i) there shall be added, effective as of the first day of Manager's employment, an additional base of ten (10) days (80 hours) of vacation leave time to the vacation leave time that the Manager will earn in accordance with the Town's Personnel Code; and (ii) as of the first day of Manager's employment, Manager shall accrue vacation time as if he had been employed by the Town for five (5) years. Notwithstanding the foregoing, at no time shall the total combined annual vacation leave time to which Manager is entitled exceed the allowed maximum for such time set forth in the Town's Personnel Code.

6.3 As of the first day of Manager's employment, the Town shall match Manager's contributions into the Town's retirement plan as if the Manager had been employed by the Town for five (5) years (which is a matching contribution of up to 7% of salary), provided, however, that such matching contributions shall vest only in accordance with the provisions of the retirement plan.

## 7.0 Automobile and Cellular Telephone.

The Town will provide a Town vehicle to Manager, with take home privileges, for business use within or outside of Summit County, and for personal use only within the State of Colorado. The Town will provide a cellular telephone to the Manager for Town business, with both voice and data services under the Town's plan.

## 8.0 Manager's Housing and Moving Assistance.

8.1 The Town shall pay up to Ten Thousand Dollars (\$10,000.00) to Manager to assist in his actual expenses of moving to the Town, including but not limited to the cost of temporary housing until the residency at 760 Pitkin Street commences under section 8.2 below, and/or the cost of furnishings that the Manager may purchase for use at 760 Pitkin Street and leave at the residence upon separation from employment with the Town.

8.2 The parties recognize that housing costs in the Town of Frisco significantly exceed those in most other places in Colorado and the nation. Accordingly, the Town

agrees that, during the term of this Agreement, it shall provide to the Manager, pursuant to its standard form of employee housing lease, the residence located at 760 Pitkin Street, Frisco, Colorado, free of charge for rent. Manager agrees that, during the term of this Agreement, he shall lease from the Town, pursuant to the Town's standard form of employee housing lease, the residence located at 760 Pitkin Street, Frisco, Colorado, free of charge for rent. Any provision of the Town's standard form of housing lease notwithstanding, such lease shall terminate forty-five (45) days after the effective date of the Manager's separation from employment with the Town, whether that separation is the result of Manager's resignation, termination (with or without cause), or otherwise.

#### 9.0 Professional Development.

9.1 As limited by the budget and in the sole discretion of the Town Council from time to time, the Town agrees to pay registration, reasonable travel and subsistence expenses for Manager for professional official travel, meetings and occasions adequate to continue Manager's professional development and to attend necessary official and other functions for the Town, including, without limitation, the annual conference and annual membership dues of the International City Management Association, the Colorado Municipal League, the Colorado City and County Managers Association, and other national, regional, state and local government groups and committees of which Manager or the Town is member.

9.2 As limited by the budget and in the sole discretion of the Town Council from time to time, the Town agrees to pay for Manager's reasonable tuition, travel and subsistence for short courses, institutes and seminars that are necessary for Manager's professional development and which are in the best interests of the Town.

9.3 As limited by the budget and in the sole discretion of the Town Council from time to time, the Town agrees to pay Manager's reasonable professional dues and subscriptions that are necessary for his continuation and full participation in national, regional, state and local associations and organizations and that are necessary and desirable for his continued professional participation, growth and advancement and which are in the best interests of the Town.

#### 10.0 Expenses.

Manager may be required as a condition of employment to incur reasonable and necessary expenses in connection with his duties hereunder. Manager shall be reimbursed by the Town in accordance with the Town's expense reimbursement policy.

#### 11.0 Indemnification.

Town shall defend, save harmless, and indemnify Manager against any tort, professional liability claim, or demand or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of Manager's duties as Town Manager; provided, however, that this indemnification shall not apply to intentional torts, including but not

limited to matters such as assault. Town will compromise and settle any such claim or suit and pay the amount of any settlement or judgment rendered thereon.

#### 12.0 Evaluation.

The Town Council shall, in accordance with the schedule set forth in section 4.2 above, review and evaluate the performance of Manager at least annually; beginning with an initial goal-setting, a six-month evaluation in January of 2022, and thereafter in January of each year. Such review and evaluation shall be for the purpose of setting the Manager's annual work plan and evaluating Manager's performance and compensation. Such review and evaluation shall be in accordance with specific goals, criteria and performance objectives developed jointly by the Town Council and Manager, which they deem necessary to achieve the Town Council's policy objectives, and shall establish the relative priority among the various goals and objectives. These overall performance criteria may be added to or revised by the Town Council periodically, in consultation with Manager. The Town Council shall provide an opportunity for discussion of the results of the evaluation with Manager.

#### 13.0 Other Terms and Conditions of Employment.

The Town Council, in consultation with Manager, may fix any such other terms and conditions of employment, as it may determine from time to time, relating to Manager's performance, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement, the Town Charter or Code, or any other law.

#### 14.0 Residency Requirement.

14.1 As set forth in § 7-1(b) of the Frisco Charter, and as a condition of continued employment with the Town of Frisco, Manager shall establish his permanent domicile and residency within the corporate limits of the Town of Frisco. "Permanent residency and domicile within the corporate limits of the Town of Frisco" shall mean that Manager maintains his personal and physical presence at a dwelling place within the Town of Frisco and intends that such dwelling place shall be his fixed and permanent home. The Town Council reserves the right to approve or disapprove a residence outside of the town limits but within a reasonable distance thereof. Any such approval of an alternative residence shall be by ordinance as required by Charter § 7-1(b).

14.2 In the event that Manager fails to establish and maintain his permanent domicile and residency as set forth herein, and throughout the term of this Agreement, then Manager shall be immediately terminated with Cause from employment with the Town and this Agreement shall be void. Notwithstanding any provision of this Agreement to the contrary, Manager shall not be entitled to and shall not receive from the Town any benefit of any kind or monetary payment of salary upon termination in accordance with this paragraph 14.2.

15.0 Compliance with Colorado Constitution Article X, Section 20.

It is the intent of the Town and Manager to comply with the provisions of Article X, Section 20 of the Constitution of the State of Colorado, including in particular subsection 4(b), as approved by the voters on November 3, 1992. Therefore, the parties agree that this Agreement is subject to an annual appropriation by the Town Council and that the failure to make such appropriation, unless such action is the result of a prior termination for Cause pursuant to paragraph 3.1 hereof, will be deemed a termination without Cause. The parties further agree and acknowledge that the Town has established an adequate present cash reserve pledged irrevocably and held for future payments, if required, in an amount sufficient to pay any severance compensation required under paragraph 3.1 of this Agreement.

16.0 General Provisions.

16.1 The text herein shall constitute the entire agreement between the parties. This Agreement may be amended only in writing, executed and approved by both parties.

16.2 The rights and obligations of the Town under this Agreement shall inure to the benefit of and be binding upon the successors and assigns of the Town. Manager shall not assign or otherwise convey any of his rights and obligations hereunder without the express written permission of the Town, which permission may be withheld in the Town's sole and absolute discretion.

16.3 If any provision, or any portion thereof, contained in this Agreement is held to be unconstitutional, invalid, unenforceable or void, the remainder of this Agreement, or any portion thereof, shall be deemed severable, shall not be affected, and shall remain in full force and effect.

IN WITNESS WHEREOF the Town of Frisco, Colorado has caused this Agreement to be signed and executed on its behalf by its Mayor, and duly attested by its Town Clerk, and Manager has signed and executed this Agreement, both in duplicate, the date and year first above written.

TOWN OF FRISCO

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Hunter Mortensen, Mayor

ATTEST:

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Deborah Wolhmuth, CMC, Town Clerk

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Anthony O'Rourke, Manager