

RELEASE AND SEPARATION AGREEMENT

THIS RELEASE AND SEPARATION AGREEMENT ("Agreement") is made this 17th day of January, 2022, by and between Anthony O'Rourke, Town Manager of the Town of Frisco, Colorado (hereinafter referred to as "Manager O'Rourke") and the Town of Frisco, Colorado, (hereinafter referred to as "Town").

WHEREAS, by this Agreement, Manager O'Rourke has resigned from his position as the Town Manager of the Town of Frisco, and the parties desire to mutually settle any and all claims and other matters related to Manager O'Rourke's employment by the Town, and to enter into various agreements relating thereto, as hereinafter set forth.

NOW, THEREFORE, in consideration of the promises and agreements herein contained, the sufficiency of which are hereby acknowledged, the parties hereby promise and agree as follows:

1. **Resignation, Separation of Employment.** Manager O'Rourke, by his execution hereof, hereby resigns from, separates, and leaves his employment with the Town effective January 18, 2022 ("Separation Date"), and by their execution of this Agreement the parties hereto waive any notice requirements pertinent to Manager O'Rourke's resignation.
2. **Payments.** The Town agrees to pay Manager O'Rourke \$141,465.24, subject to all applicable deductions and withholdings, payable within 14 days of the parties' execution of this Agreement.
3. **Termination of Benefits** – Manager O'Rourke understands and agrees that the Town will continue to pay for the currently-provided medical insurance coverage for Manager O'Rourke and his spouse only to and through March 31, 2022, and the Town acknowledges its receipt in advance of Manager O'Rourke's monthly contribution to such coverage in its current amount. Manager O'Rourke acknowledges that as of January 18, 2022, all other benefits of Manager O'Rourke's employment will cease, including any employer contributions to his retirement account.
4. **No Other Consideration.** Manager O'Rourke agrees that the payments provided for under this Agreement shall be the full and final amount of any wages and all other benefits to which he otherwise may be entitled.
5. **Equipment.** Manager O'Rourke agrees that he will surrender to the Town on or before January 18, 2022, all Town-owned equipment in his possession.
6. **Inquiries.** The Town agrees that in response to all inquiries other than employment inquiries concerning Manager O'Rourke's resignation and separation of employment it will provide a copy of the memorandum attached hereto as Exhibit A.
7. **Employment Inquires.** The Town agrees that in response to future employment inquires, the Town will follow its policy on all employment inquires, which is to provide only the

date of hire, salary at separation, title at separation, and that it is the Town's policy not to provide any additional information on any former employees.

8. **Release of All Claims.** Manager O'Rourke, with the intent of binding himself and his heirs, successors, and personal representatives, hereby expressly releases and forever discharges the Town, its elected and appointed officers, officials, employees, agents, servants, and insurers, of and from any and all liability, claims, demands, rights, controversies, damages, compensations, wages, retirement plan contributions, expenses, attorney fees, penalties, interest, and causes of actions of any kind whatsoever, including but not limited to rights or claims under the Age Discrimination in Employment Act of 1967, 29 U.S.C. section 621, et seq. (ADEA); workers' compensation laws; Title VII of the Civil Rights Act; 42 U.S.C. §§ 1981 through 1988; the Older Workers' Benefit Protection Act; the Equal Pay Act; the Fair Labor Standards Act; the Fair Credit Reporting Act; the National Labor Relations Act; the Employee Retirement Income Security Act; the Americans with Disabilities Act; the Rehabilitation Act; the Family Medical Leave Act; any other federal statute; the United States Constitution; the Colorado Constitution; any state civil rights act or other state statute; any state statutory or regulatory wage claim; any state tort claim or other legal or equitable claim; any claim for loss of consortium; any claim for breach of express or implied contract or promises; and any claim, cause of action, liability, expenses, and/or damages which Manager O'Rourke may have or may assert against the Town, whether known or unknown, which Manager O'Rourke had, has, or hereafter may have, arising out of or in any way connected with Manager O'Rourke's employment with the Town or arising out of or in any way connected with his separation from such employment. The parties agree that the severance pay described herein is expressly deemed consideration for a full and final release and waiver of any claims under the ADEA. However, as required by the ADEA, nothing herein shall constitute a release as to any claims which may arise from a breach of this Agreement by the Town or a waiver of any future rights or claims under the ADEA. Notwithstanding the foregoing, however, this release shall not be deemed to constitute a release as to any workers' compensation claim that (a) results from a work-related injury occurring before the effective date of Manager O'Rourke's separation, or (b) is unknown to Manager O'Rourke as of the date of this Agreement and arises as a result of exposure to toxic substances while employed by the Town. Manager O'Rourke warrants that, as of the date of signing of this Agreement and to the best of his knowledge and belief, no workers' compensation claims exist as of his signing of this Agreement. Manager O'Rourke further states and agrees that he has not received any Medicare benefits as a result of any physical or emotional injury he attributes to the Town.
9. **No Assignment - Indemnification.** Manager O'Rourke agrees that he has not assigned or conveyed to any person or entity any claim against the Town. Manager O'Rourke agrees to defend, indemnify, and hold the Town harmless of and from any further claims made against the Town by himself or by any other person or entity acting as an assignee or conveyee of Manager O'Rourke.
10. **Unemployment Compensation.** The Town agrees not to contest any claim for unemployment compensation made by Manager O'Rourke.

11. **Unknown Losses.** Manager O'Rourke acknowledges that a portion of the consideration for this Agreement is being given for the full and final release of any and all unknown losses, claims, injuries, costs, expenses, and damages which either may have occurred in the past and are not yet to be known, or which may occur in the future and are not presently known. Manager O'Rourke agrees to voluntarily and knowingly assume the risk of any mistake of fact, either mutual or unilateral, with respect to said losses, claims, injuries, costs, expenses and damages.
12. **Confidentiality.** Except as otherwise provided herein and only to the extent permitted by law, specifically including but not limited to the Colorado Open Records Act, Article 72, Title 24, C.R.S., Manager and the Town promise and agree to keep the conditions and terms of this Agreement confidential. The parties agree that they will not release or disclose the terms of this Agreement to third parties, except as necessary for tax purposes, legal advice, pursuant to court order, or as required by law, or as necessary in connection with the Town Council's approval of this Agreement.
13. **Responsibility for Taxes:** Except for the Town's responsibility for applicable federal and state withholding and tax contributions, Manager O'Rourke agrees that he is solely responsible for any and all tax payments that may arise from the above-described payments and this Agreement. Manager O'Rourke acknowledges that he bears the sole risk of and liability for the tax effects of any payments made by the Town pursuant to this Agreement, and for any other financial consequences of this Agreement.
14. **Satisfaction of Disputed Matters.** It is expressly understood and agreed the recitals and mutual obligations of the parties as herein expressed are in full accord and satisfaction of any disputed matters and claims which either party has or could have made against the other, that such recitals and obligations on behalf of each party represent considerations in addition to anything of value to which the other party is already entitled, and that such recitals and mutual obligations of the parties as herein expressed, are not to be construed in any way as an admission of liability on the part of the either party against the other, but, on the contrary, it is specifically denied that there is any liability on account of the above-mentioned employment or separation from employment, or any matters related or incident hereto, or otherwise, and it is further understood and agreed that all agreements and understandings between the parties are embodied and expressed herein and that the terms of this Agreement are contractual and not mere recitals.
15. **Waiver of 21-Day Review.** Manager O'Rourke acknowledges that he has been offered a period of at least twenty-one days in which to review and consider this Agreement, and hereby waives such twenty-one day period.
16. **Revocation After Acceptance.** This Agreement shall not become effective or enforceable for a period of seven days following its execution by Manager O'Rourke. During such seven-day period, Manager O'Rourke may revoke his acceptance of this Agreement, in which case this Agreement shall be null and void and of no force or effect on either party.

To be effective, any such revocation must be in writing and received by the Town Attorney. If this Agreement is not so revoked, it shall at the expiration of such seven-day period become effective, enforceable, and forever binding.

17. **Binding Effect and Venue.** The parties agree that this Agreement shall be binding upon, the parties' heirs, successors and personal representatives and that this Agreement shall be interpreted according to the laws of the State of Colorado.
18. **Modification in Writing.** This Agreement contains the entire agreement between the parties concerning the subject matter hereof, and it may not be changed orally. Manager O'Rourke acknowledges that no individual Town Council Member or other officer, employee or agent of the Town has the power to amend, modify, alter or change this Agreement, and the parties agree that this instrument may only be modified by an instrument in writing executed by both parties.
19. **Terms Severable.** If any provision of this Agreement is found to be invalid, illegal or unenforceable, the validity and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. Further, in the event of any such holding of invalidity, illegality, or unenforceability, the parties agree to take such action(s) as may be necessary to achieve to the greatest degree possible the intent of the affected provision of this Agreement.
20. **Consultation with Legal Counsel – Understanding of Terms.** By their signature below, both Manager O'Rourke and the Town acknowledge that they have had the opportunity to consult, or did consult, with their attorney. Both Manager O'Rourke and the Town expressly affirm that they have fully informed themselves of the meaning and content of this Agreement, that they understand the meaning and legal significance of each and every provision hereof, and that they have executed the same with full knowledge and understanding thereof as their own free act. Both Manager O'Rourke and the Town further expressly understand and agree that the signing of this Agreement shall be forever binding in accordance with the terms hereof.
21. **Approval by Town Council.** The parties acknowledge and agree that the terms of this Release and Severance Agreement are subject to the approval of the Town Council.

IN WITNESS WHEREOF, Anthony O'Rourke has executed this Agreement this _____ day of January, 2022.

Anthony O'Rourke

ACKNOWLEDGEMENT

[illegible]

The above and foregoing signature of Anthony O'Rourke was acknowledged before me this ____ day of January, 2022.

Witness my hand and official seal.

My commission expires on: _____

Notary Public

(SEAL)

TOWN OF FRISCO, COLORADO

By: _____
Hunter Mortensen, Mayor

ATTEST:

Deborah Wohlmuth, CMC, Town Clerk

EXHIBIT A



MEMORANDUM

P.O. Box 4100 ♦ FRISCO, COLORADO 80443

TO: MAYOR AND TOWN COUNCIL
FROM: TONY O'ROURKE,
RE: RESIGNATION
DATE: JANUARY 17, 2022

I have truly enjoyed my tenure with the Town of Frisco, and the productive partnership with the Town Council and dedicated staff to enhance the prosperity and future of Frisco.

I am very proud of the achievements the Council and staff have partnered on during the past six months, in particular the following:

- Affordable Workforce Housing initiatives that will result in two intergovernmental housing partnership projects that will provide 50 affordable rental units, a pilot program to convert short-term rentals into long-term workforce rentals, and an April ballot proposition to adopt a 5% excise tax on short-term rentals that will generate \$1.5 million dollars annually for affordable housing projects.
- A new early child care program that will invest \$400,000 dollars in child care tuition assistance to families and employees in Frisco and the Ten Mile Basin, a grant program to incentivize expansion of child care capacity, and a commitment to partner with Summit County, Breckenridge, Silverthorne and Dillon to create a countywide affordable high quality child care assistance program for all families and employees in Summit County.
- A significant investment in retaining Squire Patton Boggs to serve as Frisco's exclusive and dedicated federal and state funding advocate. With the passage of the \$1.2 trillion Federal Infrastructure and Jobs Act, the Town is poised to leverage its finite resources by securing federal and state funding for its core priorities – affordable housing, wildfire mitigation, infrastructure and environmental sustainability.
- Adoption of a Frisco Marina Park Action Plan to enhance operations, customer service, infrastructure, parking, and new public recreational amenities.

- Creation of a Municipal Emergency Response Team (MERT) in partnership with Silverthorne, Dillon and Blue River to respond to significant public safety threats and emergencies immediately.
- Initiation of the Frisco Backyard area resource management plan, comprised of Mount Royal, Minors Creek, Rainbow Lake, Ophir Mountain and Gold Hill. The plan will address wildfire mitigation, revegetation and trail system improvements in this pristine national forest area.
- Design and permitting for a treatment system to remove PFAS chemical compounds from Town water sources and meet pending EPA PFAS for drinking water to safeguard the health, safety, and welfare of Frisco water customers.
- Initiation of \$1 million dollar design and construction of two gateway roundabouts and beautification of medians within the recently completed CDOT Gap Project on Summit Boulevard.
- Development of strategies and incentives to attract and retain valued Town employees to ensure the delivery of essential community services during a period of labor shortages and turnover. Strategies include annual COLA supplements, competitive market based wage and classification adjustments, reduced employee housing cost, assigned Police vehicles, and enhanced pension contributions. These are all necessary investments in attracting and retaining a competitive and motivated Town workforce.
- The recruitment and employee engagement in the hiring of two outstanding new organization leaders, Leslie Edwards as Finance Director and O'Lynda Fette as Human Resources Director. The future is very bright with these highly talented staff additions.

While my six months here has been wonderful, I am compelled after much reflection to enter a new chapter in my life. To that end I am submitting my resignation effective January 18, 2022. This will allow a new Town Council in April to select a new Town Manager to help continue to make Frisco's future even brighter and more prosperous than it's wonderful present and past.

Sincerely,

Tony O'Rourke