

EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT (“Agreement”) is made this ___th day of _____, 2023, by and between the TOWN OF PAGOSA SPRINGS (the “Town”), a home-rule municipal corporation organized pursuant to Article XX of the Colorado Constitution and the Town’s Home Rule Charter effective November 2003, and DAVID J. HARRIS, an individual residing in Archuleta County, Colorado (“Employee”) (collectively, the “Parties”).

WITNESSETH

WHEREAS, the Town desires to employ the Employee as the Town Manager through this contract, to make provisions for certain benefits, to establish certain conditions of employment and to set working conditions therefor; and

WHEREAS, the Employee desires to accept the appointment as Town Manager.

THEREFORE, in consideration of the mutual undertakings contained in this Agreement, the Town and Employee agree as follows:

1. Job Responsibilities. The Employee is employed as Town Manager of the Town of Pagosa Springs to perform the functions and duties specified in the Town of Pagosa Springs Municipal Code and the Town’s Home Rule Charter, as may be amended from time to time, and to perform such other duties, functions and obligations as are legally permissible and proper for the office of Town Manager, under the supervision of the Town Council. The Town Manager position is exempt under the Fair Labor Standards Act and, as such, the Employee shall not be eligible for overtime compensation.

2. Term. Subject to the annual budget of the Town and the appropriation of funds related to the Town Manager’s compensation hereunder, the term of this Agreement shall be for a period of three (3) years, commencing on _____, 2023 and ending on _____, 2026, (“Initial Term”). This Agreement shall be extended at the end of the initial and renewal term(s) for an additional term of three (3) years (“Renewal Term”), unless the Town provides written notice of non-renewal not less than 60 days prior to the end of the Initial Term. This Agreement may be terminated prior to the expiration of either the Initial Term or the Renewal Term(s) as hereinafter provided.

3. Outside Activities. Employment as the Town Manager shall be the Employee’s primary employment. The Employee agrees that he will, at all times, faithfully, industriously, and to the best of his ability, expertise, and talents, perform all of the duties that may be required of and from him pursuant to the express and implicit terms herein to the reasonable satisfaction of the Town Council. The Employee agrees to devote the amount of time and energy that is reasonably necessary for him to perform his duties, which may require being on call or working outside normal business hours with an uncertain, erratic, schedule. It is recognized that the Employee must devote a great deal of his/her time outside normal office hours to business of the Town. Accordingly, the Employee will be allowed to take compensatory time off as he/she shall deem appropriate during normal office hours. Additionally, it is understood that the term “exclusive employment” shall not be construed to

preclude occasional teaching, writing, or consulting performed during the Employee's own time, or otherwise with the prior written consent of the Town Mayor.

4. Compensation. As a base annual salary (excluding employer-provided benefits), the Town agrees to pay the Employee for the services herein described the sum of \$154,000.00 per annum, payable in near-equal installments at the same time and by the same method as other management employees of the Town are paid, less necessary or agreed upon withholding for state and federal taxes, retirement contributions, insurance and other deductions, as applicable. Commencing in 2024, the Town agrees to annually consider and if deemed appropriate by the Town Council, to approve an increase in the pay of the Employee for each year that this Agreement, or any extension thereto, is in effect (the "merit increase"). The amount of the merit increase shall be dependent upon the results of the performance evaluation conducted under the provisions of Section 12 of the Agreement. The Employee shall receive the same cost of living increase or other non-merit pay adjustments generally applicable to other Town employees, but not including position specific market adjustments, effective January 1 of each year, beginning in 2025.

5. Holidays. The Employee shall be entitled to not report to work on the paid holidays established in the Town of Pagosa Springs Personnel Handbook as may be amended from time to time ("Personnel Handbook"), except as necessary to fulfill the duties of chief administrative officer, including performing urgent or emergency work.

6. Personal Time Off (PTO). The Employee shall accrue, use, and carry over personal time off (PTO) as set forth in the Personnel Handbook.

7. Administrative Leave. The Employee will receive a one-time bank of 80 hours of paid Administrative Leave at the time of hire to be used for relocation and related events. Administrative Leave must be used prior to PTO and carries no cash value for payout.

8. Reimbursement of Relocation Expenses. The Employee will be reimbursed for relocation expenses not to exceed \$6,000.00. Additionally, the Town agrees to provide a Temporary Housing Allowance of \$2,000 per month payable in advance for three months commencing on the beginning of the initial term. Such payments shall be net of any applicable state and federal taxes.

9. Additional Employee Benefits. Employee shall be entitled to all benefits the Town provides to paid employees, as set forth in the Personnel Handbook. In addition, Employee shall be entitled to the following additional benefits unique to the position of Town Manager:

(a) General Business Expenses. In addition, the Town shall reimburse the Employee for his actually incurred and documented general business expenses, to the extent funds are budgeted by the Town Council, including the following:

- Professional dues and subscriptions of the Employee necessary for continuation and full participation in national, regional, state and local associations

customarily enjoyed by municipal managers, including the International City/County Management Association (ICMA).

- Reasonable and necessary travel and subsistence, as approved in advance and duly budgeted on an annual basis by Town Council, to attend professional and official meetings, events, and occasions to continue the professional development of the Employee, including but not limited to, the ICMA Annual Conference, the Colorado Municipal League (CML) Annual Conference, and such other national, regional, state and local governmental groups and committees customarily attended by municipal managers for which the Employee or the Town is a member.
- A technology allowance, currently at \$40 per month, which shall serve as reimbursement for the use of the Employee cell phone for business related purposes. Otherwise, the Employee may request the use of a Town cell phone. If use of personal cell phone is elected, the cell phone must have a local number.
- Any dues or fees necessary for the Employee to participate and be involved in local civic clubs or organizations which assist the Employee in performing his duties as the Town Manager and maintaining business relationships beneficial to the Town's interests.

10. Retirement Benefits. The Employee shall be eligible to participate in the Town's 401(a) defined contribution plan (or any other, substitute, or additional retirement plan made available to the Town employees) on the same terms and conditions as other Town employees as set forth in the Personnel Handbook.

11. Deferred Compensation Plan. In addition, the Employee shall have the option of directing any portion of his compensation as permitted by law into a 457(b) plan or in an unqualified supplemental plan of the Employee's choosing so long as there is no negative financial impact on the Town and the Employee bears all the financial and tax impact.

12. Performance Evaluation. The Town Council may perform a six-month review of the Employee and an annual performance review and evaluation of the Employee. If conducted, the evaluation process shall provide opportunity for the Town Council members to prepare written evaluations of the Employee's performance, the Parties to meet and discuss the evaluations and goals, and the Town to prepare a written summary of the evaluation results to be delivered to the Employee. Any merit increases shall be effective January 1 of the following year.

13. Termination. Notwithstanding any provision of this Agreement to the contrary, Employee understands and agrees that he is employed by the Town at the will and pleasure of the Town Council. The Town Council may terminate this Agreement for any reason and at any time in accordance with the Town's Municipal Code and Home Rule Charter. Any provisions as to job performance, termination of employment for cause, or hearings for such

termination as provided in the Personnel Handbook and policies which apply generally to the employees of the Town shall not apply to the Employee.

(a) Severance/Termination At Will. The Town acknowledges that the Employee is committing to the exclusive service to the Town for a period of three (3) years. In the event Employee is terminated at will as described above and in this paragraph, the Town agrees to pay the Employee a cash severance equal to three (3) months of Employee's salary and benefits as provided in this Agreement.

(i) For purposes of this Agreement, the following shall be considered termination at will: (a) the Town Council votes to terminate the Employee without cause at a public meeting providing two (2) weeks' written notice to the Employee; (b) if the Town Council, citizens or the legislature acts to amend any provisions of the Town's Municipal Code or other enabling legislation which has the effect of substantively reducing the role, powers, duties, authority, or responsibilities of the Employee's position; (c) if the Town reduces the base salary, compensation or any other financial benefit of the Employee, unless it is applied in no greater percentage than the average reduction of all department heads; (d) the Employee has notified the Town of a breach of contract and such breach has not been reasonably cured within thirty days of such notice.

(ii) Termination shall be recognized at will and subject to severance if the Town Council advises the Employee that the Employee's resignation would be accepted if offered, and Employee offers said resignation.

(iii) For purposes of this Agreement, and in addition to the salary compensation defined for termination at will, the Employee shall be entitled to the following benefits upon termination at will: a) payment of accrued and unused PTO hours existing as of the date of the termination at will; b) payment of premium for Town sponsored health insurance and any other Town sponsored medical insurance coverage for a period of two (2) months; c) continuation of payment of insurance premiums necessary to continue life insurance coverage for a period of two (2) months.

(b) Termination For Cause. In addition, the Town Council may terminate this Agreement and the employment of Employee for cause, effective immediately upon written notice to Employee, with the Town's only obligation being the payment of compensation, including accrued vacation leave, earned as of the date of termination. The Town Council shall permit the Employee to address the allegations against him in an open meeting with the Town Council within fifteen (15) days after the Town Council proposes removal. To the extent permitted by state law, the session may be closed to the public by agreement of the Town Council and the Employee. At the close of the session, the Town Council may decide to terminate or retain the Employee. In the event the Employee is terminated, the termination for cause shall be final. Termination for cause shall not be subject to any provisions of subsection (a) of this Section. For purposes of this Agreement, "for cause" shall be defined as including any of the following acts of the Employee:

(i) Any material breach of the terms of this Agreement by the Employee, as defined by this Agreement and the attached Exhibit A, "Performance Standards Constituting Breach," which is incorporated herein by reference;

(ii) Injury to the economic or ethical welfare of the Town by Employee's misconduct or inattention to Employee's duties and responsibilities under this Agreement, including engaging in any activity that the Town Council, in its sole discretion, determines creates a legal conflict of interest with the Town or objectively and reasonably creates the appearance of moral turpitude;

(iii) Engaging in any of the following forms of misconduct: conviction of or a plea of guilty or no contest to any felony; a determination of Employee theft of Town property or funds; the use of controlled substances on Town premises, or appearing on such premises while intoxicated or under the influence of alcohol or drugs not prescribed by a physician; any illegal use of any controlled substance; illegal gambling on Town's premises; a determination after investigation of discriminatory behavior toward, or harassment or abuse of, any person, whether or not such harassment and/or abuse is specifically or impliedly prohibited by Federal or State law; or dishonesty, including, without limitation, falsifying any document prepared in anticipation of, in connection with or as a result of Employee's employment by Town; and any other act or offense described in the Personnel Handbook or other written Town policies or procedures which would normally result in the termination of employment of any employee of the Town.

(c) Resignation. The Employee may voluntarily resign his employment with the Town upon at least thirty (30) days advance written notice; provided, however, that the Town may require the Employee to discontinue his employment sooner than the full thirty days in the interest of the Town. Voluntary resignation shall be without entitlement to severance benefits. In the event the Town discontinues Employee's employment with the Town sooner than thirty (30) days following Employee's notice of termination, the Town shall be responsible for payment of salary and benefits only until the date employment is discontinued.

14. Suspension For Cause. The Employee may be suspended, with or without pay, by the Town Council for a maximum of thirty (30) days. Cause for suspension shall be as defined in Section 13(b) and Exhibit A. Such suspension shall operate independently of any procedures for removal.

15. Employee's Independent Legal Counsel. This Agreement has been prepared in part by the Town Attorney. Employee understands and agrees that Town Attorney does not represent Employee. Employee has been advised by the Town to obtain legal counsel and Employee's personal attorney has reviewed this Agreement or the Employee has determined, in his sole discretion, not to obtain review of this Agreement by his own legal counsel. In all matters regarding the Employee's employment or the meaning of this Agreement, the Town Attorney has and shall represent solely the interests of the Town and the Employee should seek separate legal counsel.

16. Miscellaneous.

(a) Entire Agreement/Merger/Severability. This Agreement constitutes the entire agreement of the Parties and a complete merger of prior negotiations and agreements. If any court of competent jurisdiction declares any provision of this Agreement invalid or unenforceable, the remainder of the Agreement shall remain fully enforceable. The court shall also have the authority to reform such unenforceable or void provision, so as to render the provision enforceable.

(b) Governing Law. This Agreement shall be governed by the laws of the State of Colorado. Neither Party shall have a right to assign this Agreement, or enforce any other change, deletion, or addition or amendment, except as such assignment, or change, or amendment is agreed to in writing by both Parties.

(c) Date of Signatures not Effective Date. Notwithstanding the date this Agreement is actually signed by any Party this Agreement is intended to and shall be effective as of _____.

(d) Indemnification. To the extent legally permissible, beyond that required under Federal, State or local law, Town shall defend, save harmless and indemnify Employee against any tort, professional liability claim and demand or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of Employee's duties as Town Manager or resulting from the exercise of judgment or discretion in connection with the performance of program duties or responsibilities, unless the act or omission involved willful or wanton misconduct. The Employee may request and the Town shall not unreasonably refuse to provide independent legal representation at Town's expense and Town may not unreasonably withhold approval. Legal representation, provided by Town for Employee, shall extend until a final determination of the legal action including any appeals brought by either party. The Town shall indemnify Employee against any and all losses, damages, judgments, interest, settlements, fines, court costs and other reasonable costs and expenses of legal proceedings including attorney's fees, and any other liabilities incurred, imposed upon, or suffered by such Employee in connection with or resulting from any claim, action, suit, or proceedings, actual or threatened, arising out of or in connection with the performance of his duties. Any settlement of any claim must be made with prior approval of the Town in order for indemnification, as provided in this section to be available.

Employee recognizes that Town shall have the right to compromise and unless Employee is a party to the suit which Employee shall have a veto authority over the settlement, settle any claim or suit; unless, said compromise or settlement is of a personal nature to Employee. Further, Town agrees to pay all reasonable litigation expenses of Employee throughout the pendency of any litigation to which the Employee is a party, witness or advisor to the Town. Such expense payments shall continue beyond Employee's service to the Town as long as litigation is pending. Further, Town agrees to pay Employee reasonable consulting fees and travel expenses when Employee serves as a witness, advisor, or consultant to Town regarding pending litigation.

IN WITNESS WHEREOF, the TOWN OF PAGOSA SPRINGS has caused this Agreement to be signed and executed on its behalf by the Mayor of the Town Council and the

Employee has signed and executed this Agreement, both in duplicate, as of the day and year first above written.

TOWN OF PAGOSA SPRINGS

By: _____
Shari Pierce, Mayor

Attest:

April Hessman, Town Clerk

EMPLOYEE

By: _____
David J. Harris

EXHIBIT A

Performance Standards Constituting Breach Town Manager of the Town of Pagosa Springs

The following inattention to performance standards shall constitute a breach of the Employment Agreement and due cause for termination of the Employment Agreement between the Town of Pagosa Springs and the Employee:

1. Any failure to follow and enforce the laws of the State of Colorado and the County of Archuleta, as those laws apply directly to the office of Town Manager, or failure to follow and enforce any law or ordinance of the Town of Pagosa Springs as those laws or ordinances apply to the person or the office of the Town Manager.
2. Without the consent or approval of the Town Council, any failure to attend three or more Town Council meetings in a row, or failure to designate and ensure attendance by an appropriate designee for the same period of time.
3. Any failure to respond or to properly engage efforts to respond to notification of a Town emergency within an objectively reasonable period of time.
4. Any failure to employ or discharge a Town employee which employment or discharge of employment is objectively required for the efficient and effective operation of the Town as a whole.
5. Any failure to prepare a draft budget for Town Council approval within the time required by Colorado law, or any failure to administer the budget during the year for which it has been adopted, including failure to engage and ensure performance of an audit or to keep the Town Council advised as to the financial condition of the Town at [quarterly/monthly] meetings of the Town Council.
6. Any failure to complete any purchase as approved and directed by the Town Council without advising the Town Council of the reason for an inability to complete the purchase and a recommendation for an alternative purchase approval.
7. Any failure to positively represent the Town's interest at a public meeting, engagement, function or event which attendance is incidental to or required of the office of Town Manager, including publicly disparaging or discrediting the Town or the Town Council as a body or any individual member of the Town Council, or any elected or appointed official of the Town, or otherwise engaging in material and public forms of insubordination.
8. Any failure to abide by the ethical standards established and maintained by the International City/County Management Association (ICMA), the Colorado Code of

Ethics, or any other State, federal or local law that governs the conduct of appointed local public officials in the State of Colorado.

9. Any failure to attend work for one week or more without notification or having first obtained the prior approval of the Town Council.

10. Without express approval of the Town Council after a full disclosure of the facts and circumstances by the Employee, taking or performing any additional employment which is contrary to the best interests of the Town, creates a legal conflict of interest, or otherwise prevents the Employee from performing the duties of Town Manager to a level expected by the Town Council.

11. Failure to maintain a principal and primary residence, and actually residing, within, Archuleta County at all times during the term of this employment and any extension thereto.

12. Any material violation of the Personnel Handbook of the Town of Pagosa Springs, including but not limited to, engaging in harassing behavior; abuse or misuse of Town property; discrimination against any employee, citizen, vendor, contractor, or elected or appointed official of the Town or any organization that the Town is engaged in business transactions with or through, or abuse or misuse of drugs or alcohol leading to an impairment of the function of Town Manager.

13. During periods of the Employee's leave or absence from work due to illness, accident, or incapacity, it shall be the responsibility of the Employee to ensure the Town will be adequately staffed and that the absence of the Employee from work will not result in harm to the Town's interests in continuing and consistent management.