

EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT (the "Agreement"), is entered into on this _____ day of _____, 2021 by and between the Town of Apple Valley (the "Town") and John R. Barlow ("Employee" or the "Administrator") (referred to sometimes herein collectively as the "Parties" or, individually as a "Party").

RECITALS

WHEREAS, the Apple Valley Town Council, desires to appoint Employee to serve as the Apple Valley Town Administrator pursuant to Utah Code Section 10-3b-202 and Chapter 2.15 of the Apple Valley Municipal Code (the "AVMC"), which authorize the Town to enter into agreements with town administrators delineating terms and conditions of employment in addition to and consistent with those contained within the Utah Code and the AVMC;

WHEREAS, the Council and the Administrator believe that an employment agreement, when appropriately structured, can strengthen the Council-Administrator relationship by enhancing the excellence and continuity of the administration of the Town for the benefit of its citizens;

WHEREAS, the Mayor, the Council and the Administrator believe that entering into an employment agreement negotiated between the Town and Administrator will be mutually beneficial to all;

WHEREAS, the Employee desires to accept the Mayor's appointment as the Apple Valley Town Administrator, subject to the terms, conditions, and provisions of this Agreement.

NOW, THEREFORE, the Town and the Administrator, for and in consideration of the terms, conditions and provisions hereinafter established have agreed, and do hereby agree as follows:

- 1. Effective Date.** The Parties intend and agree that the effective date of this Agreement should be October 18th, 2021 (the "Effective Date").
- 2. Employment.** The Parties agree that Employee shall be employed in the official position of Apple Valley Town Administrator.
- 3. Termination.** This Agreement shall remain in effect for an initial term beginning on the Effective Date and ending on January 5, 2026 (the "Initial Term"), and

thereafter for any additional term(s) expressly agreed upon in a writing signed by the Parties prior to the end of the Initial Term (“Additional Term”), unless otherwise terminated in accordance with this Section 3. Notwithstanding the foregoing, Employee may terminate this Agreement at any time and for any reason by voluntarily resigning from Town employment. During the Initial Term and any subsequent Additional Term, the Town may only terminate the employment relationship under the following circumstances:

- a. With cause as determined in the Town’s discretion by a majority vote of the Council; “cause” being defined as:
 - i. Employee’s disqualifying disability within the meaning of the Americans with Disabilities Act;
 - ii. Employee’s act or omission that materially breaches Employee’s duty of care or loyalty;
 - iii. Employee’s gross misconduct, to include without limitation intentional insubordination to the Council’s lawful directives, or conduct that may reasonably be expected to inflict severe reputational harm upon the Town;
 - iv. Employee’s conviction by a court of competent jurisdiction of a felony, or of any other criminal offense involving fraud, misrepresentation, theft, corruption, or moral turpitude.
- b. Upon the appointment of another person to the position of Apple Valley Town Administrator as of right pursuant to Section 4 below.

If at any time a Party determines to terminate the employment relationship, except in cases of Employee’s gross misconduct, death, or failure to re-appoint pursuant to Section 4 below, the terminating Party shall give thirty days’ prior written notice thereof to the other Party (the “Termination Notice”). If the termination is by the Town with cause other than gross misconduct, or by Employee for the Town’s material breach of its obligations under the Agreement, the other Party shall be given thirty days within which to cure the cause for termination (the “Cure Period”). Unless Employee on his own part, or a majority of the Council on the Town’s part, finds that the other Party has effectively cured the cause for termination, the termination shall become effective at the end of the Cure Period.

4. Failure to Re-Appoint. The Parties agree that, if there is a new mayor elected in a municipal general election, and the Town Council appoints another person who is not Employee to the position of Apple Valley Town Administrator within 60 days after beginning his or her term, this Agreement shall terminate on the date of such appointment with no liability to the Town, other than payment of compensation and

other amounts due through the date of such termination. If the Town Council appoints another person as Town Administrator after the said sixty-day period and during the term of this Agreement, such a failure to re-appoint Employee shall constitute a material breach of this Agreement.

5. Severance. In the event that the Town terminates the employment relationship without cause or Employee terminates the employment relationship for material breach, as provided in Section 3 of this Agreement, the Town agrees to pay Employee, in addition to any other amounts that may be due Employee, a severance payment equal to the value of the compensation and benefits that Employee would have received absent such termination for the then-remaining term of this Agreement, payable in one lump sum within fourteen days after such termination becomes effective.

6. Duties. Employee agrees to diligently and faithfully fulfill the duties and functions prescribed by the AVMC, as well as any other duties and functions that the Town Council may assign, and such duties and functions as are customary or proper to the role of a Town Administrator. Employee shall perform these duties and functions in compliance with all applicable laws, regulations, ordinances, resolutions, policies and procedures.

7. Performance Evaluations. The Council shall prepare and present to Employee for mutual approval, a performance plan that specifies benchmark areas of accomplishment annually and for any renewal years. Such plan, which shall be subject to annual review and change as deemed necessary by Council, with agreement of the Employee, shall be the basis for annual performance review.

The Council may review Employee's job performance once annually during each employment year. The reviews shall be conducted during the month of May of each year of the employment thereafter. If the Council fails to conduct an annual review by the end of May, Employee has the right to request the Council conduct a review. If Employee fails to request a review by the end of May, the Parties, by their action, will be deemed to have waived the review for that year of the Agreement.

8. Reassignment. In the event of Employee's change to a different position within the Town, Employee shall remain subject to the provisions of this Agreement, including any modifications hereto.

9. Compensation. Beginning on the Effective Date of this Agreement, the Town will pay Employee a salary of \$34,000.00 per year, payable in accordance with the Town's normal payroll practices. After the first twelve months of this Agreement, Employee's compensation will be subject to review and adjustment on an annual basis

in the reasonable discretion of the Town, and any change will be effective beginning with the first payroll period following notification of the change.

10. Town Property. The Town agrees to provide equipment and other resources to Employee as reasonably necessary to performing Town Administrator duties, including without limitation information technology hardware and software, which use shall be subject to all applicable Town policies and procedures. All such Town Property shall be returned by Employee to Town upon termination of the employment relationship.

11. Personal Leave. Employee will continue to accrue personal leave at the rate specified in the policy.

12. Benefits. During the term of this Agreement, Employee will be eligible to receive and participate in all employment benefits that the Town offers to part-time employees, in accordance with the respective terms and conditions of said plans and programs. These benefits may be modified or eliminated at any time in the sole discretion of the Town, without discrimination.

13. Expenses. Employee is authorized to incur ordinary and reasonable expenses in accordance with budgets and guidelines established by the Town from time to time. The Town will reimburse Employee for all such reasonable expenses in accordance with its expense reimbursement policy in effect from time to time. In any event, Employee will submit a written expense report and evidence of such expenditures no later than thirty (30) days after incurring such expenses.

14. Working Hours. The Parties acknowledge that the proper performance of the Town Administrator's duties require flexibility in Employee's working hours and will also often require the performance of necessary services outside of the Town's normal business hours which, as of the Effective Date, are Monday through Thursday, 8:30 am to 5:00 pm.

Consequently, the Parties agree that Employee will regularly work a minimum of (15) fifteen hours per week on a four-day schedule (Monday-Thursday, excluding holidays), subject to adjustment as the Town may reasonably require. Employee may work remotely, if necessary, at Employee's discretion. During the Town's normal business hours, Employee shall be reasonably available to receive and respond to phone calls and emails, including on days that Employee is not regularly scheduled to work.

15. Professional Development. The Town hereby agrees to budget and pay for the costs, including travel and per-diem, of Employee's attendance at courses,

meetings, seminars and other events, as well as subscriptions and membership dues in professional associations, as necessary for Employee's continued professional development.

16. Outside opportunities. The employment provided for by this Agreement shall be Employee's secondary employment. Recognizing that certain outside employment opportunities provide indirect benefits to the Town and the community, Employee may, at his discretion, elect to accept other employment opportunities.

17. Future Appropriations. This Agreement shall not be construed in any manner to bind the future legislative discretion of the Town or its future budget appropriations. Where future appropriations are unavailable or insufficient to meet the obligations provided for herein, such circumstances shall constitute a termination without cause by the Town.

18. Waiver of Rights. If in one or more instances, either Party fails to insist that the other Party perform any of the terms of this Agreement, such failure shall not be construed as a waiver by such party of any past, present, or future right granted under this Agreement, and the obligations of both parties under this Agreement shall continue in full force and effect.

19. Severability. Whenever possible, the provisions of this Agreement should be interpreted in such a manner as to be effective under applicable law. Nevertheless, if any clause or provision of this Agreement shall be adjudged invalid or unenforceable by a court of competent jurisdiction or by operation of any applicable law, it shall not affect the validity of any other clause or provision which shall remain in full force and effect.

20. Governing Law. The laws of the State of Utah shall govern the interpretation, validity and effect of this Agreement. Subject to Section 21 of this Agreement, venue for any action concerning the enforcement of this Agreement shall be in any court of competent jurisdiction located in the State of Utah, whether state or federal court, and the Parties each waive any objection to venue laid therein.

21. Arbitration. If there is a dispute hereunder which the Parties cannot resolve between themselves, the Parties agree to attempt to settle the dispute by nonbinding arbitration before commencement of litigation. The arbitration shall be held under the rules of the American Arbitration Association. The matter in dispute shall be submitted to an arbitrator mutually selected by the Town and Employee. In the event that the Parties cannot agree upon the selection of an arbitrator within seven (7) days,

then within three (3) days thereafter, they shall request the presiding judge of the Fifth District Court in and for Washington County, State of Utah, to appoint an independent arbitrator. If court is unable to appoint such arbitrator, the parties will request the United States District Court to appoint an arbitrator pursuant to the Employment Arbitration Rules, of the American Arbitration Association. The cost of any such arbitration shall be divided equally between the Town and Employee. The results of the arbitration shall be non-binding on the parties, and any party shall be free to initiate litigation after the final decision of the arbitrator.

22. Attorney's Fees and Costs. In the event either party shall bring suit to enforce any term of this Agreement or to recover any damages for and on account of the breach of any term or condition in this Agreement, it is mutually agreed that the prevailing party in such action shall recover all costs including: all litigation and appeal expenses, collection expenses, reasonable attorney's fees, necessary witness fees and court costs to be determined by the court in such action.

23. Entire Agreement. This Agreement constitutes the entire agreement between the Parties with regard to the matters contained herein and supersedes all prior agreements to the extent they are inconsistent. Any modification of this Agreement must be in writing and executed by both Parties.

24. Notices. All notices, requests, demands or consents required hereunder shall be in writing and shall be delivered (a) in person, (b) by courier or overnight service, (c) mailed by first class registered or certified mail, return receipt requested, or (d) by email transmission, as follows:

If to Employee:

John R. Barlow
725 North Willow,
P.O. Box 2742
Hildale, Utah 84784

If to the Town:

Apple Valley Town Clerk
1777 Meadowlark Drive,
Apple Valley, Utah 84737

The notice date will be deemed the date of delivery, if notice is delivered personally or by courier, one business day after sending, if by overnight service or email, or else three business days after sending, if notice is sent by first class mail. Either Party may

permanently or temporarily change the address to which notices are to be sent by giving written notice to the other Party in the manner above provided.

25. Acknowledgment of Execution. Employee acknowledges that he or she has carefully read this Agreement, that he or she knows and understands its contents, that no promise or agreement not expressed in this Agreement has been made, that the Agreement is made without relying on any statement or representation by the Town, and that he or she has signed this Agreement as his or her own free act.

Signed and executed on the date first specified above.

John R. Barlow

Dale Beddo, Mayor

ATTEST:

Jeff Voran, Town Clerk