

**AGREEMENT BETWEEN THE TOWN OF TRUCKEE AND ANDREW MORRIS
FOR SERVICES AS TOWN ATTORNEY**

This Agreement is made and entered into this _____, 2022 by and between the Town of Truckee, a charter city and municipal corporation, hereafter "Town", and Andrew Morris, hereafter "Employee".

This Agreement is entered into on the basis of the following facts, among others:

1. The Town Council of the Town desires to appoint Employee as the Town Attorney of the Town, and Employee desires to accept this appointment.
2. The Town and Employee desire to establish specific terms and conditions relating to compensation and benefits, performance evaluations, and related matters.

BASED UPON THE FOREGOING, THE TOWN AND EMPLOYEE AGREE AS FOLLOWS:

1. Employee Appointed. The Town appoints and employs Employee as Town Attorney and Employee accepts the appointment and employment.
2. Duties of Employee. Employee shall perform the duties established for the Town Attorney by State law, the Truckee Municipal Code, the Town Attorney job description, the directions of the Town Council, or as otherwise provided by law, ordinance, or regulation.
3. Full Energy and Skill. Employee shall faithfully, diligently, and to the best of Employee's abilities, perform all duties that may be required under this Agreement. Employee agrees that Employee has a duty of loyalty and a general fiduciary duty to the Town. Employee shall devote the whole of Employee's working time, skill, experience, knowledge, ability, labor, energy, attention and best effort exclusively to the Town's business and affairs.
4. No Conflict. Notwithstanding the foregoing or any other provision of this Agreement, Employee shall be permitted to serve as the Town Attorney for the Town of Mammoth Lakes, and to represent small clients which cumulatively impose minimal demands upon Employee' s time, provided no such representation is actually or potentially in conflict with, inimical to, or interferes with the performance of Employee' s duties. Further, Employee shall not, during the term of this Agreement, individually, as a partner, joint venture, officer or shareholder, invest or participate in any business venture conducting business in the corporate limits of the Town of Truckee, other than
5. Hours of Work. The Town Attorney is an exempt employee but is expected to engage in those hours of work that are necessary to fulfill the obligations of the Town Attorney position. The Town Attorney does not have set hours of work as the Town Attorney is expected to be available at all times. It is recognized that the Town Attorney must devote a great deal of time to the business of the Town outside of the town's customary office hours, and to that end the Town Attorney's schedule of work each day and week shall vary in accordance with the work required to be performed and in accordance with any specific direction provided by the Town Council.

6. Term.

- (a) The term of this Agreement shall be for a period of four (4) years retroactively from December 30, 2021 through December 30, 2025 unless terminated earlier by either party

in accordance with the provisions set forth in Section 17 or by the event of the death or permanent disability of Employee.

(b) The Term of this Agreement shall automatically renew and extend for an additional one (1) year term beginning on December 31, 2025 and for an additional one (1) year term on each successive anniversary of that date, unless written notice not to renew and extend is given by Town to Employee no later than ninety (90) days prior to the renewal date. If a renewal occurs under the provisions of the preceding sentence, the additional one (1) year term shall immediately be deemed part of the term of this Agreement for purposes of Section 17(a). If notice of non-renewal is given by Town, the Agreement shall remain in effect for the remaining term and Employee will be expected to continue Employee's duties for the remainder of the Agreement term, unless the Agreement is terminated earlier under Section 17 below. Should said non-renewal notice be given by the Town, then Town shall pay Employee severance for six (6) months service based upon compensation as provided in Section 8.

7. Annual Evaluation. Each year on or about December 15th or at a time mutually agreed upon by the Town Council and Employee, the Town Council shall conduct an evaluation of Employee's performance and provide guidance and direction regarding the Town Council's goals and objectives which Employee shall be tasked with implementing.

8. Compensation.

(a) Salary. Employee shall receive the base annual salary of one hundred ninety-nine thousand four hundred eighty-seven dollars and eighty-six cents (\$199,487.86) payable on a bi-weekly basis in the same manner as all full time Town employees, and subject to all applicable payroll taxes and withholdings.

(b) Annual Salary Adjustments. At the Town Council's sole discretion, salary adjustments may be given to Employee at or around the time of the annual review and evaluation by the Town Council. Additionally, Employee shall be entitled to receive any cost of living or similar increase granted other mid-Management Town employees during the term of this Agreement. Council may consider one-time incentive payments when Employee is at the top of the wage range

(c) Town Council shall consider adjustments to the Town Attorney pay range based on any compensation study completed town-wide during the term of this contract.

9. Deferred Compensation.

(a) Town shall maintain a deferred compensation program established for Employee and pay the following amounts: \$12,000 annually plus 2% of base pay. This amount shall be paid in regular equal installments coinciding with compensation payments, including any severance payment if and when incurred.

(b) In the event this Agreement terminates or is not renewed, Employee shall be entitled to retain the funds that have been deposited in the year of termination or non-renewal.

(c) After such time as Employee resigns or is terminated, Town shall transfer ownership of the amount on deposit to succeeding employers upon Employee's written request.

10. Pension. Town shall enroll Employee as a member of the Public Employees Retirement System (PERS), or equivalent, in the 2.0% at age 62 PERS plan. Town shall pay for employer's portion of the plan costs and Employee shall pay for the employee's portion of

the contribution into the plan in the extent described in the Mid-Management Memorandum of Understanding, as it may be modified from time to time.

11. Health and Medical Benefits Insurance. Town shall provide Employee with the same health and medical benefits plan or plans which are provided to other Town management employees and shall pay 100% coverage of the employee and dependent rate or premium.

Town shall provide Employee a matching contribution of up to 1% of his base pay to a retiree health savings plan.

12. Life Insurance. Town shall pay the premium or premiums to provide Employee with a term life insurance policy in a manner provided to all mid-management employees.

13. Automobile Allowance. Employee shall not be paid an automobile allowance. Employee will be eligible for personal auto use under the regular Town process or may use a Town vehicle for out-of-town Town business.

14. Professional Conferences. Town shall budget for travel and conference expenses in order for Employee to attend official meetings and occasions reasonably adequate to continue the professional development of Employee and to reasonably pursue necessary official and other functions for the Town. Use of such allowance shall be at the discretion of Employee. Notwithstanding the above, the number of conferences or meetings Town will pay for each year and attendance at conferences and meetings shall be at the discretion of the Town Council as approved in the annual budget.

15. Publications. Town shall budget for professional legal publications necessary for effective research related to Town issues.

16. Vacation, Administrative and Sick Leave.

(a) Annually, Employee shall accrue paid vacation leave at the rate afforded all management employees in the Town's Personnel Rules, in addition to recognized Town holidays.

(b) Employee shall accrue vacation as delineated in (a) above plus forty (40) hours per year, earned pro-rata in accordance with standard Town practices.

(c) Employee shall accrue sick leave at a rate commensurate with Town personnel rules and regulations. In the event of termination or resignation from employment or the non-renewal of this Agreement, Employee shall be entitled to a buy-back of the accumulated but unused sick leave, up to the maximum set forth in the Town personnel rules and regulations, as they may be amended from time to time.

(d) Employee shall be entitled to an additional two (2) weeks of paid administrative leave per year to be taken at a time and in a manner consistent with his responsibilities under this agreement.

17. Termination of Employment.

(a) No Property Interest. Employee understands and agrees that Employee has no constitutionally-protected property or other interest in Employee's employment as Town Attorney. Employee understands and agrees that Employee works at the will and pleasure of the Town Council, and that Employee may be terminated, or asked to resign, at any time, with

or without cause, by a majority vote of its members. Notice of termination shall be provided to the Town Attorney in writing. "Termination," as used in this Agreement, shall also include:

- (i) a request that the Town Attorney resign;
- (ii) a reduction in salary or other financial benefits of the Town Attorney in a significant amount which is inconsistent with a reduction in salary or financial benefits for employees in the executive management unit;
- (iii) a material reduction in the powers and authority of the Town Attorney (excluding placement on paid administrative leave); or
- (iv) the elimination of the Town Attorney's position.

Any such notice of termination or act constituting termination shall be given at or effectuated at a duly noticed regular or special meeting of the Town Council.

(b) Termination Immediately Before or Following Town Council Election. No action by the Town Council to terminate Employee, other than for gross mismanagement or an act of moral turpitude (as described in Section 17 (e)), will be made within ninety (90) days either before a Town Council election or immediately following a Town Council election. Nothing in this paragraph alters the "at will" status of Employee's employment with Town.

(c) Notice Required Of Employee. Employee may voluntarily terminate employment at any time by giving not less than thirty (30) days notice.

(d) Severance Pay. If Employee is asked to resign or is terminated, Employee shall be eligible for a severance payment as provided herein. Severance shall be defined as continuing compensation to Employee as set forth in this Agreement, including health and welfare insurance. Employee's employment separation date shall be deemed to be 180 days following the last day of employment, subject to the applicability of subsection (e) below. Employee shall also be paid for any accrued, but unused, vacation and sick leave in accordance with the Town's Personnel Rules. If employee is retiring, employee may apply unused sick leave as CalPERS Service Credit per CalPERS regulations. Any unused Administrative Leave shall be lost. Employee's final paycheck shall be paid in accordance with the Town's established payroll schedule. Eligibility for such severance payment is expressly conditioned upon Employee's execution of:

- (i) a waiver and release of any and all of Employee's claims against Town, and
- (ii) a covenant not to sue, in a form prescribed by the Town.

All normal payroll taxes and withholdings as required by law shall be made with respect to any amounts paid under this section. Should Employee obtain employment with a CalPERS agency and/or an employer with comparable health insurance during said 6-month period, Town's obligation for continued CalPERS and or health insurance coverage shall cease, and Employee's final date of employment with Town for purposes of calculating retirement benefits shall be the day immediately preceding Employee's commencement of employment with the new employer.

(e) Ineligibility for Severance Under Certain Conditions. If the termination of Employee is the result of gross mismanagement and/or an act or acts of moral turpitude, Employee shall not be paid any severance pay except as provided in the remainder of this subsection. In such an instance, Employee may institute a judicial action in declaratory relief to determine whether there was substantial evidence of gross mismanagement and/or an act or acts of moral turpitude. If judicial action is instituted and the court determines there was no

such substantial evidence, Employee may either receive severance pay upon satisfaction of the criteria in subsection (d) or forego the severance pay and reserve all of his legal rights including the right to proceed with legal action against the Town.

18. Statutory Requirements. This Agreement shall be deemed to incorporate by reference the provisions of Sections 53243 *et seq.* of the Government Code, as it may be amended or renumbered.

19. Payment of Expenses of Employment. The Town shall pay the following usual and customary employment expenses.

(a) The cost of any fidelity or other bonds required by law for the Town Attorney.

(b) Subject to Section 17 of this agreement, the cost to defend and indemnify Employee to the full extent of the law as provided by the California Government Claims Act (Government Code §810 *et seq.*), or otherwise provided by law. Notwithstanding the foregoing, Town's obligation to defend and indemnify Employee shall extend only to the entry of a final judgment by the trial court, and shall not extend to providing defense or indemnity in connection with an appeal of the judgment, unless otherwise specifically provided by law. Town will determine, in its sole discretion, whether to compromise and settle any such claim or suit against Employee and the amount of any settlement or judgment rendered thereon.

(c) Subject to budget approval, reasonable dues for Employee's membership in professional organizations associated with the office of Town Attorney. The Town will allow Employee reasonable time away from the Town to participate in the annual conferences of these organizations.

20. Miscellaneous.

(a) Notices. Notices given under this Agreement shall be in writing and shall be:

- (i) served personally; or
- (ii) sent by facsimile (provided a hard copy is mailed within one (1) business day); or
- (iii) delivered by first-class United States mail, certified, with postage prepaid and a return receipt requested; or
- (iv) sent by Federal Express, or some equivalent private overnight delivery service.

Notices shall be deemed received at the earlier of actual receipt or three (3) days following deposit in the United States mail, postage prepaid. Notices shall be directed to the addresses shown below, provided that a party may change such party's address for notice by giving written notice to the other party in accordance with this subsection.

TOWN: Town of Truckee
Attn: Mayor
10183 Truckee Airport Road
Truckee, CA 96161

EMPLOYEE: Mr. Andrew Morris

(b) Entire Agreement/Amendment. This Agreement constitutes the entire understanding and agreement between the parties as to those matters contained in it, and supersedes any and all prior or contemporaneous agreements, representations and understandings of the parties. This Agreement may be amended at any time by mutual agreement of the parties, but any such amendment must be in writing, dated, and signed by the parties and attached hereto.

(c) Attorney's Fees. If any legal action or proceeding is brought to enforce or interpret this Agreement, the prevailing party, as determined by the court, shall be entitled to recover from the other party all reasonable costs and attorney's fees, including such fees and costs as may be incurred in enforcing any judgment or order entered in any such action.

Nothing in this subsection shall be read to prevent the parties from agreeing to some alternative method of dispute resolution. If such a method is agreed to, any final determination shall include an award of attorney's fees and costs by the presiding officer.

(d) Severability. In the event any portion of this Agreement is declared void, such portion shall be severed from this Agreement and the remaining provisions shall remain in effect, unless the result of such severance would be to substantially alter this Agreement or the obligations of the parties, in which case this Agreement shall be immediately terminated.

(e) Waiver. Any failure of a party to insist upon strict compliance with any term, undertaking, or condition of this Agreement shall not be deemed to be a waiver of such term, undertaking, or condition. To be effective, a waiver must be in writing, signed and dated by the parties.

(f) Representation by Counsel. The parties acknowledge and agree that they were, or had the opportunity to be, represented individually by legal counsel with respect to the matters that are the subject of this Agreement and that they are fully advised with respect to their respective rights and obligations resulting from signing this Agreement.

(g) Governing Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of California. Employee and Town agree that venue for any dispute shall be the Nevada County (California) Superior Court.

(h) Section Headings. The headings on each of the sections and subsections of this Agreement are for the convenience of the parties only and do not limit or expand the contents of any such section or subsection.

(i) No Assignment. Employee may not assign this Agreement in whole or in part.

Dated: _____

TOWN OF TRUCKEE

By _____
Mayor Henderson

Dated: _____

EMPLOYEE

By _____
Andrew Morris