

EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT (this “Agreement”) is made and entered into as of May 25, 2023, by and between the Town of Paradise Valley, an Arizona municipal corporation (the “Town”) and Andrew B. Ching (“Ching” or “Manager”).

RECITALS

A. The Town desires to employ Ching as Town Manager for the Town.

B. The Council of the Town of Paradise Valley (the “Town Council”) desires to provide certain benefits, to establish certain conditions of employment and to set working conditions for Ching.

C. Ching desires to accept employment as Town Manager of the Town.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing introduction and recitals, which are hereby incorporated into and are deemed an integral part of this Agreement, the mutual covenants set forth below and other good and valuable consideration, the receipt and sufficiency of which are mutually acknowledged by the parties hereto, the Town and Ching hereby agree as follows:

1. Employment & Duties.

1.1 Scope of Duties. The Town agrees to employ Ching as Town Manager to perform the functions and duties specified in state law (A.R.S. § 9-303 and applicable laws), the Town Code (Article 3-2 and applicable ordinances), and the Town of Paradise Valley Policy and Procedure Manual (the “Policy Manual”). Manager shall also perform such other administrative and executive duties as required by his position and other duties as assigned to him by the Town Council.

1.2 Standards. The Manager shall perform his duties to the best of his ability and for the benefit of the Town in accordance with the highest professional and ethical standards of the profession, including the International City/County Management Association (ICMA) Code of Ethics.

1.3 Applicable Law; Policies. Manager agrees to comply with all applicable laws, ordinances, regulations, rules, and statutes of all federal, state, and local government entities (and any agencies, departments, and political subdivisions thereof). Manager agrees to comply with all Town policies and regulations, including, but not limited to, those set forth in the Policy Manual and any subsequent amendments or additions thereto. In the event of any conflict between those policies and regulations and this Agreement, the terms of this Agreement shall govern.

1.4 Work Hours. Ching shall devote his working day to the business of Town, it being recognized and agreed that the position of Town Manager is full-time and that he will hold no other positions for monetary gain without approval of the Town Council. Notwithstanding the full-time nature of Manager's duties, he shall conduct his work hours as an executive employee, thereby giving to Ching the discretion as to his actual time and place of work, which may include working after regular work hours and on holidays; provided it is understood that Manager is generally expected to be present at Town offices during the days (currently Monday through Friday) and office hours generally consistent with director-level managers.

2. Term. This Agreement shall become effective on June 19, 2023, and shall remain in full force and effect for five years, until midnight on June 18, 2028 (the "Termination Date"), subject to continuation or termination as set forth below.

3. Continuation. This Agreement shall be extended on the same terms and conditions as herein for additional one-year periods (the last day of each such additional one-year period to be considered a "Subsequent Termination Date") unless either party hereto gives written notice to the other at least 60 days prior to the Termination Date or Subsequent Termination Date, as the case may be, that the noticing party does not wish to extend this Agreement beyond the Termination Date or Subsequent Termination Date.

4. Termination. The Town may terminate this Agreement by an affirmative vote of the majority of the full Town Council at duly posted public meeting, with or without cause at any time, subject only to the severance provisions set forth below. Ching may terminate this Agreement at any time, with or without cause, upon not less than 60 days' prior notice to the Town Council.

4.1 Severance With Cause. If the Town Council terminates this Agreement with cause, no severance pay will be paid to Ching. For the purposes of this Agreement, "with cause" shall mean that the Town Council, at a duly posted public meeting, has determined that Ching has: (A) committed an act of gross insubordination by refusing to take a legal, ethical, and valid action that is clearly within the scope of his employment when specifically directed to do so by a majority of the Town Council; (B) been incarcerated and/or charged with a felony as defined in Arizona Revised Statutes (the Town Council may, alternatively, choose to place Ching on administrative leave either with or without pay during the pendency of any such prosecution); (C) engaged in theft or embezzlement; (D) materially failed to successfully complete a "Corrective Action Plan," as defined in and pursuant to Section 8; (E) been convicted of a criminal act that adversely affects the business reputation of the Town; or (F) materially breached the terms of this Agreement.

4.2 Severance Without Cause. In the event Ching is terminated by the Town Council without cause and during such time as Ching is willing and able to fulfill the duties of the office under this Agreement, the Town agrees: to pay Ching a lump sum payment (or, at the Town's option, in installments) in cash equal to six months of Ching's base salary at the time of termination; and to provide health insurance benefits as set forth in Paragraph 7.2, below, to Ching and any of his covered dependents for six months from date of termination. Prior to, and as a condition of, receipt of any severance pay set forth herein, Ching shall execute a waiver and release

of claims in a form satisfactory to the Town Attorney. This severance benefit shall not be considered wages under the Arizona Wage Statute, A.R.S. § 23-350, *et seq.*, and Ching hereby waives the treble damage provision of A.R.S. § 23-355 if there are any disputes regarding the payment of severance pay.

4.3 Voluntary Resignation. In the event Ching voluntarily terminates this Agreement in accordance with this Section 4, he shall not be entitled to severance pay.

5. Suspension. If the Town Council has determined that a “with cause” termination of the Manager is appropriate (as set forth in Section 4 above), the Town Council may, in its sole discretion, as an alternative to termination with cause, suspend Ching, with or without pay, for a period of up to 30 days.

6. Disability. If Ching is unable to perform the essential functions of his position, either with or without reasonable accommodations, for a period of 12 consecutive weeks, plus any remaining accrued but unused leave, due to his own physical or mental health, the Town shall have the option to terminate this Agreement; provided, the Town shall pay the full amount of severance pay as set forth in, and subject to the conditions of, Section 4.2 above.

7. Compensation.

7.1 Base Salary; Adjustments; Bonus. The Town agrees to pay Ching an annual base salary of \$250,000 for his services rendered pursuant to this Agreement, payable in installments at the same time as other management employees of the Town are paid. Ching’s annual base salary shall be adjusted on July 1 of each year, beginning on July 1, 2024, by an amount equal to the combined (cost of living and performance) percentage increase provided to management employees of the Town for the fiscal year beginning on that same July 1. Ching shall be eligible for an annual bonus following a performance evaluation as set forth in Section 8 below.

7.2 Disability, Health and Life Insurance. The Town agrees to provide Ching major medical, hospitalization, surgical, comprehensive medical, life, accident, sickness, short and long-term disability income benefits, dental and vision insurance, workers compensation, and FMLA benefits in the same manner and at the same benefit level as is generally provided to eligible Town employees.

7.3 Retirement and Deferred Compensation.

A. Arizona State Retirement System (“ASRS”). The Town agrees to enroll Ching into the ASRS and, during the life of this Agreement, to make all matching contributions required by Arizona Law.

B. Deferred Compensation. In addition to contributions pursuant to Section 7.3(A), the Town agrees to contribute into a qualified tax-sheltered deferred compensation plan (“Plan”) under the Internal Revenue Code, designated by the Town and Ching, in the amount of \$25,000 annually. The annual amount contributed shall be paid in equal quarterly payments during the term of this Agreement. If Manager is terminated

without cause, he will receive a partial amount of the upcoming quarterly deferred compensation amount pro-rated based on the effective date of termination of the Agreement. The Plan will conform to the Internal Revenue Code and all applicable state and federal regulations, including but not limited to those issued by the Internal Revenue Service. Manager is responsible for any tax consequences related to the Town's contributions.

7.4 Cellular Telephone Stipend. The Town shall either provide a cell phone at no cost to Ching, or pay Ching a monthly cell phone stipend, consistent with other management employees of the Town and according to the current Policy Manual and/or administrative policies.

7.5 Automobile Stipend. The Town shall pay Ching \$575.00 per month as an automobile stipend.

7.6 Vacation; Sick Leave. Ching shall accumulate vacation time at a rate of 160 vacation hours per year; provided, however, that Ching shall be credited with 120 vacation hours as of the date of this Agreement, and which credited hours shall be available on the date he reports for duty as set forth in Section 2. He shall also accumulate sick leave at the same rate as granted other employees. Ching shall be credited with 80 sick leave hours as of the date of this Agreement, which credited hours shall be available on the date he reports for duty as set forth in Section 2 above. Ching may be compensated for unused vacation and sick leave upon termination according to the provisions of the Policy Manual relating thereto, unless otherwise specified in this Agreement. This sick leave provision is intended to comply with Arizona's Fair Wages and Healthy Families Act.

8. Performance Evaluation. The Town Council shall provide Manager with an annual performance review. The performance review will include an opportunity for Manager to meet and discuss the review and shall also include a Town Council review of the Manager's compensation, which includes salary and possible bonuses. It is understood and agreed that the award of any increase in Manager's compensation or benefits, including Manager pay raise(s) or bonus(es), shall be at the sole and exclusive discretion of the Town Council. The performance review shall occur within a reasonable time prior to approval of the Town's annual budget. If a Corrective Action Plan is deemed necessary by an official act of the majority of the Town Council, the Manager will receive such a plan in writing after consultation with the Town Council and will have at least three months to successfully address the item(s) set forth in the plan.

9. Professional Development.

9.1 Professional Associations. The Town agrees to budget and pay Ching's travel, conference registration and subsistence expenses for professional and official travel, meetings, and related occasions adequate to continue his professional development and pursuit of necessary official and other functions on behalf of the Town, which may include the annual conferences of the International and Arizona City/County Management Associations, the Arizona League of Cities and Towns, and such other national, regional, state and local government groups and committees thereof for which Ching serves as a member. This benefit shall not be included as a portion of the Severance Pay under Section 4 of this Agreement.

9.2 Continuing Education. The Town also agrees to budget and pay Ching's reasonable travel, registration and subsistence expense for short courses, institutes, and seminars necessary for Ching's professional development and continuing education requirements; as well as events that promote and benefit the Town. This benefit shall not be included as a portion of the Severance Pay under Section 4 of this Agreement.

9.3 Dues and Subscriptions. The Town agrees to budget for and to pay for Ching's professional dues and subscriptions necessary for his continuation and full participation in national, regional, state, and local professional associations and organizations, and chapters thereof, of which he is expected to be a member because of his position as Town Manager; and for other suitable and desirable expenses for his continued professional participation, growth, and advancement, and for the good of the Town, as the Town Council deems appropriate. The Town agrees to pay Ching's dues related to maintaining inactive status with the State Bar of Arizona. The benefits in this Section 9.3 shall not be included as a portion of the Severance Pay under Section 4 above.

9.4 Professional Development Expenses. Manager agrees and understands that expenses related to Sections 9.1-9.3, above, shall not exceed \$7,500 for each annual budget year while this Agreement is in effect, unless a greater allowance is first approved by the Town Council. It is understood that this expense provision is not intended to discourage Manager from seeking to participate in valuable professional development opportunities, but instead is intended to encourage timely communication between Manager and Town Council regarding budgeting and expenses.

10. General Expenses. The Town: (i) recognizes that certain expenses of a non-personal and generally job-affiliated nature are periodically incurred by Ching; (ii) agrees to reimburse or to pay said general expenses; and (iii) authorizes the Finance and Budget Director, or authorized designee, to disburse such monies upon receipt of duly executed expense or petty cash vouchers, receipts, statements, or personal affidavits, consistent with Town ordinance, policies, and procedures.

11. Indemnification. In addition to that required under state and local law, the Town shall defend, hold harmless, and indemnify Ching from and 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 Ching's duties as prescribed by the Town Code or separate directions of the Town Council.

12. Bonding. The Town shall bear the full cost of any fidelity or other bonds required of Ching under any law or ordinance.

13. Notices and Requests. Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if: (i) delivered to the party at the address set forth below; (ii) deposited in the U.S. Mail, registered or certified, return receipt requested, to the address set forth below; or (iii) given to a recognized and reputable overnight delivery service, to the address set forth below:

If to the Town: Town of Paradise Valley
6401 E. Lincoln Drive
Paradise Valley, AZ 85253
Attn: Mayor

With a copy to: Town of Paradise Valley
6401 E. Lincoln Drive
Paradise Valley, AZ 85253
Attn: Town Attorney

If to Ching: Andrew B. Ching

Tempe, AZ 85283

or at such other address, and to the attention of such other person or officer, as any party may designate in writing by notice duly given pursuant to this Section. Notices shall be deemed received (i) when delivered to the party, (ii) three business days after being placed in the U.S. Mail, properly addressed, with sufficient postage, or (iii) the following business day after being given to a recognized overnight delivery service, with the person giving the notice paying all required charges and instructing the delivery service to deliver on the following business day. If a copy of a notice is also given to a party's counsel or other recipient, the provisions above governing the date on which a notice is deemed to have been received by a party shall mean and refer to the date on which the party, and not its counsel or other recipient to which a copy of the notice may be sent, is deemed to have received the notice.

14. Effect of Waiver. The failure of either party to insist on strict compliance with any of the terms, covenants or conditions of this Agreement by the other party shall not be deemed a waiver of that term, covenant, or condition, nor shall any waiver or relinquishment of any right or power at any one time or times be deemed a waiver or relinquishment of that right or power for all or any other times.

15. Attorneys' Fees. In the event either party finds it necessary to bring any action at law or other proceeding against the other party to enforce any of the terms, covenants or conditions hereof, or by reason of any breach or default hereunder, the party prevailing in such action or other proceeding shall be paid all reasonable costs and reasonable attorneys' fees by the other party and, in the event any judgment is secured by said prevailing party, all such costs and attorneys' fees shall be included therein, such fees to be set by the court and not by jury.

16. Headings. The descriptive headings of the sections of this Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof.

17. Further Acts. Each of the parties hereto shall execute and deliver all such documents and perform all such acts as reasonably necessary, from time to time, to carry out the matters contemplated by this Agreement.

18. Time Is of the Essence. Time is of the essence in this Agreement.

19. Assignment. This Agreement may not be assigned, in whole or in part.

20. Entire Agreement. This Agreement constitutes the entire agreement between the parties. This Agreement, and any documents appended to or referenced in it, supersedes all other agreements, either oral or in writing or implied in fact, between the parties hereto with respect to the employment of Manager by Town, and contains all covenants and agreements between the parties with respect to that employment in any manner whatsoever. Each party to this Agreement acknowledges that no representations, inducements, promises, or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein, and that no other agreement, statement or promise not contained in this Agreement shall be valid or binding.

21. Amendment. Any amendment, modification, or waiver of any provision in this Agreement will be effective only if it is in a writing that (i) is signed by both parties; (ii) has been approved by the Town Council; (iii) specifically references this Agreement; and (iv) specifically expresses an intent by both parties to modify or amend this Agreement.

22. Governing Law, Jurisdiction and Venue. This Agreement shall be governed by, interpreted under, and construed and enforced in accordance with the laws of the State of Arizona without giving effect to any choice or conflict of law provision or rule (whether of the State of Arizona or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of Arizona. Any action or proceeding concerning this Agreement shall be commenced in Maricopa County, Arizona and the parties irrevocably consent to personal jurisdiction and venue in Maricopa County, Arizona.

23. Partial Invalidity. If any sentence, clause, word or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining sentences, clauses, words or provisions shall nevertheless continue in full force without being impaired or invalidated in any way. Moreover, if any sentence, clause, word or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the offending item(s) shall, if possible, be construed to permit its enforcement to the maximum extent possible that is permissible under law and the parties will negotiate in good faith for such amendments of this Agreement as may be necessary to achieve its intent, notwithstanding such invalidity or unenforceability.

24. Authority and Reliance. Each party, for that party's self, heirs, personal representatives, successors, and assigns, hereby represents and warrants: that the party has the full capacity and authority to enter into, execute, deliver, and perform this Agreement; that such execution, delivery, and performance does not violate any contractual or other duty or obligation by which that party is bound; and that this Agreement constitutes an agreement binding upon and enforceable against that party. Each party acknowledges that this Agreement is written in a manner that is fully understandable to the party, and the party has had an opportunity to consult with counsel. Each party is entering into this Agreement in reliance on each party's own judgment and

not in reliance on any statements made by the other party. Each party warrants and represents that the party is not relying on counsel for any other party for the performance of any task, provision of any service, or rendering of any advice for any purpose whatsoever, but instead is relying solely and exclusively on the party's own counsel for all matters relating to the terms of this Agreement.

25. No Construction Against Either Party. The parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement. Any reference to any federal, state, local or foreign statute shall be deemed to refer to all rules and regulations promulgated thereunder, unless the context requires otherwise. The word "including" means "including, without limitation." The parties intend that representations, warranties and covenants contained herein shall have independent significance. If any party has breached any representation, warranty or covenant contained herein in any respect, the fact that there exists another representation, warranty or covenant relating to the same subject matter (regardless of the relative levels of specificity) that the party has not breached shall not detract from or mitigate the fact the party is in breach of the first representation, warranty, or covenant.

26. Covenant of Good Faith. In exercising their rights and in performing their obligations pursuant to this Agreement, the parties will cooperate with one another in good faith to ensure the intent of this Agreement can be attained. The Town and its Town Council shall not unreasonably withhold appropriation authority to fund the salary, benefits, and other provisions of this Agreement.

27. Conflict of Interest. This Agreement may be cancelled by the Town pursuant to ARIZ. REV. STAT. § 38-511. In addition, Manager covenants that he presently has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of services of Manager.

[Signatures on following page]

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first set forth above.

“Ching”

“Town”

TOWN OF PARADISE VALLEY, an
Arizona municipal corporation

Andrew B. Ching

Jerry Bien-Willner, Mayor

ATTEST:

Duncan Miller, Town Clerk

APPROVED AS TO FORM:

Andrew McGuire, Town Attorney