

**TOWN OF PINETOP-LAKESIDE**

**RESOLUTION NO. 22-1630**

**A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF PINETOP-LAKESIDE, ARIZONA, APPROVING THE RENEWAL OF TOWN MANAGER'S EMPLOYMENT AGREEMENT FOR A FOUR (4) YEAR PERIOD.**

**WHEREAS**, the Town and Keith W. Johnson previously entered into an initial Employment Agreement for a three-year period followed by an amended agreement expiring July 12, 2022 (the "Former Employment Agreement").

**WHEREAS**, the Town and Keith W. Johnson desire to extend the term of the former Employment Agreement for an additional four (4) year period.

**NOW, THEREFORE, BE IT RESOLVED** by the Mayor and Town Council of the Town of Pinetop-Lakeside, Arizona, hereby approve the new employment agreement (the "New Employment Agreement") that includes the following provisions:

- 1) Section 1: TERM is amended as follows:  
The term of the New Agreement shall be for a four (4) year period effective July 13, 2022 and expiring August 30, 2026.
- 2) Section 3: COMPENSATION is hereby updated as follows:  
The Employer agrees to pay Employee an annual base salary of One Hundred-Twenty Thousand Three Hundred Sixty-Nine Dollars (\$120,369) for the first year of the Employment Term. The Employer agrees to pay the Employee in equal installments on a bi-weekly basis during the term of this Agreement. Such amount shall be subject to the same salary increases as all other Director level employees on or before each anniversary of the Commencement Date if warranted as determined by the Annual Performance Evaluation required by Section 4 of the New Employment Agreement.
- 3) Section 13: SEVERANCE (13)(A) is hereby amended as follows:  
A. If Manager is terminated "without cause" at a time Manager is willing and able to perform his duties under this Agreement, then Town agrees to pay Manager a lump sum cash payment equal to nine (6) months' base salary at the then current rate of pay (the "**Severance Pay**") plus accrued benefits to include all accrued vacation leave, paid holidays, and leave. Manager shall also be entitled to receive payment for sick leave as set forth in Section 903 of the Town's Employee Manual.

All other provisions of the Former Employment Agreement shall remain as agreed upon on July 13, 2019, unless expressly revised or addressed hereinafter. Any inconsistencies between the New Employment Agreement and the Former Employment Agreement shall be controlled by the provisions of the New Employment Agreement. The Mayor is hereby authorized to execute the New Employment Agreement.

**PASSED AND ADOPTED** by a majority vote of the Mayor and Town Council of the Town of Pinetop-Lakeside in an open meeting on this 4<sup>th</sup> day of August, 2022.



**TOWN OF PINETOP-LAKESIDE**

*Stephanie Irwin*

Stephanie Irwin  
Mayor

**ATTEST:**

*Kristi Salskov*

Kristi Salskov  
Town Clerk

**APPROVED AS TO FORM:**

*William Sims*

William J. Sims, III  
Town Attorney

**EXHIBIT A**

Employment Agreement

## EMPLOYMENT AGREEMENT

This Employment Agreement (“**Agreement**”) is made and entered into as of July 13, 2022 and between the Town of Pinetop-Lakeside, an Arizona municipal corporation, (hereinafter called either the “**Town**” or “**Employer**”) and Keith W. Johnson (hereinafter called the “**Manager**” or “**Employee**”).

### RECITALS

**WHEREAS**, the Pinetop-Lakeside Town Council (the “**Council**”) and the Employee entered into an employment agreement effective July 13, 2019 (the “**Prior Agreement**”);

**WHEREAS**, the Town and the Employee desire to extend the term of the Prior Agreement and update its terms; and

**WHEREAS**, the Town and the Employee have agreed to the terms hereof in order to extend the term of employment of the Employee.

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

#### **Section 1: Term**

The term of employment of the Manager shall be extended effective July 13, 2022 (“**Commencement Date**”) for a four (4) year period commencing effective July 13, 2022 and expiring August 30, 2026 (the “**Employment Term**”). Employee shall serve as the Town Manager during the Employment Term unless this Agreement is terminated by the Employer, or the Employee as provided in Section 12 of this Agreement. Manager understands that he serves as an “at-will” employee and at the pleasure and will of the Town Council as permitted by A.R.S. § 9-303.C and Chapter 2.08 of the Town Code, as may be amended from time to time.

#### **Section 2: Duties and Authority**

The Town hereby employs the Manager to serve as the Town Manager of the Town of Pinetop-Lakeside in order to perform the duties and functions specified in the Town Code, Chapter 2.08, as amended; and to perform other legally permissible and proper duties and functions as the Town Council shall from time to time assign to Manager. All duties assigned to the Manager shall be discharged consistent with the professional role and responsibility of the Town Manager position. The employment provided for by this Agreement shall be the Employee’s sole employment.

#### **Section 3: Compensation**

The Employer agrees to pay Employee an annual base salary of One Hundred-Twenty Thousand Three Hundred Sixty-Nine Dollars (\$120,369.00) for the first year of the Employment Term of this Agreement (the “**Commencement Date Salary**”). The Employer agrees to pay the

Employee in equal installments on a bi-weekly basis during the term of this Agreement. After the Commencement Date the Commencement Date Salary may be adjusted by the Employer as part of the Town's annual budget process. Council may adjust the Town Manager pay commensurate with Director level Salary and Benefit pay adjustments on or before each anniversary of the Commencement Date if warranted as determined by the Annual Performance Evaluation required by Section 4 of this Agreement.

**Section 4: Performance Evaluations; Goal Setting.**

A. The Town Council shall review and evaluate the performance of Employee at least once annually at a time and place set by the Council. The Manager's review and evaluation shall be in accordance with specific criteria developed jointly by the Town Council and the Manager. The criteria may be changed from time to time as the Town Council may determine.

B. From time to time, the Town Council and Manager shall define the goals and performance objectives that they determine necessary for the proper operation of the Town of Pinetop-Lakeside and in the attainment of the Town Council's policy objectives and shall further establish a relative priority among those various goals and objectives

**Section 5: Automobile Allowance.**

Town agrees to furnish to Manager an automobile allowance in the sum of Five Hundred Dollars (\$500) per month for all of Manager's Town-related business travel within the State of Arizona. Such amount shall be used by Manager to purchase or lease a vehicle for the Manager's Town-related business travel. The Manager shall be responsible for purchasing liability and property insurance for Manager's vehicle provided under this Section 5, with liability limits of at least \$300,000/\$500,000 or a \$500,000 single limit at all times during Manager's employment with Town. This vehicle liability insurance policy shall name the Town as an additional insured.

**Section 6: Cell Phone Allowance.**

Town agrees to furnish to Manager a cell phone allowance in the sum of \$100/month. The Manager agrees to provide the corresponding contact number to all Council members and department heads.

**Section 7: Vacation and Sick Leave.**

As an inducement to Manager to become Town Manager, Manager shall be credited with Ten (10) days of vacation leave at the beginning of his employment. Thereafter, Manager shall accrue, and have credited to his personal account, vacation leave, and sick leave as set forth in the Town's Employee Manual for employees who have five or more years of service. Vacation leave credits will continue to accrue with no preset limit should Manager be unable to use accrued vacation leave credits. In the event that the Manager leaves employ of the Town, the Manager shall be entitled to compensation for all days of accrued and unused vacation leave.

**Section 8: Insurance.**

Manager shall be entitled to the same medical, dental, vision, life, short-term disability, and long-term disability insurance coverage accorded all full-time employees of the Town at no cost to the Manager. In addition, Manager's family shall also be included in the Town's medical, dental, and vision insurance programs at the Town's expense. Manager understands that the Town's medical insurance plan will vary from year to year and policy period to policy period based upon budget and other concerns. Manager further agrees to participate in the Town's wellness program, at no cost to the Manager, when the program is available for Town employees.

**Section 9: Retirement.**

The parties agree that Manager is eligible to take part in the Arizona State Retirement System ("ASRS") which is operated and managed by the State of Arizona. The parties further agree that Manager and Town will take part in the ASRS retirement plan, in accordance with the applicable laws, rules, and regulations of this State and the United States; and that the parties will contribute to the Manager's retirement plan at the same level as for other full-time department heads employed by the Town.

**Section 10: Professional Development.**

Subject to Town budget constraints, and with the prior approval of the Town Council, Town hereby agrees to budget and pay for travel, meals and lodging and other reasonable expenses of Manager for professional and official travel, meetings, and occasions adequate to continue the professional development and training of Manager and to adequately pursue necessary official functions for the Town, including but not limited to the ICMA Annual Conference, and the Arizona City Managers' Association.

**Section 11: Manager Subject to Employee Manual; Residency.**

A. Manager shall be subject to the applicable provisions of the Town Code and the Town's Employee Manual, as amended.

B. Manager shall live within fifteen (15) minutes of the Town Hall.

**Section 12: Termination**

For the purpose of this Agreement, termination shall occur when one of the following occurs:

1. The Town Council votes to terminate the Employee;
2. Resignation, retirement or death of the Employee;
3. Mutual agreement of the Council and Employee in writing signed by the Employee and the Town;
4. Expiration of the term of the Agreement;

### **Section 13: Severance**

A. If Manager is terminated “without cause” at a time Manager is willing and able to perform his duties under this Agreement, then Town agrees to pay Manager a lump sum cash payment equal to nine (6) months’ base salary (the “**Severance Pay**”) plus accrued benefits to include all accrued vacation leave, paid holidays, and leave. Manager shall also be entitled to receive payment for sick leave as set forth in Section 903 of the Town’s Employee Manual.

B. If Manager is terminated “for cause” or for any criminal violation of a felony or misdemeanor involving dishonesty or moral turpitude, theft, perjury or misrepresentation, bodily injury, drugs, or alcohol; then Town shall have no obligation to pay the Severance Pay designated in Section 13.A above. “For cause” shall mean that Manager commits a violation of federal, state, or local laws, regulations or policies, the Town Code, the Town’s Employee Manual, or other Town policies. If, however, subsequent civil or criminal proceedings fail to establish that Manager committed such crime or act or affirmatively prove that he did not, then the Manager’s termination will be considered to have occurred “without cause” and he will be entitled to payment of the Severance Pay set forth above within thirty (30) days without interest and interest will be charged at the legal rate beginning after thirty (30) days.

C. In the event Manager voluntarily resigns, terminates his position with the Town, or if his Agreement terminates due to the death of the Employee, then the Town shall have no obligation to pay the Severance Pay designated in Section 13.A, above.

D. If Manager is unable to perform the functions and duties of Town Manager in the opinion of a physician selected by the Town, Town will have the option of termination subject to payment of one-half (1/2) of the Severance Pay described in Section 13.A, above.

E. As a condition precedent to receiving any Severance Pay, Manager shall execute a severance agreement acceptable to both parties, which shall include Manager’s (i) full release of the Town, Town Council members, and all of its agents and employees from any and all claims, including but not limited to demands, damages, causes of action or liability arising out of Manager’s employment or termination of employment with the Town, and any discrimination claims, and (ii) agreement not to initiate or cause to be initiated any lawsuit, claim, grievance, proceeding, or investigation of any kind, under any contract, law, or regulation, pertaining to employment with the Town.

### **Section 14: Indemnity**

The Town shall defend, save harmless, and indemnify the Manager against any lawsuit, tort, professional liability claim or demand, or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring within the scope and in the performance of the Manager’s duties as Town Manager, and will pay for the amount of legal fees, settlement or judgment arising therefrom. The parties understand and agree that in the event of any such claim that the Town may assign the defense of such claim or action to its insurer(s), and Manager understands that the Town or its insurers shall control the appointment

or retaining of any lawyer or law firm to provide the defense of the Manager contemplated by this section. The parties also agree that Manager may retain counsel of his own choosing at his own cost to provide additional, personal legal advice in the event of a claim covered by this indemnity. Any settlement of any claim must be made with prior approval of the Employer in order for indemnification, as provided in this Section 14, to be available. Employee recognizes that Employer shall have the right to compromise and settle any claim or suit.

**Section 15: Bonding**

Manager represents and warrants that he has never violated the terms of any bond and that no bonding company has ever paid a third party on behalf of the Manager. Employer shall bear the full cost of any fidelity or other bonds required of the Employee under any law or ordinance.

**Section 16: Other Terms and Conditions of Employment**

The Employer shall fix any such other terms and conditions of employment, as it may determine from time to time, relating to the performance of the Employee, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement, the Town of Pinetop-Lakeside Town Code or any other law.

**Section 17: Notices**

Notice pursuant to this Agreement shall be given by depositing in the custody of the United States Postal Service, postage prepaid, addressed as follows or to such other address provided by the parties:

- (1) EMPLOYER: Mayor Town of Pinetop-Lakeside, 325 W. White Mountain Boulevard, Lakeside, AZ 85929
- (2) EMPLOYEE: Mr. Keith W. Johnson, 1130 E. Pine Oaks Dr. Show Low, AZ 85901

Alternatively, notice required pursuant to this Agreement may be personally served on Employer by hand-delivering the notice to the Pinetop-Lakeside City Clerk or to the Employee by hand-delivering the notice to the Employee. Notice shall be deemed given as of the date of personal service or as the date of deposit of such written notice in the course of transmission in the United States Postal Service.

**Section 18: General Provisions**

A. Integration. This Agreement and any attachments represent the entire agreement between Employer and Employee relating to the employment of Employee by the Employer and supersede all prior negotiations, representations or agreements, either expressed or implied, written or oral. It is mutually understood and agreed that no alteration or variation of the terms and conditions of this Agreement shall be valid unless made in writing and signed by the parties hereto. Written and signed amendments shall automatically become part of this Agreement, and

shall supersede any inconsistent provision therein; provided, however, that any apparent inconsistency shall be resolved, if possible, by construing the provisions as mutually complementary and supplementary.

B. Binding Effect. This Agreement shall be binding on the Employer and the Employee as well as their heirs, assigns, executors, personal representatives and successors in interest.

C. Severability. If any part, term or provision of this Agreement shall be held illegal, unenforceable or in conflict with any law, the validity of the remaining portions and provisions hereof shall not be affected.

D. Arbitration. In the event that 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 Employer 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, the Employer and Employee shall request the presiding judge of the Superior Court in and for the County of Gila, State of Arizona, to appoint an independent arbitrator. The cost of any such arbitration shall be divided equally between the Employer and Employee. The results of the arbitration shall be nonbinding on the parties, and any party shall be free to initiate litigation subsequent to the final decision of the arbitrator.

E. Governing Law and Venue. The terms and conditions of this Agreement shall be governed by and interpreted in accordance with the laws of the State of Arizona. Any action at law or in equity brought by either party for the purpose of enforcing a right or rights provided for in this Agreement shall be tried in a court of competent jurisdiction in Navajo County, State of Arizona.

F. 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.

G. Conflict of Interest. The provisions of A.R.S. §38-511 relating to cancellation of contracts due to conflicts of interest shall apply to this Agreement.

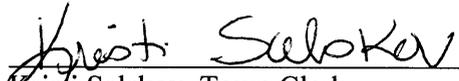
**TOWN OF PINETOP-LAKESIDE,**  
an Arizona municipal corporation

**Keith W. Johnson**

By Stephanie Irwin  
Stephanie Irwin, Mayor

By Keith W. Johnson  
Keith W. Johnson

ATTEST:

  
\_\_\_\_\_  
Kristi Salskov, Town Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Bill Sims, Town Attorney