

**TOWN ATTORNEY EMPLOYMENT AGREEMENT**  
**MICHAEL J. HYMAN**

This EMPLOYMENT AGREEMENT ("Employment Agreement") executed on June 16, 2020 is entered into between Michael J. Hyman ("Hyman"), and the Town of Castle Rock, a Colorado home rule municipal corporation ("Town").

1. **Purpose and Effect of Agreement.** The Town Council of the Town ("Town Council") has agreed to employ Hyman as the Castle Rock Town Attorney and Hyman has agreed to be employed by the Town as Town Attorney under the terms and conditions set forth in this Employment Agreement. This Employment Agreement does not supersede the provisions of the Home Rule Charter of the Town ("Charter"), and to the extent that this Employment Agreement conflicts with the Charter, the applicable Charter provision shall govern and control. However, to the extent that the provisions of this Employment Agreement conflict with the provisions of the Castle Rock Municipal Code or the Town Personnel Guidelines, this Employment Agreement shall govern and control. The provisions of the Castle Rock Municipal Code and the Town Personnel Guidelines shall apply to Hyman in the same manner as other Town employees to the extent that such provisions are not inconsistent with or varied by the terms of this Employment Agreement.

2. **Term.** The term of this Employment Agreement shall commence effective July 1, 2020 and shall terminate on July 30, 2030, unless (i) amended or extended by mutual agreement of the Town and Hyman or (ii) sooner terminated as provided in this Employment Agreement. If this Employment Agreement is still in effect on June 30, 2030, it shall continue for an indefinite period until terminated as provided in this Employment Agreement or by mutual agreement of the parties. The recurring period of employment commencing on July 1 of each year and ending on the following June 30 is referred to as an "Employment Year."

3. **Compensation.** In consideration of Hyman's performance of services as Town Attorney, Hyman shall be paid a salary at the rate of compensation of \$200,000 per year effective July 1, 2020. The annual compensation rate initially established at \$200,000 per annum may be increased by the Town Council from time to time, but at no time during the term of this Employment Agreement may the rate of compensation in effect at any time be reduced. Hyman's salary shall be paid according to the Town payroll protocol and will be subject to adjustment as hereinafter provided. Hyman may also receive bonuses at such times and in such amounts as the Town Council shall deem appropriate.

4. **Benefits.**

4.1 **Base Retirement Plan.** The Town maintains a defined contribution retirement plan (the "Base Retirement Plan") pursuant to Section 401(a) of the Internal Revenue Code of 1986 as amended. The Base Retirement Plan mandates that employees make a before-tax contribution (currently four percent (4%) of salary and bonuses) and that the Town makes a contribution (currently seven percent (7%) of salary and bonuses). During the term of this Employment Agreement, on behalf of Hyman the Town shall make both the employee and the

employer contributions to the Base Retirement Plan at the then current rate of contribution under the terms of the Base Retirement Plan. This contribution by Town to the Base Retirement Plan shall be in addition to Hyman's annual salary and bonuses. To illustrate application of this provision, in 2020 the Town shall make a Base Retirement Plan contribution for the benefit of Hyman of eleven percent (11%) of the salary and bonuses Hyman receives.

**4.2 Qualified Deferred Compensation Plan.** The Town maintains a qualified deferred compensation plan pursuant to Section 457 of the Internal Revenue Code of 1986 (the "457 Plan"). Hyman may elect to defer a portion of his salary to the 457 Plan, up to the maximum permitted under law.

**4.3 Executive Defined Contribution Plan.** The Town agrees to establish and maintain a qualified 401(a) Executive Defined Contribution Plan (the "Executive Plan") for Hyman. The Town shall contribute to Hyman's Executive Plan, during each plan year, twenty percent (20%) of Hyman's annual salary and bonuses minus the percentage of Hyman's compensation contributed by the Town (both employer and employee contributions) pursuant to Section 4.1 of this Employment Agreement (i.e. the Base Retirement Plan contribution). To illustrate application of 4.3 in conjunction with 4.1, assuming Hyman earns \$200,000 in salary and bonus for the Employment Year ending June 30, 2021, the Town shall contribute \$22,000 to the Base Retirement Plan and \$18,000 to the Executive Plan for a total contribution of \$40,000 for such Employment Year.

The specific details of the Executive Plan are contained in the Executive Plan Document. The "vested" interest of Hyman in his Executive Plan account shall be determined under the following schedule and is based upon vested Years of Service:

**Vesting Schedule**

Years of Service	Plan Year	Vested Percentage
1	July 1, 2020 to June 30, 2021	0
2	July 1, 2021 to June 30, 2022	0
3	July 1, 2022 to June 30, 2023	0
4	July 1, 2023 to June 30, 2024	20
5	July 1, 2024 to June 30, 2025	40
6	July 1, 2025 to June 30, 2026	60
7	July 1, 2026 to June 30, 2027	80
8	July 1, 2027 to June 30, 2028	90
9	July 1, 2028 to June 30, 2029	95
10	July 1, 2029 to June 30, 2030	100

Hyman's vested percentage in his Executive Plan account is based upon Years of Service. The Town shall make the required contributions on a calendar quarterly basis, each contribution to be made not later than thirty (30) days after the last day of the calendar quarter for which it is being made.

However, irrespective of the vesting schedule outlined above, upon the termination of Hyman without Cause (as set forth in Section 11.1 below), or upon his death, or disability, Hyman shall be one hundred percent (100%) vested in the balance of his Executive Plan account as of the date of termination, or date of death, or date of disability, as the case may be.

**4.4 Vacation.** Hyman shall earn 1.67 vacation days for each completed month of service. In addition, Hyman's vacation bank shall be credited with 40 hours (5 days) effective with the commencement of employment on July 1, 2020. Hyman may accrue and carry over to the following Employment Year up to 320 hours (40 vacation days). Hyman shall be paid at his salary rate of any accrued vacation days as of the end of an Employment Year in excess of 40, but not to exceed 10 days. Town shall calculate the amount of such cash in lieu of vacation compensation and pay same to Hyman not later than July 30 of each year for the prior Employment Year. If Hyman resigns in accordance with the provisions of Section 10, he may not take any vacation during the 60-day notice period described in Section 10 unless such vacation is approved in writing by the Mayor.

**4.5 Sick Leave.** Hyman shall earn one day of sick leave for each month of completed service. In addition, Hyman's sick bank shall be credited with 40 hours (5 days) effective with commencement of employment on July 1, 2020. Hyman may accrue up to 1440 hours (180 days) of sick leave.

**4.6 Health Insurance.** The Town shall pay one hundred percent (100%) of the total premium cost for individual and family medical and dental insurance coverage for the plan(s) selected by Hyman from the health insurance program options made available to Town employees. In addition, if necessary, Town will pay COBRA family health insurance premiums for the continuation of Hyman's existing health insurance coverage with the City and County of Denver until such time as Hyman is enrolled and covered under the Town insurance coverage on or about July 1, 2020. If practical, Town will pay directly such COBRA expenses, but otherwise Town shall reimburse Hyman for such cost of COBRA coverage.

**4.7 Life Insurance.** Employee life insurance shall be provided by Town to Hyman, at no cost to Hyman, under the Town's group policy in an amount equal to two times Hyman's annual salary, including all increases in his salary during the term of this Employment Agreement. Hyman shall have the right to name the beneficiaries of the policy.

**4.8 Automobile Allowance.** Hyman shall receive a monthly automobile allowance in the amount of \$638 for the use of his personal automobile for Town business. Hyman shall annually provide to the Town Clerk proof of automobile liability insurance coverage in an amount not less than required under Colorado law. The amount of the monthly automobile allowance shall increase in the amount of five percent (5%) per annum with the first such increase effective July 1, 2021.

**4.9 Cell Phone Allowance.** Hyman shall receive a monthly cell phone allowance in the amount of \$90. The amount of the cell phone allowance shall increase in the amount of five percent (5%) per annum.

**4.10 Professional Development.** The Town shall budget and pay for attorney registration fees, and professional dues and subscriptions incurred by Hyman for his participation in such national, regional, state and local associations or organizations as he deems necessary or desirable for his continued professional development and advancement and for the good of the Town, including the Colorado and Douglas/Elbert Bar Associations, Colorado Municipal League Attorney training, Metro City Attorney's Association, and the International Municipal Lawyers Association (IMLA).

The Town shall budget for and pay the travel, registration and subsistence expenses incurred by Hyman in the course of his attendance at or participation in such meetings, conferences, or other function as he deems necessary to adequately discharge official and ceremonial functions on behalf of the Town, including but not limited to the annual conferences or conventions of the ABA, the Colorado Municipal League, IMLA and any such national, regional, state, and local groups and committee thereof upon which the Hyman serves as a member.

The Town shall budget and pay for travel and subsistence expenses incurred by Hyman for courses, seminars, and institutes which he deems necessary for his professional development and for the good of the Town.

**4.11 Other Benefits.** Hyman shall receive all other Town employee benefits which are set forth in the Town Personnel Guidelines or are otherwise offered to Town employees, to the extent that they are not inconsistent with the terms of this Employment Agreement. If the amount or value of a specific benefit that the Town makes available to its employees varies by position, years in service, annual amount of compensation, or other variable, the amount or value of such benefit for Hyman shall be calculated as if Hyman qualified for the greatest amount or value available for such benefit.

**5. Annual Review.** Pursuant to the Town's Personnel Policy and subject to the Town Charter, the Town Council shall annually review Hyman's job performance and determine whether, based upon his performance, an increase in his compensation and benefits is appropriate. Except as otherwise specified in this Employment Agreement, this determination shall be made in the sole discretion of the Town Council. The Town Council's review of Hyman's job performance for the period from July 1, 2020 to June 30, 2021 shall be completed prior to July 31, 2021, and any increase in compensation and benefits shall become effective on July 1, 2021. Subsequently, each annual review of Hyman's job performance shall be completed prior to July 31 of each succeeding year, and any increase in compensation and benefits resulting therefrom shall become effective on July 1 of the same year. Provided however, in any Employment Year the July 31 annual performance evaluation may be extended with the consent of Hyman if requested by Town Council due to exigent circumstances.

**6. Hyman's Duties.** Hyman is employed as the Town Attorney of the Town in a full-time capacity. Employment as Town Attorney shall be Hyman's exclusive employment. Hyman shall perform such duties and have such powers as are set forth in the Town Charter and such additional duties as are required by the Town Council, provided that such duties are not inconsistent with the Town Charter. Should the position of Town Attorney be eliminated from the Town's Charter, or should the Charter be amended pertaining to the role, powers, duties, authority, and responsibilities of the office of Town Attorney that such amendment substantially changes the



role, powers, duties, authority, and responsibility of the position of Town Attorney position, Hyman shall have the right to declare such amendments to constitute termination without Cause, pursuant to Section 11. Hyman shall be entitled to Severance Compensation as provided in Section 11.

7. **Residency.** Not later than December 31, 2021, Hyman shall establish his principal residency within the corporate limits of the Town of Castle Rock, and thereafter maintain such residency during the term of this Agreement. Town shall reimburse Hyman for up to \$5000 in relocation expenses incurred by Hyman and his immediate family in moving to Castle Rock.

8. **Facilities.** The Town shall furnish office facilities and assistance for Hyman as the Town deems appropriate for the performance of Hyman's duties.

9. **Expenses.** Hyman may be required as a condition of employment to incur reasonable and necessary expenses in connection with his duties. Hyman shall be reimbursed by the Town in accordance with the Town's expense reimbursement policy.

10. **Resignation by Hyman.** This Employment Agreement may be terminated by Hyman on 60 days advance written notice by him to the Town of his resignation date. If Hyman fails to give 60 days' advance written notice of his resignation, he shall pay to the Town a sum equal to 60 days of his salary as liquidated damages for failure to give such notice. The parties agree that the actual damages which the Town will suffer in the event of the failure of Hyman to give such notice would be speculative and difficult to determine. In the event of resignation, Hyman shall not be entitled to Severance Compensation (as described in Section 11.3 of this Employment Agreement) except as set forth in Section 11.1 of this Employment Agreement, but shall receive the vested percentage of the balance of the Executive Plan account as described in Section 4.3. In addition, he shall receive compensation for all accrued vacation time and sick days and such other accrued benefits as are payable in accordance with the applicable provisions of the Town Personnel Guidelines, or which are mandated by applicable federal or Colorado law. Except as set forth herein, upon the effective date of his resignation, Hyman shall be entitled to no further compensation or benefits pursuant to this Employment Agreement, unless by mutual agreement of the parties.

11. **Termination by Town.**

11.1. **Termination Without Cause.** Hyman agrees and acknowledges that pursuant to the Charter, he serves at the pleasure of the Town Council, and may be terminated without Cause or for Cause (as "Cause" is defined in Section 11.2 of this Employment Agreement) at any time. If terminated without Cause, Hyman will immediately be vested in and entitled to one hundred percent (100%) of the balance of his Executive Plan account, and to Severance Compensation as provided in Section 11.3, compensation for all accrued vacation time and sick days and such other accrued benefits as are payable in accordance with the applicable provisions of the Town Personnel Guidelines, or which are mandated by applicable federal or Colorado law. In the event that the Mayor, after first being authorized by the Town Council, offers to permit Hyman to resign in lieu of termination, such resignation will constitute a termination without Cause under this Employment Agreement. In such event, the Mayor will provide Hyman with a

written request to resign in lieu of termination which request shall acknowledge that Hyman shall receive the same compensation as he would be entitled to receive if terminated without Cause, as set forth in this Section 11.1.

**11.2. Termination For Cause.** In addition to termination without Cause, the Town Council has the right to terminate Hyman at any time for Cause. As used herein, "Cause" shall mean (i) conduct by Hyman in the performance of his duties as Town Attorney which is fraudulent or dishonest, or (ii) his conviction of a felony or crime involving moral turpitude under any federal or state law. If Hyman is terminated for Cause, he shall not receive Severance Compensation, but shall receive the vested portion of the balance of his Executive Plan account based on the Vesting Schedule, compensation for all accrued vacation time and sick days, and such other accrued benefits as are payable in accordance with the applicable provisions of the Town Personnel Guidelines, or which are mandated by applicable federal or Colorado law. If Hyman is terminated for Cause, the Town shall give written notice to Hyman identifying the matters constituting Cause (the "Cause Notice"). If Hyman disputes whether the matters set forth in the Cause Notice are accurate or whether they constitute Cause, he shall have the right to provide written notice to the Town of such disputed matter(s) (the "Appeal Notice") within ten (10) days after his receipt of the Cause Notice. In the event the parties are unable to resolve the issue within ten (10) days after the Town's receipt of the Appeal Notice, any matter falling under Section 11.2(ii) shall be submitted to binding arbitration (as described in Section 12 of this Employment Agreement), for the sole purpose of obtaining an arbitrated decision on whether the termination was for Cause, or whether it was without Cause. The Town shall have the burden of persuasion to establish Cause in any such arbitration. If the arbitration decision is that Hyman's termination was without Cause, Hyman shall nevertheless be deemed to have been terminated effective as of the date he received the Cause Notice, but such termination shall be without Cause. Any arbitration under this Section shall be completed within thirty (30) days after the Appeal Notice is received by the Town.

If Hyman disputes a Cause Notice which asserts a violation by Hyman of Section 11.2(i) of this Employment Agreement, he shall not be required to arbitrate such matter but shall have any and all rights and remedies that are available to him at law or in equity to establish that such termination was without Cause, provided that any civil action must be initiated not later than ninety (90) days after the effective date of the Cause Notice, or be forever barred. In any such proceeding, the Town shall have the burden of persuasion to establish Cause. If the final judgment of a court of competent jurisdiction determines that Hyman's termination was without Cause, Hyman shall nevertheless be deemed to have been terminated effective as of the date he received the Cause Notice, but such termination shall be without Cause.

Anything elsewhere herein to the contrary notwithstanding, it is expressly understood and acknowledged that the provisions of this Employment Agreement relating to termination for Cause relate solely to the issue of whether Severance Compensation and whether the entire balance or only the vested portion of the balance of his Executive Plan account is to be paid to Hyman, and do not relate to whether the termination was appropriate or justified. It is expressly acknowledged by Hyman that if the Town chooses to terminate his employment hereunder without providing a Cause Notice, he has no rights other than to receive Severance Compensation, the entire balance of his Executive Plan account, compensation for accrued vacation days and sick days and such other accrued benefits as are payable in accordance with the

applicable provisions of the Town Personnel Guidelines, or which are mandated by applicable federal or Colorado law. Hyman also acknowledges that if the Town chooses to terminate his employment for Cause, and provides a Cause Notice, his only right under this Employment Agreement is to dispute whether or not the termination was for Cause, but he has no right to contest the authority of or the procedures followed by the Town Council to terminate him, except to the extent that such procedures are in violation of the Town Charter, or applicable Colorado law. To the extent that any provision of this Employment Agreement is in violation of applicable Colorado law, the applicable provision shall be deemed to be modified to the least extent necessary to comply with applicable Colorado law.

**11.3. Severance Compensation.** Severance Compensation means the equivalent of Hyman's salary at the rate he is compensated at the time of termination, including retirement contributions (Section 4.1), Executive Plan contribution and health insurance benefit (Section 4.6) for a period of six months following the date of termination.

**12. Binding Arbitration.** Whenever any dispute under this Employment Agreement is to be resolved by arbitration, the parties agree that, upon written demand of either party, such dispute shall be submitted to binding arbitration in Denver, Colorado before the Judicial Arbitrator Group ("JAG"). A single arbitrator shall be selected by the parties, and if they cannot agree, the arbitrator shall be selected by JAG. The arbitrator shall have all the powers and authority of a district court judge sitting in the State of Colorado to adjudicate any dispute pertaining to the issues submitted. The arbitrator shall be governed by the provisions of the laws of the State of Colorado relating to arbitration, by the terms of this Employment Agreement, and by other applicable statutory and case law. The decision of the arbitrator may be entered by either party as a judgment in any court in the State of Colorado or elsewhere.

**13. Compliance with Colorado Constitution.** It is the intent of the Town and Hyman to comply with the provisions of Article X, Section 20 of the Constitution of the State of Colorado ("TABOR"). Therefore, the parties agree that this Employment Agreement is subject to annual appropriation by the Town Council, unless the Town has established an irrevocable cash reserve sufficient to cover the Town's aggregate financial obligation under this Employment Agreement pursuant to Section (4)(b) of TABOR. Failure of the Town Council to appropriate sufficient funds to meet its monetary obligations under this Employment Agreement shall constitute termination of Hyman without Cause, effective thirty (30) days after Hyman gives Town notice of such insufficiency, unless within said thirty (30) day period, Town appropriates sufficient funds to meet its monetary obligations. Any dispute pertaining to whether or not an insufficiency exists shall be resolved by binding arbitration.

**14. Other Professional Activities.** Hyman may engage in such activities as consulting, teaching and writing for compensation as long as they do not interfere with his duties as Town Attorney. It is the intent of the parties that Hyman's Employment Agreement is for full-time employment. Participation in professional organizations, appointive boards, and committees and voluntary programs are encouraged provided they are consistent with the responsibilities of the Town Attorney for the Town.

**15. Assignment.** The rights and obligations of the Town under this Employment Agreement shall inure to the benefit of and be binding upon the successors and assigns of the Town. Hyman shall not assign or otherwise convey any of his rights and obligations

hereunder without the express written permission of the Town Council.

16. **Indemnification.** To the extent permitted by law, the Town shall defend, save harmless, and indemnify Hyman against any tort, professional liability claim or demand or other legal action whether groundless or otherwise, arising out of an alleged act or omission in Hyman's performance of his duties as Town Attorney, provided that such claim does not arise from the willful and wanton conduct or gross negligence of Hyman.

17. **Notices.** All notices provided for in this Employment Agreement shall be in writing and shall be personally delivered or mailed by certified United States mail, postage prepaid, return receipt requested, to the parties at the addresses given below or at such other addresses as may be specified by written notice in accordance with this Section:

If to the Town:	Mayor Town of Castle Rock 100 Wilcox Street Castle Rock, CO 80104
-----------------	--

If to Hyman:	Michael J. Hyman 4870 S. Elkhart Ct Aurora, CO 80015
--------------	--

Notice shall be effective 3 days after mailing, if mailed, and upon receipt if personally delivered.

18. **Entire Agreement.** This instrument contains the entire agreement of the parties and it may only be changed by written agreement signed by the party against whom enforcement of any waiver, change, modification, extension or discharge is sought.

19. **Approval.** By execution of this Employment Agreement, the signatories on behalf of the Town acknowledge that all required approvals have been obtained by the Town Council so that this Employment Agreement shall be fully effective and binding upon the parties hereto.

IN WITNESS WHEREOF, Hyman has executed this Employment Agreement and the Town of Castle Rock, Colorado, has caused this Employment Agreement to be signed by its Mayor, attested by its Town Clerk as authorized by Town Council action on June 16, 2020.

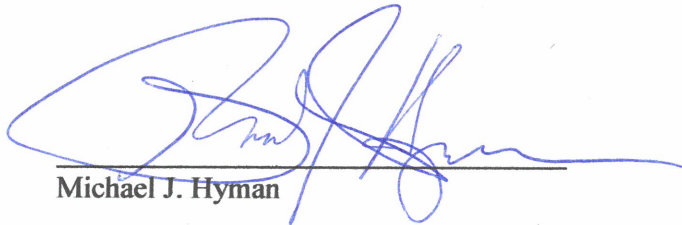
**TOWN OF CASTLE ROCK, COLORADO**

By: \_\_\_\_\_

Jason Gray, Mayor

ATTEST: \_\_\_\_\_

Lisa Anderson, Town Clerk



\_\_\_\_\_

Michael J. Hyman