

Introduced by: Councilmember Fulcher

CITY OF TAKOMA PARK, MARYLAND

RESOLUTION NO. 2024-01

**APPROVING AN EMPLOYMENT AGREEMENT
BETWEEN THE CITY OF TAKOMA PARK
AND ROBERT DISPIRITO AS CITY MANAGER**

WHEREAS, the City Council conducted a nationwide executive search with the assistance of a recruiting firm; and

WHEREAS, the City Council developed a recruitment process, which included multiple interviews with the Council, candidate tours of the city and its facilities, and meetings with the City's senior staff and committee members; and

WHEREAS, community outreach and engagement in the selection process included a dedicated email comment box for public feedback, a public reception with short presentations from finalists, and a short survey to gather feedback from residents who participated in the reception; and

WHEREAS, the search, review, and interview processes resulted in the City Council's selection of Robert DiSpirito; and

WHEREAS, the City Council reached a final agreement with Mr. DiSpirito on the terms and conditions of his employment with the City; and

WHEREAS, the City of Takoma Park now wishes to enter into a written four (4) year Employment Agreement with Mr. DiSpirito memorializing the terms and conditions of his employment as the City Manager; and

WHEREAS, the Employment Agreement is attached to this resolution and incorporated herein by reference; and

WHEREAS, Mr. DiSpirito's employment with the City will commence on January 22, 2024.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF TAKOMA PARK, MARYLAND THAT, the City Council hereby approves the Employment Agreement between the City and Mr. DiSpirito as City Manager; and

BE IT FURTHER RESOLVED THAT the City Council authorizes the Mayor to execute said Employment Agreement on behalf of the City of Takoma Park, Maryland.

Adopted this 17th day of January, 2024.

Attest:

A handwritten signature in cursive script, reading "Jessie Carpenter".

Jessie Carpenter, CMC
City Clerk

EMPLOYMENT AGREEMENT

City Manager

Robert DiSpirito

Start Date: January 22, 2024

End Date: January 31, 2028

THIS AGREEMENT ("Agreement") is made this ____ day of _____, 2024, by and between the City of Takoma Park, Maryland, a political subdivision of the State of Maryland (the "City"), and Roberto DiSpirito, an individual ("Employee") (hereinafter sometimes collectively referred to as the "Parties").

WHEREAS, the City desires to employ Robert DiSpirito as the City Manager; and

WHEREAS, the City Council of the City of the City of Takoma Park (the "Council") desires to establish the terms and conditions for such employment; and

WHEREAS, Employee desires to accept employment as the City Manager.

NOW, THEREFORE, intending legally to be bound, and in exchange for the mutual promises contained herein, the Parties agree as follows:

1. EMPLOYMENT. The City hereby employs Employee to serve as City Manager, and Employee accepts that employment, upon the terms and conditions herein set forth.

2. TERM.

2.1. Initial Term. This Agreement shall be of a continuing nature with the parties sharing the goal that it last for four (4) years, beginning January 22, 2024, and ending, January 31, 2028. The parties look forward to a long-term relationship and acknowledge the International City and County Management Association ethical standard that city managers should commit to serving for a term no less than two (2) years.

2.2. Termination. Nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of the Council to terminate the employment of Employee at any time, subject only to any applicable provisions of the City Charter and Code, and Section 7 of this Agreement. Likewise, nothing in this Agreement shall prevent Employee from resigning at any time; provided that if Employee voluntarily resigns his position with the City, he shall give the Council sixty (60) days' advance written notice, unless otherwise mutually agreed upon in writing by the City and Employee. In the event of such a resignation, the Council may, in its sole discretion: immediately relieve Employee of any further duties required pursuant to this Agreement and provide Employee with compensation owed up through the date of Employee's termination.

2.3. Extensions. The parties will meet and confer beginning on or around May 1, 2027, to decide whether this Agreement will be extended beyond the initial four (4) year period, the duration of any such extension to be jointly determined by the parties.

3. EMPLOYEE'S REPRESENTATIONS. Employee represents and warrants to the City that: (i) Employee will be available to work for the City from and after the date on which the Term begins; (ii) the execution, delivery, and performance of this Agreement is neither prohibited by, nor constitutes a default under, any statute, law, judgment, order, decree, writ, injunction, deed, instrument, agreement, contract, lease, license or permit to which Employee is a party or by which Employee is bound; and (iii) to the best of Employee's knowledge, there is no litigation, proceeding or investigation by any governmental agency or professional organization, including, but not limited to, any bankruptcy proceeding, pending or threatened against Employee.

4. DUTIES. As the City Manager, Employee shall perform the functions and duties specified in the City Charter and Code, and such other legally permissible duties and functions as the Council shall, from time to time, assign. The Council shall direct, control, and supervise Employee's work. Employee shall fully and faithfully perform all duties assigned to Employee and shall devote his best efforts on behalf of the City. Employee shall work exclusively and actively on a full-time basis for the City. Employee shall be permitted to engage in such activities as teaching, writing, and such other activities that do not conflict with the performance of his duties hereunder and that do not conflict with the interests of the City. The Council shall be the sole judge of any conflict.

5. COMPENSATION.

5.1. Base Salary. For all services rendered by Employee pursuant to this Agreement, the City shall pay Employee an initial annual salary of two hundred ten thousand dollars and zero cents (\$210,000.00), which may be reviewed and adjusted by the Council annually.

5.2. Car Allowance. The City will pay Employee five hundred dollars (\$500.00) per month as a vehicle allowance, which is inclusive of maintenance and insurance costs. This payment shall be in lieu of providing Employee with a City-owned or leased motor vehicle and reimbursement for automobile travel expenses.

5.3. Amounts Withheld. The City may withhold from Employee's compensation, and from any other amounts paid to or for the benefit of Employee, all sums authorized by Employee or required to be withheld by law, court decree, and executive order, including, but not limited to, such things as income taxes, employment taxes, and employee contributions to fringe benefit plans sponsored by the City and/or State.

6. FRINGE BENEFITS.

6.1. Health and Welfare Benefits. The City will pay one hundred percent (100%) of the premiums for Employee and his eligible dependents to obtain Employee's choice of group medical, dental, and vision insurance through the health and welfare plans sponsored by the City.

6.2. Retirement. The City is a participating governmental unit in the Maryland State Retirement System. Employee will participate in the system on the terms established by the State Retirement Agency.

6.3. Matching Contributions to 457 Plan. The City will match Employee's elective deferrals to the City sponsored 457 plan, up to five percent (5%) of eligible compensation and the maximum amount permitted by law, as is consistent with other City employees.

6.4. Disability and Life Insurance. Employee will participate in the City's group Long Term Disability (LTD) plan. The City will pay one hundred percent (100%) of the cost of the LTD premiums. Employee is eligible to participate in the City's group Short Term Disability (STD) plan. If employee elects STD benefits, he will be responsible for paying the associated cost of the same terms as other management employees of the City. The City will also provide life and accident death and dismemberment insurance on the same basis it provides these benefits to other management employees of the City.

6.5. Reimbursement of Expenses. The City shall reimburse or pay Employee for routine business expenses and travel expenses in accordance with City procedures, and per budgetary approval.

6.6. Professional Development. The City will pay reasonable membership dues for Employee's membership in standard professional associations and the fees for Employee's attendance at recognized conferences of professional associations where such membership and attendance are necessary for Employee to fully discharge his duties and responsibilities (e.g., ICMA, NFBPA, MCCMA, or NRPA memberships), subject to budgetary availability.

6.7. Equipment. The City will provide and pay for a mobile telephone, iPad, and laptop, and for the use and maintenance of those devices.

6.8. Paid Leave.

6.8.1. Annual Leave. Employee will accrue annual leave at the rate equal to one hundred sixty hours (160) per year, or twenty (20) days. Accrual, use, and carryover of unused annual leave hours will be allowed consistent with the City Code provisions governing other full-time employees, except as modified herein.

6.8.1.1. In the first year of this Agreement, Employee will be credited immediately with twenty (20) days of annual leave. Thereafter, annual leave will accrue at a rate of 13.3 hours per month, per leave year.

6.8.1.2. Employee may not carryover more than 240 hours of annual leave from one calendar year to the next. Unused annual leave accrued in excess of 240 hours shall be forfeited at the end of the calendar year.

6.8.1.3. Under no circumstances will an amount more than 240 hours of annual leave be paid to Employee if Employee separates from the City for any reason.

6.8.2. Sick Leave. Employee will accrue the same sick leave other full-time employees accrue, currently one hundred twenty (120) hours, or fifteen (15) days. Accrual, use, and carryover of unused sick leave hours will be allowed consistent with the City Code provisions governing other full-time employees.

6.8.3. Personal Leave. Employee will be granted eighty (80) hours of personal leave, or ten (10) days, per year. This leave shall be credited at the beginning of each calendar year and must be used by the end of each calendar year. Any personal leave hours not used at the end of the calendar year will be forfeited. Personal leave will not be paid out if Employee separates from the City.

6.8.4. Holidays. Employee shall be paid for the holidays recognized by the City.

6.8.5. Discrepancies. In the event there is a discrepancy between any leave issue addressed herein and the City's Department of Human Resources system for tracking leave, the language contained in this Agreement shall control.

6.9. Other Benefits. Except as specifically provided for herein, Employee shall be provided the same benefits provided to the executive management staff of the City.

7. TERMINATION AND SEVERANCE PAY.

7.1. Termination. Employee serves at the pleasure of the Council, and this Agreement may be terminated at any time by the Council with or without cause.

7.1.1. Termination Without Cause. If Employee is terminated by the Council without cause before the expiration of the four (4) year term of this Agreement, then Council will pay Employee severance pay equal to six (6) months of the Employee's base salary and will continue Employee's health, dental, and vision benefits only for six (6) months. Leave shall not accrue during the severance period and any leave balance properly accrued prior to termination shall be paid out

in accordance with applicable City Code provisions unless otherwise modified herein. The continuation of pay and benefits provided under this paragraph is contingent upon Employee signing a release of all claims arising out of or related to his employment.

7.1.2. Termination for Cause. If Employee is terminated for cause, Employee shall be paid salary and accrued benefits through the date of termination, and the Employee shall not be entitled to any other pay or benefits. Any properly accrued leave balance shall be paid out in accordance with applicable City Code provisions and this Agreement. "Cause" includes, but is not limited to: (i) Employee's inattention to or neglect of, or negligence or incompetence in the performance of Employee's duties, (ii) material breach or violation by Employee of any obligation, (iii) conviction of any illegal act, or (iv) a determination by the Council that Employee has engaged in behavior clearly detrimental to the City.

7.3. Termination Upon Death. Employee's employment by the City will terminate automatically and immediately upon Employee's death.

7.4. Termination Upon Disability. The Council may terminate this Agreement if Employee is unable to perform the duties hereunder for sixty (60) consecutive days. In such event, Employee will be paid salary and accrued benefits through the date of the termination, and Employee shall not be entitled to any additional notice, severance pay, or continuation of benefits except as allowed through COBRA. Notwithstanding anything herein contained to the contrary, the City will at all times comply, to the extent it is required to do so, with the Americans with Disabilities Act, the Family and Medical Leave Act, and any other applicable state, county, or federal employment law.

7.5. Suspension. If Employee has been criminally charged or it is alleged that Employee has engaged in misconduct clearly detrimental to the City, the Council may, by majority vote, suspend Employee.

7.6. Offset. In the event of any termination, the City may offset against any amount it owes Employee, any amount which Employee owes the City. Employee expressly authorizes the City to withhold any such amounts from his final paycheck.

8. PERFORMANCE EVALUATIONS.

8.1. Evaluations. The Council will evaluate Employee's performance after the first six (6) months of service and annually upon the anniversary of the hire date thereafter. The review and evaluation shall follow criteria established by the Council. The primary purpose of such review and evaluation is to facilitate an open and frank discussion, define roles and expectations, identify performance strengths and weaknesses, and to provide Employee an opportunity to take affirmative action to address weaknesses and areas needing improvement.

8.2. Bonus. The payment of any bonus is at the discretion of the City Council. Employee is bonus eligible each year of this Agreement provided Employee receives at least a “successful” evaluation.

9. INDEMNIFICATION. In accordance with the terms and conditions of Maryland’s Local Government Tort Claims Act and subject to the terms and conditions of the applicable insurance policy, the City agrees to provide a legal defense to Employee and to indemnify him from and against any legal action arising out of any actions or omissions committed by him within the scope of his employment with the City.

10. BONDING. The City shall bear the cost of any fidelity bond or other bonds required of Employee by law.

11. OTHER TERMS AND CONDITIONS. The Council may fix any such other terms and conditions of employment as it may determine from time to time, relating to the performance of Employee, provided such terms and conditions are not inconsistent with or in conflict with provisions of this Agreement, the City Charter, Code, or any other law. However, all provisions of the City Charter, Code, and regulations, rules, and policies of the City relating to any paid leave, retirement and pension system contributions, holidays, and other fringe benefits and working conditions as they now exist or hereafter may be amended, also shall apply to Employee as they would to any other management level employees of the City.

12. MISCELLANEOUS. This Agreement shall be construed and enforced in accordance with the laws of the State of Maryland. Any action arising under this Agreement shall be brought in the Circuit Court of Maryland for Montgomery County. Whenever used herein, the singular includes the plural, and the plural includes the singular. The use of any gender, tense, or conjugation includes all genders, tenses and conjugations. The Section headings have been included for convenience only, are not part of this Agreement, and are not to be taken as an interpretation of any provision thereof. Except as set forth herein, this Agreement contains the entire agreement between the parties as to the terms of Employee’s employment. Neither the City nor Employee has relied upon any representations, express or implied, not contained in this Agreement. This Agreement may not be modified except by a writing signed by Employee and the City Council. The failure by either party to insist upon the strict performance of any or all of the provisions of this Agreement shall not constitute a waiver of any provision of this Agreement. This Agreement may be executed in counterparts, any one of which shall be regarded for all purposes as an original, and all of which shall constitute one and the same instrument.

(The rest of this page is intentionally blank. Signature page to follow.)

IN WITNESS WHEREOF, the City of Takoma Park, Maryland has caused this Agreement to be signed and executed on its behalf by the Mayor for the City Council and duly attested by the City Clerk, and Employee has signed and executed the Agreement, both in duplicate, this date.

Witness

By: _____

By: _____
Robert DiSpirito Date

Witness

City of Takoma Park

Jessie Carpenter, City Clerk,
City of Takoma Park

By: _____
Talisha Searcy, Mayor Date

Approved as to form and
legal sufficiency:

_____ day of _____, 2024

E.I. Cornbrooks, IV
City Attorney
City of Takoma Park