

## SEPARATION AGREEMENT

THIS SEPARATION AGREEMENT (the "Agreement") is made and entered into this 15<sup>th</sup> day of February, 2018, by and between the Town of Winter Park, Colorado, a Colorado home rule municipality with an address of P.O. Box 3327, 50 Vasquez Road, Winter Park, Colorado 80482 (the "Town"), and Drew Nelson, an individual with an address of P.O. Box 854, Winter Park, Colorado 80482 ("Employee") (each individually a "Party" and collectively the "Parties").

WHEREAS, Employee and the Town entered into an Employment Agreement dated June 2, 2009 (the "Employment Agreement") under which Employee acted as the Town Manager of the Town; and

WHEREAS, Employee and the Town wish to terminate the Employment Agreement and Employee's employment with the Town by mutual agreement, as set forth herein.

NOW THEREFORE, for the consideration hereinafter set forth, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Separation.

a. Employee voluntarily resigns his position with the Town as Town Manager, effective February 15, 2018. Until that date, Employee shall remain on paid administrative leave and shall not return to the Town premises, other than as provided in Section 1.b. hereof.

b. On or before February 23, 2018, Employee may return to the Town Hall offices on one occasion to retrieve personal items, under the supervision of the Acting Town Manager. Employee shall schedule an appointment in advance. Under the supervision of the Acting Town Manager, Employee may remove personal documents and photographs from the Town server. Any personal items remaining at the Town offices after February 23, 2018 may be disposed of by the Town.

c. At the time of the appointment to retrieve personal items, Employee shall bring his laptop computer and tablet to the Town. The Town will scrub both and return them to Employee within 7 days. After that time, Employee may retain both the laptop and the tablet for personal use. The Town shall remove Employee's mobile phone from the Town's account so that the Town is no longer paying for Employee's use of the mobile phone, but Employee may retain the mobile phone and mobile phone number for personal use.

d. After February 23, 2018, the Town shall permanently remove all of Employee's personal email, files, documents and photographs from the Town's computers, mobile telephones, tablets and email systems. Employee acknowledges that once such information is removed, the removal is permanent, and Employee will not be able to access such information. Nothing in this Section shall be construed to require the Town to remove any information from Employee's personnel file. To the extent that the Town receives personal email intended for Employee after February 23, 2018, the Town shall delete such email.

2. Consideration.

a. Through August 15, 2018, Employee shall continue to receive his current compensation, less deductions required by law. The Town shall treat such payments as compensation from which federal and state withholding and payroll taxes shall be deducted. The payments shall be made by direct deposit, consistent with current Town compensation practices.

b. The Town shall continue to pay for its portion of Employee and Family's medical insurance premiums through August 15, 2018 in the manner prescribed in the Town's Personnel Handbook, as modified at the discretion of the Town. After August 15, 2018, Employee shall have the right to exercise his rights under COBRA.

c. The Town shall continue to make employer contribution payments to Employee's 401(a) retirement account through August 15, 2018. However, effective February 15, 2018, the Town will no longer match any contribution by Employee to the 457 Deferred Compensation plan as provided in the Town's Personnel Handbook.

d. Upon separation, the Town shall provide an employment reference, which shall include informing prospective employers and others who inquire about Employee, in the form attached hereto as **Exhibit A** and incorporated herein by this reference.

e. Upon separation, Employee shall be entitled to payment for any existing accrued Paid Time Off leave as of February 15, 2018, as provided for in the Town's Personnel Handbook. Such payment shall be made by check by February 23, 2018. Employee shall not accrue Paid Time Off while on administrative leave.

f. Pursuant to Section 9.C. of the Employment Agreement, on November 25, 2009, Employee and his spouse, Stefanie Nelson, purchased the residential unit located at 112 Trestle Drive, Winter Park, Colorado 80482 (the "Residence") as joint tenants. The Residence is encumbered by a Restrictive Covenant dated February 21, 2006 (the "Restrictive Covenant"). Article III of the Restrictive Covenant limits the occupancy of the Residence to Qualified Residents and Qualified Buyers, as defined in the Restrictive Covenant. So long as Employee or Stefanie Nelson or both occupy the Residence, the Town agrees to waive enforcement of only Article III of the Restrictive Covenant. The intent of this provision is to allow Employee and/or his family to occupy the Residence whether or not any of them are Qualified Residents or Qualified Buyers. This waiver is exclusive to Employee and Stefanie Nelson, and should the ownership of the Residence change to include anyone other than Employee or Stefanie Nelson, this waiver shall automatically terminate. This waiver shall only apply to Article III of the Restrictive Covenant, and shall not affect any other provision of the Restrictive Covenant, including without limitation the Maximum Sales Price set forth in Article IV, Section 3 of the Restrictive Covenant.

3. Employee's Release and Covenant Not to Sue.

a. In consideration for the consideration set forth in this Agreement, Employee agrees to forever, unequivocally and unconditionally release from and covenants not to sue or

assert against the Town any cause of action, whether at law or in equity, pertaining to or arising from the employment relationship of the parties and the termination of such employment relationship based in whole or in part upon any act or omission occurring on or before the date of this Agreement, whether negligent or intentional without regard to Employee's present actual knowledge of the act or omission. This release does not affect Employee's right to file a charge with or participate before the Equal Employment Opportunity Commission.

b. If Employee brings a claim covered by this release in which Employee seeks damages or other remedies against the Town, or seeks to recover against the Town in any claim brought by a government agency on Employee's behalf pertaining to Employee's employment with the Town, this Agreement shall serve as a complete defense to such claims, and Employee is expressly waiving the right to recover damages or attorney fees from any such proceeding.

c. "Cause of action," as used in this section, means all claims, causes, judgments, damages, losses, liabilities and demands, of any kind and nature whatsoever, whether intentional or negligent, known or unknown, in law or in equity, individually or as part of a class action, occurring on or prior to the date of execution of this Agreement, arising under any constitution, federal, state, or local law(s) including but not limited to Title VII of the Civil Rights Act of 1964, the Colorado Anti-Discrimination in Employment Act, *et seq.*, the Family and Medical Leave Act, the Americans With Disabilities Act, and the Age Discrimination in Employment Act of 1967, or arising from any theory under common law such as breach of contract, express or implied promissory estoppel, wrongful discharge, tortious interference with contract rights, infliction of emotional distress, and defamation, excepting only vested retirement benefits (if any), COBRA rights, unemployment compensation, and workers' compensation.

4. Older Workers Benefit Protection Act. Employee acknowledges that Employee has been informed pursuant to the federal Older Workers Benefit Protection Act of 1990 that:

a. Employee is advised to consult with an attorney before signing this Agreement.

b. Employee does not waive rights or claims under the federal Age Discrimination in Employment Act that may arise after the date this Agreement is executed.

c. Employee has 21 days from the date of receipt of this Agreement to consider this Agreement. Employee acknowledges that if Employee signs this Agreement before the end of the 21-day period, it is Employee's personal, voluntary decision to do so and that Employee has not been pressured to make a decision sooner.

d. Employee has 7 days after signing this Agreement to rescind this Agreement, and the Agreement will not be effective until that revocation period has expired. If mailed, the rescission must be postmarked within the 7-day period, addressed to the Acting Town Manager at the address first listed above.

5. Non-Disparagement. The Parties agree that there shall be no disparaging public comments or remarks made by any Party about the other Party concerning the employment of

Employee or this Agreement. The Parties are relying on the decision of the Colorado Supreme Court in *Pierce v. St. Vrain Valley School District RE-1J*, 981 P.2d 600 (Colo. 1999), concerning the enforceability of this provision. As used in this confidentiality provision, "disclose" means to convey information via any medium, including, without limitation, correspondence, news article, speech, writing, telephone, electronic mail, radio, television, internet and magnetic or optical storage. The Town and Employee further agree not to disclose to any party any legally confidential information gained during Employee's employment with the Town.

6. Other Employment. If Employee secures and begins other full-time employment prior to August 15, 2018, the Town's obligation to pay any compensation set forth in Section 2 hereof shall cease on the first day of such employment, but the remaining provisions of this Agreement shall remain in full force and effect. "Full-time employment" shall be employment consisting of a minimum of 40 working hours per week with employee health and retirement benefits.

7. Breach. If Employee breaches any provision of this Agreement, the Town shall notify Employee in writing, and Employee's employment with the Town shall immediately terminate. Upon termination of employment, Employee shall not be entitled to receive any compensation not yet paid or given under Section 2 hereof, but the remaining provisions of this Agreement shall remain in full force and effect.

8. Miscellaneous.

a. Governing Law and Venue. This Agreement shall be governed by the laws of the State of Colorado, and any legal action concerning the provisions hereof shall be brought in Grand County, Colorado or the U.S. District Court for the District of Colorado.

b. Integration. This Agreement constitutes the entire agreement between the Parties, superseding all prior oral or written communications.

c. Third Parties. There are no intended third-party beneficiaries to this Agreement.

d. Notice. Any notice under this Agreement shall be in writing, and shall be deemed sufficient when directly presented or sent pre-paid, first class United States Mail to the Party at the address set forth on the first page of this Agreement.

e. Severability. If any provision of this Agreement is found by a court of competent jurisdiction to be unlawful or unenforceable for any reason, the remaining provisions hereof shall remain in full force and effect.

f. Modification. This Agreement may only be modified upon written agreement of the Parties.

g. Assignment. Neither this Agreement nor any of the rights or obligations of the Parties hereto, shall be assigned by either Party without the written consent of the other.

h. Governmental Immunity. The Town and its officers, attorneys and employees are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as amended, or otherwise available to the Town, its officers, attorneys or employees.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

**TOWN OF WINTER PARK**

  
\_\_\_\_\_  
Jimmy Lahrman, Mayor

ATTEST:

  
\_\_\_\_\_  
Danielle Jardee, Town Clerk

**EMPLOYEE**

  
\_\_\_\_\_  
Andrew (Drew) Nelson

STATE OF COLORADO        )  
  ) ss.  
COUNTY OF GRAND        )

The foregoing instrument was subscribed, sworn to and acknowledged before me this \_\_\_\_ day of February, 2018, by Andrew (Drew) Nelson.

My commission expires:

(S E A L)

  
\_\_\_\_\_  
Notary Public

DANIELLE S. JARDEE  
NOTARY PUBLIC  
STATE OF COLORADO  
NOTARY ID 20174029408  
MY COMMISSION EXPIRES JULY 14, 2021

**EXHIBIT A**  
**EMPLOYMENT REFERENCE**

Date

To Whom it May Concern:

Andrew (Drew) Nelson was appointed by the Winter Park Town Council as Town Manager beginning in September 2008. Prior to his appointment, Drew served as the Town Planner for the Town of Winter Park from June 2006 to September 2008. Drew resigned from his position as Town Manager on February 15, 2018.

During Drew's tenure as Town Manager, he guided the organization with professionalism and integrity, and his tenure included a number of notable accomplishments by the Town:

- Managed the negotiations and acquisition in 2015 of the private resort-owned transit operations which were converted to a public transit system serving the Upper Fraser Valley's half-million annual riders. This included a new community-supported transit and trails tax, \$2M in new state capital rolling stock grants, and \$450,000 in new federal operating grants.
- Guided the design and construction of the Hideaway Park facility and concert venue, including the recent 2017 completion of a \$3.7M stage and events center, along with the negotiation of naming and development rights for the Rendezvous Event Center.
- Succeeded in the negotiation, acquisition, and master planning for the Hideaway Station development in downtown Winter Park, which resulted in a collaborative public-private partnership to deliver 38 workforce housing units, a community center, a public parking structure, a grocery store, and future mixed-use retail and residential development, all of which opened in December 2017, resulting in over \$40M of direct public and private investment in downtown Winter Park.
- Cultivated a collaborative relationship with the Winter Park Chamber of Commerce which resulted in the continued growth and development of special events and business opportunities in Winter Park. This partnership now welcomes thousands of guests and visitors to over 40 annual events, leading to over \$15M of local spending throughout the year.
- Collaborated with the Grand Foundation and Winter Park Resort on the creation of the Winter Park Affordable Housing Donor Advised Fund, which led to a grassroots community initiative via the Neighbor To Neighbor campaign which resulted in a \$500,000 endowment for housing assistance for the Winter Park workforce.
- Led the design and construction in 2014 of the \$1.2M U.S. Highway 40 North Portal Enhancement Project, which improved pedestrian and bicycle safety at King's Crossing Road while promoting future economic growth in the area.
- Created a collaborative partnership between state, county, town, and private interests to design and install the remotely-controlled avalanche control system on the Stanley Slide

avalanche path on Berthoud Pass. This project resulted in significant reduction in avalanche impacts on US Highway 40, improving traveler safety and reducing pass closures affecting Winter Park.

- Directed the design and construction in 2011 and 2014 of the roadway and railroad improvements at Vasquez Road and King's Crossing Road to implement the first railroad quiet crossings in the mountains of Colorado, which improved traveler safety and resident quality of life within Winter Park.
- Created programs dedicated to the expansion of multi-purpose trails within and surrounding Winter Park, resulting in the connection of the Fraser River Trail between Fraser and Winter Park as well as the addition of nearly 20 miles of single-track and multi-purpose trails throughout the community.
- Steered the organization through the 2008-2009 recession, reducing Town expenditures without reductions in staff or services while creating an institution dedicated to quality customer service and transparency. Financial outcomes during this time have resulted in annual growth in the Town's General Fund balance and more than a doubling of annual Town revenues.

The Winter Park Town Council greatly appreciates Drew's contributions to the Town of Winter Park, and wishes him the best of luck in the future.

Sincerely,



Mayor  
Town of Winter Park