

STATE OF NORTH CAROLINA

COUNTY OF WAKE

SEPARATION AGREEMENT AND RELEASE

This Settlement and Separation Agreement and Release (“Agreement”) is entered into between Catherine Crosby (“Ms. Crosby” or “Employee”) and the Town of Apex, North Carolina (“Employer” or “the Town”) (each a “Party” and collectively, “Parties”).

WHEREAS, Ms. Crosby was employed with the Town as its Town Manager pursuant to the terms of an Employment Agreement entered into between Ms. Crosby and Town dated May 25, 2021 (the “Employment Agreement”), until Ms. Crosby’s employment ended on July 27, 2023;

WHEREAS, the Parties dispute which provisions of the Employment Agreement apply to Ms. Crosby’s separation from employment with the Town; and

WHEREAS, Employee and the Town desire to resolve all current and future disputes between them;

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, Employee and Employer agree as follows:

1. **Resignation.** The Town accepts Ms. Crosby’s resignation effective July 27, 2023 (the “Separation Date”).

2. **Consideration.** The Town shall pay or cause to be paid to Ms. Crosby the following sums or remit the following benefits in consideration of the promises made in this Agreement:

a. **Payment of Severance.** For one year following the Separation Date (the “Severance Period”), the Town will continue to pay salary to Ms. Crosby at her current rate of pay, on the existing bi-weekly payroll schedule (the “Severance Payments”). For clarity, the “current rate of pay” for Ms. Crosby as referred to in this sub-section is a gross annual salary of \$231,000. All Severance Payments shall be subject to the same deductions and tax withholdings as elected by Ms. Crosby for the payroll period immediately preceding the Separation Date; provided, however, tax withholding elections may be changed upon submission of the appropriate forms in accordance with the Town’s human resources policies and procedures.

b. **Health and Dental Insurance Benefits.** For the duration of the Severance Period, the Town shall cause Ms. Crosby to continue to receive health and dental insurance benefits under the same elections and terms under which health

and dental insurance benefits were provided to Ms. Crosby immediately prior to the Separation Date.

c. Vehicle Allowance. For the duration of the Severance Period, the Town will continue to pay Ms. Crosby a monthly vehicle allowance in the amount of \$600, the sum of which allowance payments will accrue to a total benefit of \$7,200 remitted during the Severance Period. The provisions of Section 2.04(B) of the Employment Agreement will continue to apply to any vehicle for which Ms. Crosby uses the vehicle allowance payments.

d. Retirement Benefits. For the duration of the Severance Period, the Town will continue to make employer contributions to Ms. Crosby's 457(b) deferred compensation plan at the same contribution rate in effect immediately prior to the Separation Date.

3. Vacation and Sick Leave. The Town will pay out 281 hours of accrued vacation leave to Ms. Crosby, which payment will be remitted through payroll at the end of the first full pay period following execution of this Agreement by the Parties. During the Severance Period, Employee will accrue 40 hours of additional vacation leave, to be paid out with the final Severance Payment. All payments of vacation leave shall be subject to the same deductions and withholdings as the Severance Payments. To the extent Employee becomes employed by a state or local agency in the future, the Town will provide information to Employee's future employer regarding her accrued sick time upon request. However, in the event of such employment, the Town is not obligated to make any payment to Employee or on her behalf regarding Employee's accrued sick leave.

4. General Release and Covenant Not to Sue.

a. General Release by Employee. Employee, for and on behalf of herself and each of her heirs, executors, administrators, personal representatives, successors and assigns, hereby acknowledges full and complete satisfaction of and ABSOLUTELY AND IRREVOCABLY AND UNCONDITIONALLY FULLY AND FOREVER RELEASES, ACQUITS AND DISCHARGES Employer together with its respective governing boards and bodies, and each of their respective past and present direct and indirect directors, elected officials, members, officers, employees, attorneys, insurers, agents and representatives, and their respective heirs, executors, administrators, personal representatives, successors and assigns (collectively, the "Releasees"), from any and all claims, demands, suits, causes of action, liabilities, obligations, judgments, orders, debts, liens, contracts, agreements, covenants and causes of action of every kind and nature, whether known or unknown, suspected or unsuspected, concealed or hidden, vested or contingent, in law or equity, existing by statute, common law, contract or otherwise ("Claims"), which have existed, may exist or do exist, through and including the execution and delivery by Employee of this Agreement (but not including the Parties' performance

under this Agreement), including, without limitation, any of the foregoing arising out of or in any way related to or based upon:

- i. Employee's application for and employment with Employer;
- ii. Employee's separation from Employer and any related proceedings;
- iii. Claims in tort or contract, including but not limited to claims alleging breach of an express or implied, or oral or written, contract, policy manual or employee handbook;
- iv. Claims for wages, overtime pay and benefits, including any claims arising under the Fair Labor Standards Act (FLSA) or the North Carolina Wage and Hour Act (WHA);
- v. Any alleged misrepresentation, defamation, interference with contract, intentional or negligent infliction of emotional distress, sexual harassment, negligence, whistle-blower protection, wrongful discharge, or retaliation;
- vi. Any federal, state or local law, statute, ordinance or regulation, including but not limited to all labor and employment discrimination laws, and including specifically but not limited to the North Carolina Equal Employment Practices Act, the North Carolina Persons with Disabilities Protection Act, the North Carolina Retaliatory Employment Discrimination Act, Title VII of the Civil Rights Act of 1964, the Civil Rights Act of 1991, the Americans with Disabilities Act of 1990, the Pregnant Workers Fairness Act (PWFA), and the Providing Urgent Maternal Protections for Nursing Mothers Act; or
- vii. Any state or federal Constitutional claim for violation of due process, denial of the fruits of one's own labor, violation of property right, right to a name clearing hearing, or any other claim for violation of a right protected by the state or federal Constitution.

b. Acknowledgment of Waiver; Disclaimer of Benefits. Nothing in this Agreement is intended to waive claims (i) for vested rights under ERISA-covered employee benefit plans as applicable on the date Employee signs this Agreement, (ii) that may arise after Employee signs this Agreement, or (iii) which cannot be released by private agreement. Employee further agrees that she will not in the future maintain or prosecute any lawsuit, complaint, administrative charge, action or proceeding of any kind against Employer with respect to any act, omission or other matter occurring on or before the date of her execution of this Agreement.

However, this Agreement shall not act to prevent Employee from filing a charge of discrimination with the Equal Employment Opportunity Commission, although by signing this Agreement, Employee waives the right to recover any damages or other relief in any claim or suit brought by or through the Equal Employment Opportunity Commission or any other state or local agency on her behalf under any federal, state, or local anti-discrimination law against Employee for any event which occurred as of the date of this Agreement, except where prohibited by law. Employee further understands that the representations, and understandings set forth in this section have been specifically relied upon by the Releasees and constitute consideration for Employer's execution of this Agreement, and without which Releasees would not have entered into this Agreement.

c. Effect of Release and Waiver. Employee understands and intends that this Section and all sub-sections thereto constitutes a general release of all Claims except as otherwise provided in Section 4(b) above, and that no reference therein to a specific form of Claim, statute or type of relief is intended to limit the scope of such general release and waiver.

d. Waiver of Unknown Claims. Employee expressly waives all rights afforded by any statute which limits the effect of a release with respect to unknown Claims and understands the significance of her release of unknown Claims and her waiver of statutory protection against a release of unknown Claims. Employee acknowledges that if she later discovers facts different from, or in addition to, those which she now knows or believes to be true concerning the subject matter of her employment with Employer and separation thereof, that nevertheless this Agreement shall be and remain effective in all respects. "Claims" shall be interpreted liberally to preclude any further disputes, litigation, or controversies between Employee and Employer or any of the Releasees based on events that occurred on or before the effective date of this Agreement.

e. Waiver of Federal Age Rights. **By this section of the Agreement, Employee expressly agrees to waive any right or claim she may have relating to the Age Discrimination of Employment Act of 1967 ("ADEA"), as amended (29 U.S.C. § 626), as defined in the Older Workers Benefit Protection Act and amendments to ADEA, 29 U.S.C. § 626(f).**

i. **Specifically, Employee represents and acknowledges that she is aware that she is waiving any and all federal age discrimination claims that may be currently in existence against Employer, or that may arise on or before her execution of this Agreement; and that she makes said waiver knowingly and voluntarily.**

ii. **Employee represents and acknowledges that she has been informed of her right to consult with an attorney relative to any federal**

age discrimination claim which may or may not exist prior to his execution of this Agreement and the waiver of said claim, and that she has in fact consulted with an attorney prior to entering this Agreement.

iii. This release and waiver is requested by Employer in connection with the fact that the consideration defined herein is offered to Employee as an incentive and is designed expressly for the circumstances surrounding her individual service or employment to Employer and the end of that service or employment with Employer.

iv. *Employee further acknowledges that while she has been advised in writing that she is entitled to at least twenty-one (21) days to consider the terms of this agreement, she has knowingly elected not to avail herself of the full twenty-one (21) day period before entering into and executing this agreement. Employee acknowledges that she has voluntarily and knowingly signed this agreement in exchange for valuable consideration that she would not have otherwise received. Employee further understands that for a period of seven (7) days following the execution of this agreement upon written notice to Employer she may revoke this agreement, and the agreement will not become effective or enforceable until the time for revocation has expired.*

v. To the extent that Ms. Crosby wishes to revoke this Agreement in accordance with the revocation period referred in this section of this Agreement, Ms. Crosby must provide notice, in writing, addressed to the attention of the Town Attorney, Laurie Hohe, by email to Laurie.Hohe@apexnc.org or by delivery to Apex Town Hall, Attn: Laurie Hohe, 73 Hunter Street, Apex, NC 27502, by a delivery method that causes such notice to arrive no later than the end of the business day on the last day of the revocation period.

5. **Mutual Non-Disparagement.** Ms. Crosby promises and agrees that she shall not at any time make, publish, or communicate to any person or entity or in any public forum any defamatory or disparaging remarks, comments, or statements concerning the Town, or any of its employees, elected officials, or officers. This section does not, in any way, restrict or impede Ms. Crosby from exercising protected rights to the extent that such rights cannot be waived by agreement, or from complying with any applicable law or regulation or a valid order of a court of competent jurisdiction or an authorized government agency. The Town promises and agrees that it shall not at any time make, publish, or communicate to any person or entity or in any public forum any defamatory or disparaging remarks, comments, or statements concerning Ms. Crosby.

6. **Joint Statement.** The Parties will agree upon a statement concerning Ms. Crosby's service as Town Manager (the "Joint Statement"), which the Town will release

upon request. Except for provision of information and records that the Town is required to disclose pursuant to the Public Records Act, N.C.G.S. § 160A-168, or any other statement or disclosure required from either Party to comply with any applicable provision of federal or state law, the Joint Statement is the only statement that the Town or Ms. Crosby will make or release publicly concerning Ms. Crosby's service as Town Manager.

7. **Return of Property.** No later than ten (10) days after execution of this Agreement, Ms. Crosby must return all the Town's property in her possession or control, including identification cards or badges, access codes or devices, keys, laptops, computers, telephones, mobile phones, hand-held electronic devices, credit cards, electronically stored documents or files, physical files and any other Town property and information in Ms. Crosby's possession or control, any other materials of any nature pertaining to Ms. Crosby's work for the Town, and any documents or data of any description (or any reproduction of any documents or data). Within the same 10-day period, Ms. Crosby may contact the Town to coordinate a time to retrieve any of Ms. Crosby's personal property located in or on Town property.

8. **Non-Admission of Liability or Wrongful Conduct.** This Agreement is in compromise of disputed claims. This Agreement shall not in any way be construed as an admission by the Town or any of the Releasees that they acted wrongfully with respect to Employee or any other person, or that Employee has any rights whatsoever against the Town or any of the Releasees. The Town and the Releasees specifically disclaim and deny any liability to, or wrongful acts against Employee, or any other person, on the part of themselves, their employees, or their agents.

9. **Administrative Proceedings.** This Release does not bar Employee from filing an administrative charge with, participating in an administrative proceeding conducted by, communicating with, or cooperating with any governmental agency (including the Equal Employment Opportunity Commission) concerning Employee's employment, but Employee agrees that in no event shall Employee seek, accept, or receive any personal or financial benefit with respect to Employee's hiring, retention, transfer, demotion, compensation, separation treatment or any and all other elements of employment by Employer, which are fully released and resolved by this Release.

10. **Employee's Representations and Covenants Regarding Actions.** Employee represents, warrants and covenants to each of the Releasees that at no time prior to or contemporaneous with her execution of this Agreement has she filed or caused or knowingly permitted the filing or maintenance, in any state, federal or foreign court, or before any local, state, federal or foreign administrative agency or other tribunal, any Claim, which she may now have or has ever had against the Releasees which is based in whole or in part on any matter referred to above.

11. **Indemnification.** Ms. Crosby does by execution of the present document expressly acknowledge receipt and sufficiency of this consideration. Ms. Crosby warrants

and represents that, to the extent that the payments referenced above or any part or portion of the payments constitute income for tax purposes, she will report such amount on her federal and state tax returns and on any other returns or reports which may be required by law. Ms. Crosby further agrees to be solely responsible for all taxes, interest, penalties, and other charges which may be owed to any and all governmental agencies as a result of the payments made to her pursuant to this Agreement, and further agrees to indemnify and hold harmless the Releasees from any costs, obligations, interest, expenses, penalties or fees incurred by the Releasees for his failure to do so.

12. **Governing Law.** All issues and questions concerning the construction, validity, enforcement and interpretation of this Agreement will be governed by, and construed in accordance with, the laws of the State of North Carolina, without giving effect to any choice of law or conflict of law rules or provisions that would cause the application hereto of the laws of any jurisdiction other than the State of North Carolina. In furtherance of the foregoing, the laws of the State of North Carolina will control the interpretation and construction of this Agreement, even though under any other jurisdiction's choice of law or conflict of law analysis the substantive law of some other jurisdiction may ordinarily apply.

13. **Severability.** If any provision(s) or portion(s) of this Agreement are or become invalid, illegal, or unenforceable, such provision(s) or portion(s) shall be deemed stricken and the remainder of this Agreement shall remain in full force and effect.

14. **Modification and Waiver.** This Agreement may be amended, changed, or modified only by a writing executed by all of the Parties. No waiver of any provision of this Agreement will be valid unless set forth in writing and signed by the Party against whom such waiver is charged, and no waiver of a right or condition by a Party shall be construed to be a total waiver of any other right or condition set forth herein.

15. **Counterparts.** This Agreement may be executed in separate counterparts, each of which will be deemed to be an original and all of which taken together will constitute one and the same agreement.

16. **Complete Agreement.** This Agreement constitutes the full and complete understanding and agreement of the parties with respect to all subjects addressed herein and supersedes and replaces any and all prior negotiations and agreements, proposed or otherwise, whether written or oral. There are no other agreements other than those set forth herein, and no amendment, deletion, addition, modification, or waiver of any provision of this Agreement shall be binding or enforceable unless in writing and signed by all parties.

17. **Employee Acknowledgment.** EMPLOYEE IS ADVISED TO CONSULT WITH AN ATTORNEY PRIOR TO SIGNING THIS AGREEMENT. EMPLOYEE ACKNOWLEDGES AND AGREES THAT EMPLOYEE HAS FULLY READ AND UNDERSTANDS THE AGREEMENT'S BINDING LEGAL EFFECT. EMPLOYEE

FURTHER ACKNOWLEDGES AND AGREES THAT EMPLOYEE HAS HAD A REASONABLE PERIOD OF TIME TO CONSIDER ALL OF THE TERMS AND PROVISIONS AND HAS HAD AN OPPORTUNITY TO ASK QUESTIONS AND CONSULT WITH AN ATTORNEY OF EMPLOYEE'S CHOICE BEFORE SIGNING THIS AGREEMENT. EMPLOYEE FURTHER ACKNOWLEDGES THAT EMPLOYEE IS SIGNING THIS AGREEMENT FREELY AND VOLUNTARILY AND THAT EMPLOYEE'S SIGNATURE BELOW IS AN AGREEMENT TO WAIVE, SETTLE, AND RELEASE ALL CLAIMS EMPLOYEE HAS OR MIGHT HAVE AGAINST EMPLOYER AND THE RELEASEES, EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED IN THE AGREEMENT. EMPLOYEE UNDERSTANDS THAT EMPLOYEE MAKE TAKE UP TO TWENTY-ONE (21) CALENDAR DAYS TO CONSIDER THIS AGREEMENT. EMPLOYEE MAY REVOKE THIS AGREEMENT FOR A PERIOD OF SEVEN (7) CALENDAR DAYS FOLLOWING THE DAY EMPLOYEE SIGNS THIS AGREEMENT. ANY REVOCATION WITHIN THIS PERIOD MUST BE SUBMITTED PURSUANT TO SECTION 4(e)(5) OF THIS AGREEMENT. EMPLOYEE AGREES THAT ANY MODIFICATIONS, MATERIAL OR OTHERWISE, MADE TO THIS AGREEMENT, DO NOT RESTART OR AFFECT IN ANY MANNER THE ORIGINAL UP TO TWENTY-ONE (21) CALENDAR DAY CONSIDERATION PERIOD.

[Signature pages follow.]

I, CATHERINE CROSBY, ACKNOWLEDGE THAT: I HAVE CAREFULLY READ AND REVIEWED THIS AGREEMENT; CONSULTED WITH MY ATTORNEY REGARDING ITS TERMS; UNDERSTAND, AND AM SATISFIED WITH THE TERMS AND CONTENTS OF THIS AGREEMENT; AND HAVE VOLUNTARILY SIGNED MY NAME TO THE SAME AS A FREE ACT AND DEED.

Crosby
CATHERINE CROSBY

Sworn to and subscribed before me the 24th day of August, 2023.

Shannon Howell
Notary Public

Commission Expires: 8/23/2025

SHANNON HOWELL
NOTARY PUBLIC
Wake County
North Carolina
My Commission Expires 8/23/2025

