

EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT ("Agreement") is entered into and effective as of the 15th day of June, 2021, by and between the **CITY OF SALIDA, COLORADO**, a Colorado municipal corporation, hereinafter referred to as "City" and **ANDREW (DREW) NELSON**, hereinafter referred to as "Nelson," together referred to as the "Parties."

WITNESSETH:

WHEREAS, City appointed Nelson to serve as City Administrator, which appointment began on October 8, 2018; and

WHEREAS, City continues its desire to employ the services of Nelson as City Administrator; and

WHEREAS, it is the desire of the Salida City Council, hereinafter called "City Council," to continue to provide certain benefits, establish certain conditions of employment, and to set and clarify the working conditions of Nelson; and

WHEREAS, Nelson desires to continue employment as City Administrator of the City of Salida; and

WHEREAS, the Parties desire to express the employment relationship in written form;

NOW, THEREFORE, in consideration of the premises, and the mutual covenants and promises hereinafter set forth, the Parties agree as follows:

SECTION I DUTIES

The City hereby agrees to employ Nelson as City Administrator of the City of Salida to perform the functions and duties specified in the job description of the City Administrator and to perform other legally permissible and proper duties and functions as the City Council shall from time to time assign.

SECTION II TERM

(a) Without waiving any rights to renegotiate and/or terminate this Agreement, Nelson's term of appointment began on October 8, 2018 and continue indefinitely until terminated by the City or Nelson as provided for in Section IV or V of this Agreement.

(b) The City Administrator is an appointed City officer who serves at the pleasure of the Mayor and City Council. Nelson may therefore be removed from office at any time, for any reason or for no reason (for convenience), upon a majority vote of the Mayor and City Council, at which time this Agreement would terminate, subject only to the provisions set forth in Section IV of this Agreement. The Mayor and City Council and Nelson specifically agree that Nelson's employment with the City is "at will" notwithstanding any personnel or employment rule or policy of the City to the contrary.

(c) Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of Nelson to resign at any time from his position with City, subject only to the provisions set forth in Section IV of this Agreement.

**SECTION III
SUSPENSION**

Acting by majority vote of the Mayor and City Council, the Mayor and City Council may suspend Nelson at any time, with or without pay as the circumstances dictate, and such action shall not be considered a termination within the meaning of Section IV(a). In no event shall a suspension last longer than sixty (60) consecutive days.

**SECTION IV
TERMINATION AND SEVERANCE COMPENSATION**

- (a) For the purposes of this Agreement, termination shall occur when:
- (1) a majority of the Mayor and City Council votes to terminate Nelson at a duly authorized public meeting; or
 - (2) the Mayor and City Council, or the citizens by initiative, acts to amend any provisions of the Salida Municipal Code pertaining to the role, powers, duties, authority, responsibilities of Nelson's position that substantially changes the form of government, in which case the following shall apply: within ten (10) days following the effective date of such change in the form of government, Nelson must inform the Mayor and City Council in writing of his election of one of the following two (2) options: (1) that he elects to accept such changes in the form of government and agrees to continue as the City Administrator (or equivalent title under such changed form of government), in which case no termination shall be deemed to have occurred and no Severance Compensation shall be paid; or (2) that he elects to consider the same a termination, in which case he shall leave the employ of the City and Severance Compensation shall be paid; or
 - (3) the Mayor and City Council reduces the base salary, compensation or any other financial benefit of Nelson, unless it is applied in no greater percentage than the average reduction of all City employees; or
 - (4) Nelson resigns.

(b) In the event that Nelson is terminated pursuant to Section IV(a) and provided that Nelson is willing and able to perform his duties under this Agreement, the City shall pay to Nelson "Severance Compensation" as follows:

- (1) A minimum severance payment equal to six (6) months of pay from the date of termination. This severance shall be paid in a lump sum or in a continuation of salary on the existing biweekly basis, at Nelson's option.
- (2) Payment for all accrued Personal Time Off (PTO) leave at the time of termination. This shall include compensation for paid holidays over the six (6) month period following termination of this Agreement; provided, however, that Nelson shall not accrue PTO leave following termination.

- (3) For a minimum period of six (6) months following termination, the City shall pay the cost to continue the following benefits:
 - a. Health insurance for Nelson and all dependents, after which time, Nelson will be provided access to health insurance pursuant to the Consolidated Omnibus Budget Reconciliation Act ("COBRA").
 - b. Life insurance as provided for in the City's benefit package.
 - c. Short-term and long-term disability as provided for in the City's benefit package.
 - d. Any other benefits available to other employees in the City's benefit package.

- (4) For a minimum period of six (6) months following termination, the City shall make contributions to Nelson's retirement plan(s) in a manner consistent with the contributions made at the time of termination per Section XI of this Agreement, either in a lump sum or in a continuation of retirement match on the existing biweekly basis, at Nelson's option.

(c) Notwithstanding anything herein to the contrary, the Mayor and City Council may terminate Nelson upon a finding by the Mayor and City Council of an Improper Action. For purposes of this paragraph, "Improper Action" shall mean (i) conduct by Nelson which is fraudulent or dishonest, or (ii) Nelson's conviction of a felony or crime involving moral turpitude under any federal or state law. In the event Nelson is terminated for Improper Action, the City shall have no obligation to pay any severance amount or any Severance Compensation. Any termination for Improper Action shall require five (5) days' notice to Nelson of the reasons for termination, an opportunity for a hearing before the Mayor and City Council and a majority vote by the Mayor and City Council.

(d) In the event Nelson voluntarily resigns his position with the City at any time during the term of this Agreement, then Nelson shall give the City at least thirty (30) days written notice in advance, unless the Parties otherwise agree. Voluntary resignation by Nelson will result in a loss of all Severance Compensation, if any, that would otherwise be due and owing to him by the City under this Agreement, unless otherwise determined by the City Council in its sole and absolute discretion.

SECTION V DISABILITY

(a) If Nelson is permanently disabled or is otherwise unable to perform his duties because of sickness, accident, injury, mental incapacity or health for a period of four (4) successive weeks beyond any accrued sick leave, or for twenty (20) working days over a thirty (30) working day period, the City shall have the option to terminate this Agreement, subject to the payment of Severance Compensation set forth in paragraph (b) of Section IV.

(b) As used herein, "permanently disabled or otherwise unable to perform his duties" shall be defined as: (1) if Nelson is receiving total permanent disability payments pursuant to any disability program under which he is covered, whether owned by the City or otherwise; or (2) in the absence of such disability program, if (a) Nelson's attending physician certifies that Nelson is unable to perform his duties

as set forth herein for the City and that such condition is total and permanent; and (b) in the event that Nelson does not timely consult such attending physician and the City reasonably believes Nelson to be so disabled, the City may require such an examination from a properly qualified physician who shall conduct such examination(s) as is appropriate to determine whether or not Nelson is so totally and permanently disabled; and (c) such condition continues for the period stated in this Section V.

SECTION VI COMPENSATION

(a) City agrees to adjust Nelson's pay for his services rendered hereunder at an annual rate of One Hundred Forty Thousand Dollars (\$140,000.00) which sum shall be payable in installments at the same times as other employees of the City are paid.

(b) In addition, City agrees to consider and adjust the base salary and other benefits to Nelson based upon the performance evaluation process described in Section VII of this Agreement; PROVIDED, HOWEVER, that said consideration and salary adjustment shall be solely within the discretion of the City Council.

SECTION VII PERFORMANCE EVALUATION

(a) The Mayor and City Council shall review and evaluate the performance of Nelson at least annually, commencing in or around April of each year.

(b) All such reviews and evaluations shall be in accordance with specific criteria developed jointly by the Mayor, City Council and Nelson. The criteria may be added to or deleted from as the Mayor and City Council may from time to time determine, in consultation with Nelson. The Mayor and City Council shall provide Nelson with an adequate opportunity for Nelson to discuss his evaluation with the Mayor and City Council.

(c) The Mayor, City Council and Nelson shall periodically define such goals and performance objectives which they determine necessary for the proper operation of the City and the attainment of the Mayor and City Council's policy objectives. The goals and objectives shall generally be attainable within the time limitations as specified in the annual operating and capital budgets and appropriations provided.

(d) The City agrees to annually increase Nelson's compensation, dependent upon the results of the performance evaluation conducted under this Section. Increased compensation can be in the form of a salary increase and/or a cost of living adjustment ("COLA") and/or performance incentive and/or an increase in benefits.

(e) The Parties agree that the Mayor and City Council has the right, in their sole discretion, in addition to and not in replacement of the procedures set forth in this Section, to consider Nelson's performance in executive session in compliance with the Colorado Open Meetings Law and the City of Salida Municipal Code.

**SECTION VIII
HOURS OF WORK**

It is recognized that this is a full-time position for which Nelson must devote a great deal of time outside normal office hours to business of the City and will necessarily be engaged in work during certain evening and weekend hours. As such, Nelson shall be entitled to arrange and organize his work schedule to best achieve his duties and responsibilities.

**SECTION IX
AUTOMOBILE MILEAGE REIMBURSEMENT**

Nelson shall be reimbursed at the then existing I.R.S. rate for mileage incurred using his personal automobile for all trips expended in the performance of his duties as City Administrator which require travel in excess of ten (10) miles in one direction from the corporate limits of the City.

**SECTION X
PERSONAL TIME OFF AND OTHER LEAVE**

In all respects, Nelson shall be subject to and governed by the general policy of the City regarding Personal Time Off ("PTO") and other leaves as identified in the Personnel Manual. Nelson shall be entitled to the highest level of PTO accrual allowed under the City's Personnel Manual (non-Firefighter), as adopted and amended from time to time.

**SECTION XI
BENEFITS**

Except as otherwise provided herein, Nelson shall enjoy the benefits of, and be subject to, all the general City policies for all full-time employees regarding medical, dental and life insurance and long-term disability insurance. Notwithstanding the foregoing, the City shall match the equivalent of up to five percent (5%) of Nelson's salary to Nelson's 457 Plan if he chooses to enroll in such Plan, at such times as it makes such Plan contributions for City employees generally, and Nelson shall become immediately vested in the balance of his Plan account. Nelson shall receive a City-issued cell phone for his business use, under the same terms and conditions that such phones are provided to other City employees.

**SECTION XII
INDEMNIFICATION**

Nelson shall enjoy the benefits of City employees provided in the City of Salida Personnel Manual and in the Colorado Revised Statutes regarding tort, professional liability claims or demands, and any other legal actions, arising out of an alleged act or omission occurring in the performance of his duties as City Administrator.

**SECTION XIII
GENERAL AND MISCELLANEOUS PROVISIONS**

(a) **Binding Effect; Enforcement.** This Agreement shall be and become binding upon, and inure to the benefit of, the Parties hereto, their heirs and personal representatives. This Agreement shall be construed and interpreted according to the laws of the State of Colorado, and any action necessary to enforce, construe, or interpret the within shall be maintained in the District Court in and for Chaffee

County, Colorado. Nothing in this Agreement shall prevent or preclude the Parties' mutual agreement to submit any dispute arising from this Agreement to mediation or arbitration.

(b) **Facilities and Equipment.** The City shall furnish office facilities, equipment and assistance for Nelson as the City deems appropriate for the performance of Nelson's duties.

(c) **Compliance with TABOR.** It is the intent of the City and Nelson to comply with the provisions of Article X, Section 20 of the Constitution of the State of Colorado, including in particular subsection 4(b), as approved by the voters on November 3, 1992. Therefore, the Parties agree that this Agreement is subject to an annual appropriation by the City Council and that the failure to make such appropriation, unless such action is the result of a prior termination for Improper Action under Section IV(c) of this Agreement, will be deemed a termination within the meaning of Section IV(a). The Parties further agree and acknowledge that the City has established and shall maintain an adequate present cash reserve held for future payments, if required, in an amount sufficient to pay any severance compensation required by this Agreement. It is the intent of this Section that the City shall be entitled to reasonable notice and a reasonable opportunity to cure any failure to appropriate sufficient funds prior to any determination that Nelson's employment is terminated.

(d) **Assignment.** The rights and obligations of the City under this Agreement shall inure to the benefit of and be binding upon the successors and assigns of the City. Nelson shall not assign or otherwise convey any of his rights and obligations hereunder without the express written permission of the City Council.

(e) **Notices.** All notices provided for herein shall be in writing and shall be personally delivered or mailed by registered or certified United States mail, postage prepaid, return receipt requested, to the Parties at the addresses given below or at such other addresses that may be specified by written notice in accordance with this paragraph:

If to the City: Mayor
City of Salida
The Touber Building
448 E. First Street, Suite 112
Salida, Colorado 81201

With a copy to: City Attorney Nina Williams
Wilson Williams LLP
15306 West 93rd Avenue
Arvada, CO 80007

If to Nelson: Drew Nelson
1133 G Street
Salida, CO 81201

(f) **Entire Agreement.** This instrument contains the entire agreement of the Parties and it may not be changed orally, but only by written agreement signed by the party against whom enforcement of any waiver, change, modification, extension or discharge is sought. No action by one or more City Council members may amend, modify, alter, or change this Agreement unless approved by majority vote of the Mayor and City Council.

(g) **Approval.** By execution of this Agreement, the City acknowledges that all required approvals have been obtained by the Mayor and City Council so that this Agreement shall be fully effective and binding upon the Parties hereto.

(h) **Multiple Counterparts; Electronic Signature.** This Agreement may be executed in any number of counterparts, each of which together shall be deemed to be an original, and all of which together shall be deemed to be one and the same instrument. The signatures required for execution may be transmitted by facsimile or electronically (scan and e-mail), and such facsimile or electronic signature shall be deemed a duplicate original, shall be effective upon receipt, may be admitted in evidence, and shall fully bind the party making such signature.

IN WITNESS WHEREOF, the Parties have affixed their signatures as of the date and year first above written.

CITY OF SALIDA, COLORADO

ATTEST:

Erin Kelley, City Clerk

P.T. Wood, Mayor

Drew Nelson
