

**TOWN OF WHITESTOWN, INDIANA
RESOLUTION NO. 2023-16**

**A RESOLUTION APPROVING AN EMPLOYMENT
AGREEMENT BUY-OUT AND GENERAL RELEASE**

WHEREAS, the Town Council (“Town Council”) of the Town of Whitestown, Indiana (“Town”) is the legislative body for the Town; and

WHEREAS, the Town Council has previously entered into an Employment Agreement with its Town Manager, providing certain rights, benefits, and privileges relative thereto (“Agreement”); and

WHEREAS, the Town Council believes that it is appropriate to begin the transition to a new Town Manager; and

WHEREAS, the Town Council desires to approve an Employment Agreement Buy-Out and General Release to provide for the buy-out and termination of the Agreement and resolve any and all claims or interests relative thereto.

NOW, THEREFORE, be it resolved by the Town Council of the Town of Whitestown, Indiana, that the Employment Agreement Buy-Out and General Release substantially in the form attached hereto as Exhibit A is hereby approved (“Separation Agreement”). The President of the Town Council is authorized to execute the final Separation Agreement and authorize such other matters as may be appropriate to effectuate such terms. Payments under the Separation Agreement may be made from appropriated funds for either wages, contractual, or professional services.


PASSED AND ADOPTED by the Whitestown, Indiana Town Council this ____ day of _____, 2023, by a vote of ____ in favor and ____ against.

THE TOWN COUNCIL OF THE
TOWN OF WHITESTOWN, INDIANA

DocuSigned by:


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Clinton Bohm, President

ATTEST:

DocuSigned by:


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Matt Sumner, Clerk-Treasurer
Town of Whitestown, Indiana

Exhibit A

Employment Agreement Buy-Out and General Release

EMPLOYMENT AGREEMENT BUY-OUT AND GENERAL RELEASE

THIS EMPLOYMENT AGREEMENT BUY-OUT AND GENERAL RELEASE (the “Agreement”) is entered into by and between the Town of Whitestown (“Town”) and Jason Lawson (“Employee”) (jointly, the “Parties”).

Recitals

A. Employee has served the Town with loyalty and distinction as Town Manager, and the Town is appreciative of Employee’s service;

B. The Parties entered into an Employment Agreement concerning Employee’s employment on August 14, 2019 (“Employment Agreement”).

C. The Parties now believe that the timing is conducive to transitioning to a new Town Manager and desire to provide for the buy-out and termination of the Employment Agreement in a manner that is mutually beneficial under certain terms as set forth in this Agreement.

Terms and Conditions

NOW, THEREFORE, in consideration of the mutual covenants contained in this Agreement, the Parties hereby agree as follows:

1. Last Date of Employment and Final Payment. Employee’s employment with the Town will terminate effective May 11, 2023 (“Separation Date”). On or before the Town’s next regularly scheduled pay date following the Separation Date, the Town will pay Employee for all base salary earned through and including the Separation Date, subject to applicable taxes and withholdings (“Final Payment”).

2. Buy-Out. Subject to the Contingencies (as defined in Section 7(c) herein) and in consideration for the promises made by Employee in this Agreement, the Town shall:

(a) Pay Employee the gross amount of Fifty-Four Thousand Fifty-Nine Dollars and Ninety-Eight Cents (\$54,059.98), which is equivalent to six (6) months of Employee’s base salary, and is subject to applicable taxes and withholdings; and

(b) Pay Employee the gross amount of Ten Thousand One Hundred Thirty-Six Dollars and Twenty-Four Cents (\$10,136.24), which is equivalent to 192 hours of Employee’s earned and unused paid vacation time, and is subject to applicable taxes and withholdings.

The items of compensation in Section 2(a) and 2(b) of this Agreement are jointly referred to as the “Buy-Out Payment”. The Buy-Out Payment shall be paid to Employee in a lump-sum payment within ten (10) days following the Effective Date of this Agreement (as defined in Section 18 of this Agreement).

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3. Complete Payment. The Final Payment and the Buy-Out Payment shall constitute a complete settlement and satisfaction of any and all present or potential claims for loss of wages/salary, including any and all forms of compensation, commissions, bonuses, and benefits of employment, reinstatement, severance pay, compensatory damages, punitive damages, declaratory relief, interest, attorneys' fees, costs, other litigation fees, and any and all other forms of monetary or injunctive relief. Employee hereby expressly acknowledges payment in full by the Town of any and all earned and unpaid compensation and benefits (including paid time off benefits) as of the date Employee signs this Agreement. Apart from the Buy-Out Payment (subject to the terms and conditions herein), the Town shall have no continuing liability to Employee for any compensation, commissions, bonuses or benefits of employment.

4. Benefits. Any entitlement to retirement benefits by Employee based on Employee's age and years of service with the Town shall be unaffected by this Agreement except to the extent such benefits are affected by Employee's Separation Date. All employment-related benefits shall terminate on the Separation Date unless otherwise provided in the specific benefits plan documents, specified in this Agreement, or required by law. Employee shall not be entitled to any Town-matching or contributions to any retirement plans or other benefits plans based on the Buy-Out Payment except if required by the specific benefits plan documents or required by law.

5. Release and Claims. In consideration of the promises made by the Town in this Agreement, Employee hereby RELEASES AND FOREVER DISCHARGES the Town and its elected officials, officers, agents, employees, subsidiaries, affiliates, successors, and assigns (collectively the "Released Parties") from any and all claims, demands, liabilities, actions, or causes of action which Employee had, has, or may have on account of, arising out of, or related to: (a) Employee's employment with the Town and the termination of that employment, including, without limitation, any and all claims, demands, liabilities, actions, or causes of action arising under Title VII of the Civil Rights Act of 1964; the Civil Rights Act of 1991; the Age Discrimination in Employment Act; Sections 1981 through 1988 of Title 42 of the United States Code; the Family and Medical Leave Act; the Employee Retirement Income Security Act of 1974; the Americans with Disabilities Act; the Occupational Safety and Health Act; the Lilly Ledbetter Fair Pay Act; the Equal Pay Act; the Indiana Civil Rights Act; Indiana's payment-of-wages statutes; and any amendments thereto; and any and all other federal, state and local laws governing terms and conditions of employment, wages, hours, compensation, discrimination, and any and all other matters; (b) the Employment Agreement; and (c) all other matters occurring prior to the date Employee signs this Agreement. **Employee is releasing each and every claim, known or unknown, contingent or actual, which Employee has or may have against the Released Parties, or any of them, as of the date Employee signs this Agreement, which may lawfully be released by private agreement. The foregoing release does not extend to claims that cannot lawfully be released by private agreement, nor does it restrict Employee's right to file a charge with any administrative or government agency or participate in an administrative or government agency investigation or proceeding; provided, however, that by signing this Agreement, Employee understands and agrees that, in the event that Employee files any charge or claim against the Released Parties, or any of them, this Agreement may operate to limit or preclude Employee's entitlement to relief or recovery from such claim, including any costs or attorneys' fees.**

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6. Covenant Not to Sue. Employee promises and agrees not to file a lawsuit against the Released Parties, or any of them, with respect to any claim or cause of action released in this Agreement. In the event that Employee violates this covenant, Employee understands and agrees that any such claim will be subject to dismissal with prejudice. Employee further understands and agrees that the Released Parties shall be entitled to reimbursement from Employee for their attorneys' fees and costs incurred to secure dismissal of any claim or cause of action released in this Agreement. This Section 6 shall not be construed to prohibit any lawsuit challenging the validity of any waiver of claims under the Age Discrimination in Employment Act and shall not require reimbursement of attorneys' fees and costs with respect to such claim.

7. Return of Town Property and Confidentiality.

(a) Within ten (10) days after the Separation Date, Employee will return all Town-owned vehicles, electronic equipment, laptop computer, cell phone, all key fobs and keys, fuel card, badges, equipment, documentation, information, reports, files, memoranda, records, identification, hardware, and software, and other physical or personal property of any nature that Employee received, prepared or helped prepare in connection with Employee's employment with the Town ("Town Information/Property") and on or before the Separation Date will disclose to the Town all Town-related passwords and access codes. Employee expressly agrees that Employee will not retain any copies, duplicates, reproductions, or excerpts of any such Town Information/Property in any form. Town Information/Property includes financial, accounting, customer account, contracts, negotiations, technical, grant, sales, leasing, marketing, advertising, media relations, research, risk management, fund raising, proprietary, or human resource information; software; and intellectual property and trade secrets of any nature; the use or disclosure of which might be adverse to the best interests of the Town or its business. Except as limited by Section 9, Employee shall keep such information confidential at all times following the Separation Date, not disclose or communicate such information to any third party, and not make any use of such information on Employee's own behalf or that of any third party, unless ordered to do so by a court of law. The foregoing is not intended to prevent Employee from using or exercising the skill and general knowledge Employee has acquired or increased through Employee's experience or instruction at the Town that does not entail use of Town Information/Property.

(b) Pursuant to the federal Defend Trade Secrets Act, the Parties acknowledge and agree that Employee is immune from criminal and civil liability under state and federal law if Employee discloses trade secrets (i) directly or indirectly in confidence to a federal, state, or local government official or to an attorney solely for the purpose of reporting or investigating a suspected violation of the law, (ii) in a complaint or other document filed in a lawsuit or other proceeding when the filing is made under seal, or (iii) to Employee's attorney or in a sealed court filing in a lawsuit alleging retaliation for reporting a suspected violation of the law.

(c) The Town's obligation to pay the Buy-Out Payment to Employee is contingent upon: (i) Employee executing and not revoking this Agreement, (ii) approval of the Buy-Out Payment by the Whitestown Town Council, and (iii) Employee's compliance with the terms and

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conditions of this Agreement. The obligations contained in this subsection 7(c) of this Agreement are jointly referred to as the “Contingencies”.

8. Non-Disparagement. Except as limited by Section 9, Employee specifically understands and agrees that Employee shall not disparage, demean, or otherwise communicate any information damaging or potentially damaging to the business or reputation of the Town or any of the Released Parties to any third party, including, but not limited to, the media and business community and any past or present employees of the Town, without the express written consent of the Town, except as protected by applicable law. This provision shall not apply to any information, complaint, or other communication that Employee may in good faith file with or communicate to any judicial or other governmental entity or agency concerning any of the Released Parties.

9. Protected Rights. Notwithstanding anything to the contrary in this Agreement, nothing in this Agreement shall be construed to prohibit or interfere with Employee’s exercise of protected activity under state or federal law, including the right to file a charge with and participate in proceedings before and investigations by the Equal Employment Opportunity Commission or other government agency.

10. Breach by Employee. Employee understands and agrees that a breach by Employee of any provision of this Agreement permits the Town to not pay the Buy-Out Payment and permits the Town to pursue any other legal or equitable relief to which it is entitled as the result of such breach. Employee also understands and agrees that, in the event Employee were to violate Section 7 or 8 of this Agreement, the Town and/or Released Parties would be subject to immediate and irreparable harm, and that such breach by Employee would entitle the Town and/or Released Parties to receive temporary, preliminary, and/or permanent injunctive relief. Employee further understands and agrees that Employee will be responsible for payment of the Town’s and other Released Parties’ attorneys’ fees and costs incurred as a result of a successful effort to pursue legal action against Employee in connection with any breach of this Agreement.

11. No Knowledge of Wrongdoing. Employee affirmatively acknowledges that Employee is not aware of any policies, practices, statements, or conduct on the part of any of the Released Parties that Employee believes constitutes illegal, unethical, legally noncompliant, false, or fraudulent acts or omissions that have not been previously disclosed to Town. Employee agrees that neither this Agreement nor the furnishing of the consideration for this Agreement shall be deemed or construed at any time for any purpose as an admission by any of the Released Parties of any liability or unlawful conduct of any kind.

12. Consulting. Employee agrees to provide basic consulting service and assistance to the new or interim Town Manager from time to time upon reasonable request of the Town Manager or Town, at no charge, to aid in the transition of the Town Manager duties. Employee shall not be obligated to provide such service or assistance after December 31, 2023.

13. Entire Agreement. This Agreement sets forth the entire agreement between Employee and the Town with regard to Employee’s termination of employment and fully supersedes any prior

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agreements or understandings between the Parties with regard to the same subject. The Employment Agreement is terminated, and the Town shall have no further obligations under the Employment Agreement. Employee acknowledges that Employee has not relied on any representations, promises, or agreements of any kind made to Employee in connection with Employee's decision to sign this Agreement, except for those set forth in this Agreement. This Agreement may not be modified, altered, or changed except upon the express written consent of both Parties in which specific reference is made to this Agreement.

14. Counterparts and Severability. This Agreement may be executed in one or more counterparts, each of which (including a facsimile or pdf attachment to email thereof) shall be deemed an original, but which together shall constitute one and the same instrument. The facsimile or pdf shall be admissible in any legal proceedings as if it were a manually signed original. Each provision and individual covenant of this Agreement is severable. If any court or other governmental body of competent jurisdiction shall conclude that any provision or individual covenant of this Agreement is invalid or unenforceable, such provision or individual covenant shall be deemed ineffective to the extent of such unenforceability without invalidating the remaining provisions and covenants hereunder.

15. Successors are Bound. Each of the agreements and promises contained in this Agreement shall be binding upon, and shall inure to the benefit of, the heirs, executors, administrators, agents, and successors in interest to each of the Parties.

16. Headings. The section and other headings in this Agreement are inserted solely as a matter of convenience and for reference and, in the event of any conflict, the text of this Agreement, rather than the headings, will control.

17. Choice of Law and Venue. This Agreement shall be interpreted in accordance with the laws of the State of Indiana. Exclusive jurisdiction and venue over any and all disputes arising out of or in connection with this Agreement shall be in Boone County, Indiana, or in the federal district court responsible for Boone County, Indiana.

18. Right to Revoke for Seven (7) Days After Signing and Effective Date. Employee may revoke this Agreement by giving written notice of such revocation to the Town at any time within seven (7) days following the date this Agreement is signed by Employee, and this Agreement shall not become effective or enforceable until the end of such revocation period and the contingency in Section 7(c)(ii) is satisfied ("Effective Date").

19. Review Period and Acknowledgment of Rights and Understandings. Employee expressly agrees and acknowledges the following: (a) that Employee understands the terms and conditions of this Agreement; (b) that Employee has knowingly and voluntarily entered into this Agreement; (c) that Employee has been advised in writing to consult an attorney in connection with reviewing and entering into this Agreement; (d) **that Employee has been provided this Agreement on May 5, 2023 and has been given twenty-one (21) days (i.e., until May 26, 2023) to review and consider the original draft of this Agreement before signing this Agreement;** and (e) that this

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Agreement, when signed by the Town and Employee, is legally binding upon both the Town and Employee, as well as their heirs, assigns, executors, administrators, agents, successors in interest, even if Employee decides not to consult with an attorney in connection with reviewing and entering into this Agreement or if Employee fails to utilize the full twenty-one (21) days given Employee for this purpose.

20. Twenty-One (21) Day Review Period Not Increased by Changes. Employee agrees that any modifications, material or otherwise, made to this Agreement do not restart or affect in any manner the original twenty-one (21) day consideration period set forth in Section 19 of this Agreement.

WHEREFORE, intending to be legally bound to each and all of the terms of this Agreement, the Parties hereby execute this Agreement this ____ day of _____ 2023.

JASON LAWSON

TOWN OF WHITESTOWN

Signature:

Signature:

Printed Name

Printed Name

“Employee”

“Town”

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