



# SELAH CITY COUNCIL

5:30pm February 23, 2021



Selah City Council  
Regular Meeting  
Tuesday, February 23, 2021  
5:30pm  
Via Zoom

Mayor:  
Mayor Pro Tem:  
Council Members:

Sherry Raymond  
Roger Bell  
Russell Carlson  
Jacquie Matson  
Kevin Wickenhagen  
Clifford Peterson  
Suzanne Vargas  
Michael Costello

CITY OF SELAH  
115 West Naches Avenue  
Selah, Washington 98942

City Administrator:  
City Attorney:  
Clerk/Treasurer:

Donald Wayman  
Rob Case  
Dale Novobielski

## AGENDA

- A. Call to Order –Mayor Raymond
- B. Roll Call
- C. Councilmember Absence – Motion to Excuse
- D. Pledge of Allegiance
- E. Invocation
- R. Executive Session **\*\*\*RELOCATED\*\*\***
  - 1. 15 Minute Session – Litigation RCW 42.30.110 (1)(i)
- F. Agenda Changes **None**
- G. Public Appearances/Introductions/Presentations
  - 1. Katrina Henkle, Selah Downtown Association – Update
- H. Getting To Know Our Businesses **None**
- I. Communications
  - 1. Oral

We are presently conducting the regular meeting portion of today's session. State law does not require a noncharter code city, such as the City of Selah, to allot time for public comment during a regular meeting between the Mayor and City Council. Historically, the City has chosen to allot time for public comment during its regular meetings, subject to a maximum of two minutes per commenter and common-sense standards of decorum. Recently, those standards of decorum have been increasingly infringed.

Those wishing to offer public comments during a regular meeting must comply with the following process and standards. Each commenter must state his/her full name and whether he/she is a registered voter residing within the city limits of Selah. Each commenter is limited to one comment and a maximum duration of two minutes per regular meeting. A maximum of thirty minutes per regular meeting will be allotted for all public comments. Comments must be constructive and respectful; no profanity, insults, defamation, or direct or implied personal attacks will be allowed. Criticism of City policy is allowed, but personal criticism of any individual is not allowed. The public comment process is not a question-and-answer process. Also, each commenter should speak solely for himself/herself rather than purporting to speak on behalf of others, repeating verbatim or nearly verbatim what another commenter has said, or repeating what a written document says.

In-person comments will be heard from the podium in the order offered by commenters (and during the Covid shutdown, written comments will be read aloud in the order received by City staff and telephonic comments may also be heard). The Mayor may cut off any in-person or telephonic comment that he/she deems inappropriate (and City staff, at the direction of the Mayor, may disallow or modify any written comment that is deemed inappropriate).

These standards are subject to revision. Those who infringe the applicable standards may be barred from offering public comments during future regular meetings.

Public comment during regular meetings is not the exclusive method to communicate with the Mayor or the City Council on any topic. People may send emails or letters, leave voicemails, or request in-person meetings, to or with the Mayor or any member(s) of the City Council. The Mayor and each member of the City Council has personal discretion over how and when he/she might respond to emails, letters, voicemails, and requests for in-person meetings.

2. Written **None**

J. Proclamations/Announcements **None**

K. Consent Agenda

All items listed with an asterisk (\*) are considered routine by the City Council and will be enacted by one motion, without discussion. Should any Council Member request that any item of the Consent Agenda be considered separately, that item will be removed from the Consent Agenda and become a part of the regular Agenda.

Monica Lake \* 1. Approval of Minutes: February 9, 2021 Study Session & Council Meeting  
Dale N. \* 2. Approval of Claims & Payroll

L. Public Hearings **None**

M. General Business

1. New Business **None**

2. Old Business **None**

N. Resolutions

D.R. (Rob) Case 1. Resolution Authorizing the Mayor to Sign and Enter Into, on Behalf of the City, a “Settlement and Release Agreement” with Regard to the Currently-Pending PRA Litigation, a Related PRA Request, and the Currently-Pending OPMA Litigation

O. Ordinances **None**

P. Public Appearances **None**

Q. Reports/Announcements

1. Departments

2. Council Members

3. City Administrator

4. Boards **None**

5. Mayor

R. Executive Session **\*\*\*RELOCATED\*\*\***

R/S. Resolutions

- Donald Wayman 1. Resolution authorizing the Mayor to extend a contractual offer to D. R. (Rob) Case to become the City's full-time, directly-employed City Attorney and, if he accepts such offer, further authorizing the Mayor to sign and enter into an "Employment Contract" with him

S. Adjournment

Next Regular Meeting March 9, 2021

Each item on the Council Agenda is covered by an  
Agenda Item Sheet (AIS)

A yellow AIS indicates an action item.

A blue AIS indicates an information/non-action item.



**CITY OF SELAH**  
***CITY COUNCIL***  
***AGENDA ITEM SUMMARY***



Council Meeting      Action Item  
2/23/2021              K – 1

**Title:** Approval of Minutes: February 9, 2021 Study Session & Council Meeting

**From:** Monica Lake, Executive Assistant

**Action Requested:** Approval

**Staff Recommendation:** Approval of Minutes

**Board/Commission Recommendation:** Not Applicable

**Fiscal Impact:** N/A

**Funding Source:** N/A

**Background / Findings & Facts:** See Minutes for details

**Recommended Motion:** Motion to approve the Consent Agenda as read.  
(This item is part of the Consent Agenda)

Study Session Minutes  
Selah City Council  
February 9, 2021  
3:30pm

Mayor Raymond opened the Study Session on the Water System Plan then turned the meeting over to Public Works Director Henne and Justin Bellamy, HLA Engineering and Land Surveying, Inc.

Public Works Director Henne said that the plan is in draft form and substantially complete, covering construction, future projects, the financial aspects of the water system, and future rate requests. He noted that the plan was provided to Council on thumb drives. He introduced Justin from HLA as author of the document, who wants to focus mostly on future projects and the financial chapter, and can also discuss other portions of the document.

Justin Bellamy gave an overview of the plan, referring to several pages in the plan that are shared on screen. Starting with background information, he explained that water systems are a WAC requirement administered by the State Department of Health, which are required to be updated every ten years, with the purpose of the plan to demonstrate system capacity for present and future water system demands, and provide eligibility for future funding opportunities with improvements identified in the plan. He reviewed the current water system, discussing the different pressure zones, the booster stations, wells, and reservoirs; laid out the improvements identified as future projects in the plan; and explained the financial plan, including a proposed summary of the budget, projection of future revenues and expenditures for the system, and the water rate structure.

Discussion followed, including topics such as estimates on water use reduction via raising the rate adjustment; advantages to automatic meter reading system; water rights and the potential of acquiring more in the future; Crusher Canyon development; encouraging low water usage landscaping for new and existing construction; warehouses using well water; and finalizing the document, which includes a ninety-day review and comment period with the Health Department.

The Study Session ended at 4:59 pm.

City of Selah  
Council Minutes  
February 9, 2021

Regular Meeting  
Electronically Via Zoom  
115 West Naches Avenue  
Selah, WA 98942

- A. Call to Order Mayor Raymond called the meeting to order at 5:30 pm.
- B. Roll Call
- Members Present: Kevin Wickenhagen; Jacquie Matson; Clifford Peterson; Roger Bell; Russell Carlson; Suzanne Vargas; Michael Costello
- Members Absent: None
- Staff Present: Donald Wayman, City Administrator; Rob Case, City Attorney; Dale Novobielski, Clerk/Treasurer; Dan Christman, Police Chief; Gary Hanna, Fire Chief; Jim Lange, Deputy Fire Chief; Joe Henne, Public Works Director; Jeff Peters, Community Development Supervisor; Ty Jones, Public Works Utility Supervisor; Treesa Morales, Public Records Specialist; Monica Lake, Executive Assistant
- C. Councilmember Absence – Motion to Excuse **None**
- D. Pledge of Allegiance
- Mayor Raymond led the Pledge of Allegiance.
- E. Invocation
- Pastor Tom Morris gave the prayer.
- F. Agenda Changes **None**
- G. Public Appearances/Introductions/Presentations
1. Katrina Henkle, Selah Downtown Association – Update

Katrina Henkle, Selah Downtown Association (SDA) Executive Director, addressed the Council. She said that, as mentioned at the past few meetings, they have the have façade grant open through 26<sup>th</sup> of this month, and have only received one application thus far. She remarked that they are also getting ready for the business discovery easter egg hunt and asked that businesses check their emails and let her know if they want to participate. She commented that they have a We heart Selah display in the old Belltone building to draw attention to the space, and are working on showing three sixty-degree tours of empty commercial and business spaces in town. She noted that they are working on new bins of flowers for the year.

H. Getting To Know Our Businesses **None**

I. Communications

1. Oral

Mayor Raymond opened the Public Meeting.

City Attorney Case read aloud the rules of conduct as stated in the Agenda.

Executive Assistant Lake said that there were three comments submitted to be read aloud.

From Daniel Callahan, Selah:

I believe the city should open up the position of city attorney to new applicants in order to weigh all the options Selah could potentially have. Perhaps Selah could get a better deal on an attorney, since \$160,000 is a rather steep price for the taxpayers. Especially considering no city attorneys get paid a similar salary for any city of Selah's size and approximate geographic location. I think it would be pretty likely that attorneys in the area would agree to a more normal salary. Perhaps Selah could also look for an attorney that could skillfully keep the city from getting sued. After all there are 3 lawsuits that have come about just in the past year alone.

From Mindy Clark, Selah:

The personal lawyer for City Administrator Donald Wayman, should not be the city of Selah's attorney. Mayor Raymond and City Council members need to listen to the Selah residents they represent. Documents were signed by Rob Case stating that there would be no conflict of interest, but to the residents of Selah, there certainly is the impression of one. I do believe we do not need a full-time attorney and I believe our current, part time, attorney needs to be replaced.

From Julianne Moore, Selah:

I think the salary for the City Attorney is too high  
The Council should look at Attorney General office, staff Attorney salaries to establish a salary range

Mayor Raymond closed the Meeting.

2. Written **None**

J. Proclamations/Announcements **None**

K. Consent Agenda

Executive Assistant Lake read the Consent Agenda.

All items listed with an asterisk (\*) were considered as part of the Consent Agenda.

\* 1. Approval of Minutes: January 26, 2021 Council Meeting



- \* 2. Approval of Claims and Payroll:
  - Payroll Checks Nos. 84068 – 84084 for a total of \$286,509.92
  - Claim Checks Nos. 76064 – 76131 for a total of \$215,860.98
- \* 3. Resolution N – 1: Resolution Accepting the East Goodlander Road Improvements Project, STPUS-4710(001) as Complete
- \* 4. Resolution N – 3: Resolution Authorizing the Mayor to Sign the Kilpatrick Outside Utility Agreement (OUA 21-001)

**Council Member Bell moved, and Council Member Costello seconded, approval of the Consent Agenda as read. By a show of hands, approval was unanimous.**

- L. Public Hearings **None**
- M. General Business
  - 1. New Business
    - a. Facilities Committee

Mayor Raymond addressed M – 1a. She said that during their retreat they discussed having a facilities committee, and requested that those Council Members who had expressed interest remind her who they were.

Council Members Carlson, Costello, Bell and Peterson all indicated their interest.

Mayor Raymond commented that four Council Members would put them in violation of the Open Public Meetings Act, and asked if one of the four would like to step back. Seeing no indication from any of them that they would do so, she stated that Council Members Costello, Peterson and Bell would form the committee and work together on a plan. She added that Police Chief Christmas would be there for them to ask questions and discuss the matter as they moved forward with the process.

Council Member Bell remarked that part of their discussion had been whether it would be a police station or a combination police station/city hall, and wondered if they were to consider just a police station or an option for both.

Mayor Raymond responded that she thought they had decided on just a police station.

Council Member Carlson felt that they had talked about all options, but in an effort to save costs they had discussed a remodel to City Hall and a new police station.

Mayor Raymond asked Council Member Bell if that answered his question.

Council Member Bell replied in the affirmative.

Mayor Raymond said that the three committee members should get together and decide how they were going to meet to fulfill the committee.

Police Chief Christman commented that he remembered discussion as to whether the court would be included in the same facility.

Mayor Raymond answered that it would be included. She noted that Amy Swayze and Samantha Peterson had been appointed to fill the two positions on the Planning Commission. She went on to say that they would both be attending the meeting next Tuesday to listen in, then start as full Commissioners at the next meeting.

Council Member Carlson inquired who was leaving the Planning Commission.

Mayor Raymond replied that the two departing were Jennifer Huber and Christine Moore.

2. Old Business **None**

N. Resolutions

- \* 1. Resolution Accepting the East Goodlander Road Improvements Project, STPUS-4710(001) as Complete
- 2. Resolution authorizing the Mayor to extend a contractual offer to D. R. (Rob) Case to become the City's full-time, directly-employed City Attorney and, if he accepts such offer, further authorizing the Mayor to sign and enter into an "Employment Contract" with him

City Administrator Wayman addressed N – 2. He read aloud the title of the Resolution, saying that he had a pen change to start with on paragraph 3.1, where it says that employee shall receive employee's step scale increases, which was to be stricken as they don't have a step process for that position,.

Council Member Peterson asked if they were striking the sentence containing 'at the turn of each calendar year'.

City Administrator Wayman replied in the affirmative. He said that staff recommends approval, with no fiscal impact as the budget was already approved for the position at that rate, noting that they have the attorney present who worked with them on the contract, who could answer the more technical aspects of the contract if Council had questions. He stated that the City Attorney position was created through Selah's Municipal Code, with the duties of said position outlined in State RCW, and that this particular position is a little more unique in that the Mayor chooses the City Attorney to present to Council for confirmation, and in a case of separation, discharge or firing, that must be confirmed by Council as well, providing a second level of protection for the City. He remarked that Rob Case was selected in a competitive process that went out for bid in September 2019, and entered into a contract with the City with a last paragraph worded the way it was as they were contemplating adding a full-time attorney on staff, then read aloud the pertinent section of the City Attorney's contract. He went on to talk about City Attorney Case's background, his accomplishments as a litigator at the local, State, and Federal levels,

his extensive experience in real state matters, union grievances and appeals, contract negotiations, tax appeals, and his recent success with regard to the Owens appeal case. He added that City Attorney Case also crafted the Mayor's Proclamation with regard to the Governor's Stay Safe, Stay Home Proclamation, of which not one bit needed to be changed per the Governor's office and County Prosecutor Brusic, and was actively defending the City on three other lawsuits. He requested that Judge Federspiel comment on City Attorney Case's performance before Council asked questions.

Doug Federspiel addressed the Council. He said that over the ten years he was on the bench he had the privilege of having some cases and motions litigated in front of him by City Attorney Case, and his observations from memory were that he is a very aggressive litigator and aggressively represents his clients, relating one instance as an example. He remarked that when attorneys begin they are often uniformly aggressive in all cases all the time, and as they mature they learn when to be aggressive appropriately and when to sit back, and his observations over that period of time were that City Attorney Case did a good job of evolving from a young litigator to knowing what fights to pick and remain aggressive and which ones to sit back and let go under the bridge. He stated that he didn't have any criticisms of his litigation that he had the privilege of having him in front of him in court on.

City Administrator Wayman said that the recommended motion is approval of the Resolution to enter into a contract with City Attorney Case.

Council Member Matson questioned paragraph 6.1 where it stated that the City would pay employee six months of applicable salary as a severance payment, saying that she would like to have that discussed and shortened, as she understands the need for severance but felt that six months was a bit long.

City Administrator Wayman asked if she thought it was a bit much.

Mayor Raymond wondered what she would prefer as a shorter amount of time.

Council Member Matson suggested that a three-month period of time would be more applicable.

City Administrator Wayman requested that she confirm the three-month period of pay.

Council Member Matson replied that was correct.

City Administrator Wayman said that they discussed and had some negotiation, and this was what both parties felt was most equitable if he had to be discharged without cause. He expressed confidence that if that was necessary, it would preclude the City from having to go into a nastier breakup, while handing out a three-month severance without cause could actually lead them into litigation that could result in a much bigger layout of cash by the City. He stated that they were trying to come up with the most equitable offer can if he had to go without cause, as litigation would likely follow with only a three-month discharge, as he could seek damages or recompense from the City for a reason not stated. He felt that a judge receiving this type of information would see that the City went out of its way to offer a six-month separation.

Mr. Federspiel remarked that there are two separate issues involved in termination under an at-will employment situation, noting that this was structured to be at the recommendation of the Mayor with

consent of the majority of Council if they decide to terminate the contract prior to 2030, and that he was reviewing the contract at the City's behest. He explained the reasoning behind the termination clause, outlining the pros and cons for both the City and City Attorney Case.

Council Member Matson commented that had answered her questions.

City Administrator Wayman remarked that another aspect of that is that City Attorney Case is coming to them not vested in any retirement program at this point, whereas the new Police Chief had come to the City already invested in a retirement program and was still offered a six-month severance in the unlikely case he needed to be separated without cause.

Council Member Vargas said that the sunset of nine years in the same paragraph seemed very long to her, given that she thought Police Chief Christman's was five years.

City Administrator Wayman responded that it goes back to him not being vested in retirement, as he would be coming out of the private sector to do municipal work for the City. He added that this was something City Attorney Case wanted and felt very strongly about, and they thought it was fair.

Council Member Wickenhagen expressed some concern regarding the moonlighting clause that would allow City Attorney Case to take on the clients he currently has for an unlimited amount of time without having an obligation to the City, as he didn't see how that was fair to the City or every other employee.

City Administrator Wayman referred Council to paragraph 8.73 of the contract, saying that City Attorney Case can't just drop the clients he currently has with matters that will need to be litigated and may not come to fruition for many years with the current situation affecting courts. He explained that City Attorney Case needs to see them through or come to an agreement with his clients, or he could be subject to discipline for failing to do what he committed to prior to taking the full-time position, but this would not allow him to take on new clients or cases beyond what he has, and he would be accounting for his time and coordinate with both the Mayor and himself to manage his caseload and provide the City with forty hours per week.

Council Member Wickenhagen requested that he specify the contract section that says he has to perform his eighty hours in the pay period.

City Administrator Wayman replied that it was in paragraph 1.4 and read the pertinent section aloud.

Council Member Vargas requested clarification regarding the language in paragraph three of page nine, which describes the clients he would be able to continue working with.

City Attorney Case explained that it would only be a pending current issue where a client has been seeking advice and needs additional advice just on that matter, as the idea was to wrap up his other cases as quickly as possible. He stated that ethically he cannot disclose all his clients, but it would not be an open-ended situation, only pertaining to something active and ongoing with the necessity for more advice before being concluded.

Council Member Carlson wondered how they would monitor that to stay protected and ensure they were getting their service for the City, indicating a clause says that there are days on end when he might not be around, questioning how they would double-check that and make stay accountable to the taxpayers.

City Administrator Wayman replied that they have time sheets where he will have to account for his hours at end of each pay period, and that he would work with himself, the Mayor, or the Clerk/Treasurer in making up those hours. He added that they would not be asking for a list of clients, but they would certainly be ensuring that he was providing them the hours he signed up to do and was getting paid for.

Council Member Carlson pointed out that there are only so many hours in a day or week and how would they protect themselves. He remarked that the whole proposal was based on the need for a full-time attorney yet this would be allowing their attorney to not be there full-time during business hours.

City Administrator Wayman answered that the caseload they were talking about wouldn't take him away for long periods of time frequently, and that if he was unable to meet those hours he would be in breach of contract. He added that City Attorney Case knows what the expectations are and he's willing to work with them and manage his legacy clientele on his own time.

Council Member Carlson commented that he was having a hard time with the concept that cases cannot be passed off, opining that it happens all the time with very good attorneys for various reasons, and to claim it's an undefined time frame is a challenge. He also felt the nine-year clause was a big challenge, as was the inclusion of the contractual authority of the City Administrator instead of the Mayor as they had specifically amended in the Police Chief's contract. He added that he was in the private sector and failed to see why risk couldn't be taken as everyone takes risks, and that while he understood the request for a contract, he didn't understand the need nor did he like setting a precedent that provided authority to someone other than the Mayor or her designee.

Mayor Raymond replied that there were a lot of differences between the Police Chief's contract and this one, as the Police Chief is close to retirement while City Attorney Case is young and has years before he retires. She asked if he would expect the City Attorney to drop him if he were a client.

Council Member Carlson commented that they can't consider age as a hiring factor.

Mayor Raymond answered that they weren't, but when the Police Chief came in they understood that they might only have him for five years.

Council Member Carlson opined that retirement was the responsibility of each individual, and he didn't feel they could give him an offer based on whether he has retirement or not. He reiterated that people take risks all the time for new employment, and to provide a nine-year moonlighting was extreme when he knows attorneys pass of clients all the time.

Mr. Federspiel remarked that each individual instance is unique and there's not a uniform methodology for moving from point a to point b. He added that, while Council Member Carlson's comments were well-taken, there are many different factors to consider such as whether the person was sole practitioner or a member of a firm to transition out of their client base, and it also depends on the nature of the practice. He went on to say that there's no set protocol for it, it's just dependent on a case by case

scenario, but Council Member Carlson's observations are well-taken to at least raise the issue to have a conversation about that. He noted that his involvement wasn't to negotiate the terms, but to look at the drafting aspect of it.

City Attorney Case started by saying that he was trying to stay mostly muted and off video to avoid the appearance of advocating for the contract and advising the City on the matter. He confirmed that Mr. Federspiel wasn't involved in negotiations, but City Administrator Wayman thought it advisable to protect the City's interest by retaining Mr. Federspiel for consistency, logic, and so on. He understood the issue raised by Council Member Carlson but didn't see why it mattered, so long as City got its requisite number of hours and adequate service from it, and that he wasn't contemplating a nine-year moonlighting period. He referred Council to paragraph 1.2 with regard to the earlier question about supplanting the Mayor and putting the City Administrator over the position, reading aloud the pertinent part then clarifying it was not drafted in a way to have the City Administrator supplant the Mayor. He clarified that there would have to be a transition if he was selected to be the City's full-time attorney, and that while some cases would be easier to hand off than others, the City would still receive the appropriate hours within each pay period, so he failed to see how that matters.

Council Member Carlson replied that he did see section 1.2 but opined that the wording gave additional authority and discretion to the City Administrator without the direction of the Mayor, which he disagrees with. He commented that he had discussed the period of time needed to transfer cases with some attorneys, who indicated that six months was very generous, and he felt that offering a year and a half more than appropriate. He stated that he was not in favor of the six-month severance package or the nine-year sunseting, as he didn't believe it necessary in an employee's contract.

**Council Member Wickenhagen moved to approve the Resolution authorizing the Mayor to extend a contractual offer to D. R. (Rob) Case to become the City's full-time, directly-employed City Attorney and, if he accepts such offer, further authorizing the Mayor to sign and enter into an "Employment Contract" with him, with the following changes: that in Section 1.1 the termination earlier than December 31 be changed from year 2030 to 2026, and that the City will pay employee three months of severance pay.**

Mayor Raymond asked that he repeat his motion.

Council Member Wickenhagen repeated his motion.

Council Member Carlson wanted to encourage-

Council Member Wickenhagen called point of order, saying they have to wait for a second.

**Council Member Costello said that, since that addressed his concerns, he would second the motion.**

Council Member Carlson commented that they were allowed to take additional discussion.

Council Member Matson requested that the motion be read one more time.

Council Member Wickenhagen restated his motion.

Council Member Carlson requested a clause limiting the transition period.

Mayor Raymond stated that they have a motion and second and asked for roll call.

**Roll was called: Council Member Wickenhagen – yes; Council Member Matson – yes; Council Member Vargas – no; Council Member Peterson -**

Council Member Peterson said he was trying to decide if he had a point of order, as they have a motion to accept the contract with those changes, but Council Member Carlson had further changes to address, so he was trying to figure out a procedural way to accept the changes without ending discussion and coming to a final agreement. He opined that it fell under parliamentary procedure and things, so he wasn't sure procedurally if they were doing it in the right order.

Mayor Raymond asked for clarification on what he had said.

Council Member Peterson replied that Council Member Wickenhagen's motion was to accept the Resolution with those changes, which he views as sort of an amended motion, and wondered if accepting it would close the possibility of additional amendments.

City Administrator Wayman commented that he believes the Mayor was compelled to ask for a vote after receiving a second for the motion.

Mayor Raymond deferred to the City Attorney for his opinion on the matter.

City Attorney Case answered that his best understanding would be that because there was a motion and second, they need to finish roll call on that motion. He thought it well taken that Council Member Wickenhagen said it would be approve with the changes to the underlying document, and that absent a withdrawal of the motion they should continue forward.

**Council Member Peterson –no; Council Member Bell – yes; Council Member Costello – no; Council Member Carlson – no. Motion failed with three yes votes and four no votes.**

Council Member Matson asked if they had the opportunity to have Council Member Carlson bring his concerns and additions to the contract with the failed motion.

Mayor answered in the affirmative.

Council Member Carlson urged Council to consider having a time period where transition of clients takes place, and also to remove the City Administrator's authority that comes in this contract to be consistent with the Police Chief, where authority resides solely with the Mayor and Mayor's designee.

Council Member Peterson inquired if they were headed for a motion.

Council Member Carlson opined that it was a simple legal issue to remove the authority provided to the City Administrator in the contract, as they did with the Police Chief's contract.

City Administrator Wayman reminded Council that the contract was crafted in concert with negotiations that had already been made with the potential employee, and any major change would have a strong likelihood that the employee would not sign the contract.

Council Member Vargas remarked that they seemed to be making adjustments they normally wouldn't just to get City Attorney Case to approve, adding she would like to see someone selected in a competitive process, as the terms had changed so greatly that undoubtedly their pool would change as well, and they owed it to taxpayers to open it to a competitive process to get best terms for the City.

Mayor Raymond expressed her full confidence in City Attorney Case, saying that he was the best choice when initially hired and was the best choice now, and she would greatly appreciate it if Council would stand behind her, reminding them that this is her city just as it is City Attorney Case's city.

Council Member Matson asked if there was an opportunity to revise the contract with the suggestions made by Council and have it come back to them fully revised for their consideration.

City Administrator Wayman responded that what they have is what was negotiated, noting that they have gone back and forth on the severance and moonlighting clauses, and while he didn't want to misrepresent what City Attorney Case would say if there was a major revision, this is the deal he'll accept. He had no confidence that modifying it from the current form would be acceptable, pointing out that the Mayor has stated she has confidence in him now and that it's Council's job to confirm not to choose, along with the duty to ask if he's qualified. He opined that making major changes would be problematic, and asked if there was another motion to be made.

Council Member Matson opined that per to Mr. Federspiel, negotiating the terms of the contract was up to them, to make sure they were supplying the City with the best contract, and that there were enough concerns for a request for quite a few revisions. She felt that City Attorney Case understood what they were all doing there and reiterated her desire to discuss and revise the contract.

Council Member Bell commented that the Council doesn't have the same authority with other employee contracts as offered to them under this one, as they would have to vote to remove the City Attorney with a majority vote, which puts them in a stronger position of oversight than with other contracts. He suggested that the Mayor and City Administrator discuss the contract with City Attorney Case and bring it back at the next council meeting.

Council Member Peterson wasn't sure if that comment was a motion, but if it was he seconded it.

**Council Member Bell moved, and Council Member Peterson seconded, that they send the contract back for renegotiation and bring it back to the next Council Meeting.**

City Administrator Wayman requested clarification on what they were renegotiating.



Council Member Bell replied that he heard the different concerns voiced by Council and that they should discuss whether any of those were acceptable to City Attorney Case.

Council Member Wickenhagen started to make a motion.

Mayor Raymond told him to hold off as they had a motion on the table.

**Roll was called: Council Member Wickenhagen –no; Council Member Matson – yes; Council Member Vargas – yes; Council Member Peterson – yes; Council Member Bell – yes; Council Member Costello – yes; Council Member Carlson – no. Motion passed with five yes votes and two no votes.**

Mr. Federspiel thanked the Mayor and Council for the opportunity to assist the city of Selah in this respect, noting that he would be happy to help with additional assistance.

- \* 1. Resolution Authorizing the Mayor to Sign the Kilpatrick Outside Utility Agreement (OUA 21-001)

O. Ordinances

- 1. Ordinance Amending the 2021 Budget For Miscellaneous Adjustments

Clerk/Treasurer Novobielski addressed O – 1. He said that he has closed the books for 2020 and identified the amount of cash investments in various funds, reviewing the presented budget adjustment to adjust beginning cash investments and ending cash investments in the amount of approximately one point seven million dollars.

**Council Member Wickenhagen moved, and Council Member Carlson seconded, to approve the Ordinance Amending the 2021 Budget For Miscellaneous Adjustments. Roll was called: Council Member Wickenhagen – yes; Council Member Matson – yes; Council Member Vargas – yes; Council Member Peterson – yes; Council Member Bell – yes; Council Member Costello – yes; Council Member Carlson – yes. By voice vote, approval was unanimous.**

P. Public Appearances **None**

Q. Reports/Announcements

- 1. Departments

Clerk/Treasurer Novobielski said that Thursday at 1pm they have an exit conference with the State Auditor concerning the recently completed accountability audit. He noted that Council Members Wickenhagen and Carlson had requested the link to attend, and that it also appears that Council Member Bell would like to participate as well, which is the limit as far as Council Member attendance.

Public Works Director Henne remarked that they were getting task orders together for Crusher Canyon water rights and to maintain the capacity of the treatment plant.

Community Development Supervisor Peters thanked the Mayor for bringing in two new Planning Commissioners to replace those leaving. He said that they would attend the meeting next Tuesday to go over the shorelines master program, and while the two new Commissioners wouldn't be voting, they would be introduced and become part of the Commission. He noted that at least one other Planning Commissioner has agreed to stay on until the public hearing is done and the process completed. He commented that they were trying to replace the Permit Technician in the next month or so.

Police Chief Christman said that he was looking forward to working with the committee on the building. He informed Council that they have concluded the process for selecting a new sergeant, and Michael Gause would become the new Sergeant as of February 16. He remarked that they have two new vacancies immediately in the entry level and would be wrapping up oral boards for these folks and also filling Gause's position from them.

City Attorney Case said that the City prevailed on appeal with the Owens litigation case to uphold the prior trial court decision, noting that the matter is public record if the public would like to look it up. He suggested that a Council Member make a motion to move the Resolution for the City Contract to a new section R/S for the next Council Meeting, to allow Department Heads to do their reports prior to the discussion, clarifying that the motion would be for the forthcoming meeting on February 23 to have the Resolution for a City Contract be considered as R/S on the agenda.

**Council Member Carlson moved, and Council Member Matson seconded, to create a new one-time item for the agenda for our upcoming meeting R/S to consider potential revisions to the attorney position. By a show of hands, approval was unanimous.**

Council Member Peterson wondered if R/S was appropriate since the agenda is established in code, and if they call it R/S did that put it under executive session and adjournment. He noted that they frequently have actions than between R and S.

City Administrator Wayman replied that they would look into the matter, as they frequently take votes after an executive session but he didn't feel there was anything wrong with doing so.

Council Member Peterson responded that he just thought there needed to be something between the executive session and adjournment.

## 2. Council Members

Council Member Bell had no report.

Council Member Peterson had no report.

Council Member Wickenhagen gave a brief update on Yakima Valley Tourism and commented that he was at Volunteer Park over the weekend and the playground was full of people.

Council Member Costello had no report.

Council Member Carlson reemphasized the SDA façade grant, opining that it was a fantastic program. He clarified that his no vote regarding the City Attorney contract was simply in attempt to have a competitive bid with parameters.

Council Member Matson had no report.

Council Member Vargas had no report.

3. City Administrator

City Administrator Wayman said that it was clear to him that Council wanted him to renegotiate a contract they've already negotiated and they found unacceptable, and requested an Executive Session that night to understand the parameters of what they would be discussing to present something coherent and have a full discussion.

Executive Assistant Lake asked for a moment to review the RCW concerning Executive Sessions.

Mayor Raymond commented that they would be hosting the YVCOG meeting.

City Administrator Wayman replied that they are wanting to discuss what's going on in Selah.

Mayor Raymond noted that it would be next Wednesday night.

Community Development Supervisor Peters asked if staff could be excused.

Mayor Raymond excused staff and called for a three-minute recess.

Executive Assistant lake read aloud the RCW 42.30.110(1)(g), which states "To evaluate the qualifications of an applicant for public employment or to review the performance of a public employee. However, subject to RCW 42.30.140(4), discussion by a governing body of salaries, wages, and other conditions of employment to be generally applied within the agency shall occur in a meeting open to the public, and when a governing body elects to take final action hiring, setting the salary of an individual employee or class of employees, or discharging or disciplining an employee, that action shall be taken in a meeting open to the public", and said that there could be no Executive Session as requested.

City Administrator Wayman commented that he would try to capture what they discussed tonight.

4. Boards **None**

5. Mayor

Mayor Raymond clarified that the YVCOG meeting would be hosted remotely by Selah.

R. Executive Session **None**

S. Adjournment

**Council Member Carlson moved, and Council Member Matson seconded, that the meeting be adjourned. By a show of hands, approval was unanimous.**

The meeting adjourned at 7:33pm.

\_\_\_\_\_  
Sherry Raymond, Mayor

\_\_\_\_\_  
Roger Bell, Council Member

\_\_\_\_\_  
Russell Carlson, Council Member

\_\_\_\_\_  
Jacquie Matson, Council Member

\_\_\_\_\_  
Kevin Wickenhagen, Council Member

\_\_\_\_\_  
Clifford Peterson, Council Member

\_\_\_\_\_  
Suzanne Vargas, Council Member

ATTEST:

\_\_\_\_\_  
Michael Costello, Council Member

\_\_\_\_\_  
Dale E. Novobielski, Clerk/Treasurer



**CITY OF SELAH**  
**CITY COUNCIL**  
**AGENDA ITEM SUMMARY**



Council Meeting	Action Item
2/23/2021	K – 2

**Title:** Claims & Payroll

**From:** Monica Lake, Executive Assistant

**Action Requested:** Approval

**Staff Recommendation:**

Approval of Claims & Payroll as listed on Check Registers.

**Board/Commission Recommendation:** Not Applicable

**Fiscal Impact:** See Check Registers

**Funding Source:** See Check Registers

**Background / Findings & Facts:** See Check Registers

**Recommended Motion:** Motion to Approve the Consent Agenda as read.  
(This item is part of the Consent Agenda)



**CITY OF SELAH**  
**CITY COUNCIL**  
**AGENDA ITEM SUMMARY**



Council Meeting      Action Item  
2/23/2021              N – 1

**Title:** Resolution Authorizing the Mayor to Sign and Enter Into, on Behalf of the City, a “Settlement and Release Agreement” with Regard to the Currently-Pending PRA Litigation, a Related PRA Request, and the Currently-Pending OPMA Litigation.

**From:** D. R. (Rob) Case, City Attorney

**Action Requested:** Approval

**Staff Recommendation:** Approval of the Resolution

**Fiscal Impact:** \$45,000.00

**Funding Source:** General Fund 001

**Background / Findings & Facts:** A lawsuit is currently pending against the City under Yakima County Superior Court Cause Number 20-2-02261-39 that advances one or more claims for alleged violations of Washington’s Public Records Act, RCW Chapter 42.56 (the “PRA Litigation”). The PRA Litigation is based upon a public records request that was submitted to the City on or about September 24, 2020 (the “PRA Request”) and also based upon the timing and substance of the City’s response to the PRA Request. In addition, a separate lawsuit is also currently pending against the City (and others) under Yakima County Superior Court Cause Number 20-2-02093-39 that advances one or more claims for alleged violations of Washington’s Open Public Meetings Act, RCW Chapter 42.30. On behalf of the City (and the other defendants), the City’s Attorney, D. R. (Rob) Case, has negotiated a proposed settlement with the plaintiff, plaintiff’s attorney and PRA requestor(s), which will, if it is approved, finalized and fully effectuated, fully and permanently settle, resolve and discharge each and all of the PRA Litigation, the PRA Request and the OPMA Litigation. A written “Settlement and



**CITY OF SELAH**  
***CITY COUNCIL***  
***AGENDA ITEM SUMMARY***



Release Agreement” consisting of seven pages (and also a combined six pages of Attachments and cover pages thereto) establishes and memorializes the terms and conditions of the proposed settlement, which terms and conditions include but are not limited to that the City would issue a one-time, lump-sum payment in the amount of forty-five thousand dollars and no cents (\$45,000.00) in exchange for dismissal with prejudice of the PRA Litigation, dismissal with prejudice of the OPMA Litigation, and also withdrawal and negation of the PRA Request.

**Recommended Motion:** Approval of Resolution

**RESOLUTION NO. \_\_\_\_\_**

**RESOLUTION AUTHORIZING THE MAYOR TO SIGN AND ENTER INTO,  
ON BEHALF OF THE CITY, A “SETTLEMENT AGREEMENT AND  
RELEASE OF CLAIMS” WITH REGARD TO THE CURRENTLY-PENDING  
PRA LITIGATION, A RELATED PRA REQUEST, AND THE CURRENTLY-  
PENDING OPMA LITIGATION**

WHEREAS, a lawsuit is currently pending against the City under Yakima County Superior Court Cause Number 20-2-02261-39 that advances one or more claims for alleged violations of Washington’s Public Records Act, RCW Chapter 42.56 (the “PRA Litigation”);

WHEREAS, the above-specified PRA Litigation is based upon a public records request that was submitted to the City on or about September 24, 2020 (the “PRA Request”) and also based upon the timing and substance of the City’s response to the PRA Request;

WHEREAS, a separate lawsuit is also currently pending against the City under Yakima County Superior Court Cause Number 20-2-02093-39 that advances one or more claims for alleged violations of Washington’s Open Public Meetings Act, RCW Chapter 42.30 (the “OPMA Litigation”)

WHEREAS, the City’s Attorney, D. R. (Rob) Case, has negotiated a proposed settlement with the plaintiff, plaintiff’s attorney and PRA requestor(s), which will, if it is approved, finalized and fully effectuated, fully and permanently settle, resolve and discharge each and all of the PRA Litigation, the PRA Request and the OPMA Litigation;

WHEREAS, a written “Settlement and Release Agreement” consisting of seven pages (and also a combined six pages of Attachments and cover pages thereto) establishes and memorializes the terms and conditions of the proposed settlement, which terms and conditions include but are not limited to that the City would issue a one-time, lump-sum payment in the amount of forty-five thousand dollars and no cents (\$45,000.00) in exchange for dismissal with prejudice of the PRA Litigation, dismissal with prejudice of the OPMA Litigation, and also withdrawal and negation of the PRA Request; and

WHEREAS, the City’s Attorney recommends that the City Council authorize the Mayor to sign and enter into, on behalf of the City, such Settlement and Release Agreement and to then fully and timely perform and discharge all obligations and requirements owed by the City per the terms and conditions of such Settlement and Release Agreement;



NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SELAH, WASHINGTON, the Mayor is authorized to sign and enter into, on behalf of the City, the attached Settlement and Release Agreement.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF SELAH, WASHINGTON, this 23<sup>rd</sup> day of February, 2021.

\_\_\_\_\_  
Sherry Raymond, Mayor

ATTEST:

\_\_\_\_\_  
Dale E. Novobielski, Clerk/Treasurer

APPROVED AS TO FORM:

\_\_\_\_\_  
D. R. (Rob) Case, City Attorney

RESOLUTION NO. \_\_\_\_\_

## SETTLEMENT AND RELEASE AGREEMENT

This SETTLEMENT AND RELEASE AGREEMENT (hereinafter, this or the "Agreement") is made and entered into by, between, among and for the following parties:

1. As the parties of the first part, each and all of the following:
  - a. Trent Wilkinson (hereinafter, interchangeably "plaintiff", "claimant" and "requestor");
  - b. Timothy James Hall (hereinafter, interchangeably "Hall" and "plaintiff's attorney"); and
  - c. Hall & Gilliland PLLC.
2. As the parties of the second part, each and all of the following:
  - a. The City of Selah as a municipal corporation (hereinafter, interchangeably "City", "Selah" and "agency");
  - b. The City Council of the City of Selah as a body (hereinafter, "City Council");
  - c. Kevin Wickenhagen as the current occupier of Position 1 on the City Council (hereinafter, "Wickenhagen");
  - d. Jacquie Matson as the current occupier of Position 2 on the City Council (hereinafter, "Matson");
  - e. Suzanne Vargas as the current occupier of Position 3 on the City Council (hereinafter, "Vargas");
  - f. Clifford Peterson as the current occupier of Position 4 on the City Council (hereinafter, "Peterson");
  - g. Roger Bell as the current occupier of Position 5 on the City Council (hereinafter, "Bell");
  - h. Chris Lantz as the former occupier of Position 5 on the City Council (hereinafter, "Lantz");
  - i. Michael Costello as the current occupier of Position 6 on the City Council (hereinafter, "Costello"); and
  - j. Russell Carlson as the current occupier of Position 7 on the City Council (hereinafter, "Carlson").

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**WHEREAS**, plaintiff filed a lawsuit against some or all of the above-specified parties of the second part under Yakima County Superior Court Cause Number 20-2-02261-39 that remains pending currently and that advances one or more claims for alleged violations of Washington's Public Records Act, RCW Chapter 42.56 (hereinafter, the "PRA Litigation");

**WHEREAS**, the above-specified PRA Litigation is based upon a public records request that was submitted, by one or more of the above-specified parties of the first part, to the City on or about September 24, 2020 (hereinafter, the "PRA Request"), and also based upon the timing and substance of the City's response to the PRA Request, with the PRA Request having been substantively worded as follows:

"I am requesting electronic copies of any email sent by any Selah City Council member to any other Selah City Council member since June 1, 2020 regarding any alleged violations of the Open Public Meetings Act – including but not limited to – the use of straw polls by the Selah City Council during executive sessions. If there were any investigations/reports/discussions conducted by any agency within the City of Selah regarding violations of the Open Public Meetings Act by any employee of the City of Selah or by any Selah City Council member since June 1, 2020 please provide those electronic records – as well as any emails detailing the same."

**WHEREAS**, plaintiff also filed a separate lawsuit against some or all of the above-specified parties of the second part under Yakima County Superior Court Cause Number 20-2-02093-39 that remains currently pending and that advances one or more claims for alleged violations of Washington's Open Public Meetings Act, RCW Chapter 42.30 (hereinafter, the "OPMA Litigation"); and

**WHEREAS**, all parties desire to settle any and all claims, allegations, issues and actual and possible liabilities, and any and all combinations thereof, that exist on, in, within, under or as part of and/or that stem from, arise from or relate to, collectively or individually or in any combination, the above-specified PRA Litigation, PRA Request and OPMA Litigation, each and all;

**NOW THEREFORE**, on the following terms and conditions, the parties hereby agree as follows:

1. On or before 4:30 p.m., Friday, February 26, 2021, the City shall issue a one-time, lump-sum payment in the amount of forty-five thousand dollars and no cents (\$45,000.00) via a check made payable to and hand-delivered to Hall & Gilliland PLLC (hereinafter, the "Settlement Payment"). The above-specified parties of the first part may apportion the settlement funds contained from the Settlement Payment between or among themselves however they separately agree in their own discretion. The above-specified parties of the first part, each and all, acknowledge, agree and stipulate that no further money, recovery, award, relief, item, expense, cost or fee, collectively or individually or in any combination, is owed by or from any or all of the above-specified parties of the second part to any or all of the above-specified parties of the first part.

2. Each and all parties acknowledge, agree and stipulate that the settlement funds contained within the above-specified Settlement Payment shall be and are characterized and apportioned between the above-specified PRA Litigation, PRA Request and OPMA Litigation, for the following respective value percentages:

a. For the PRA Litigation and the PRA Request, collectively: one hundred percent (100%); and

b. For the OPMA Litigation: zero percent (0.00%).

Continuing further, each and all parties acknowledge, agree and stipulate that the above-specified respective value percentages are agreed to and established so as to be consistent with the unwavering contention by the above-specified parties of the second part that the above-specified OPMA Litigation is and always has been entirely frivolous, without merit and valueless, and thus also so as to safeguard and protect against one or more persons or entities (who are not parties to this Agreement) from using or trying to use this Agreement for their own benefit or advantage in any way including but not limited to using or trying to use this Agreement as a basis for subsequently contending that one or more OPMA violations actually occurred, or using or trying to use this Agreement as a basis for contending that one or more OPMA violations have been admitted or conceded to have occurred, or using or trying to use this Agreement as a basis for contending that any subsequently-advanced OPMA lawsuits, claims, allegations, issues or liabilities, collectively or individually or in any combination, have actual or presumptive merit or value. For clarity, however, the above-specified parties of the first part do not admit, concede or believe that the above-specified OPMA Litigation is or has ever been frivolous, without merit or valueless.

3. The above-specified parties of the first part, each and all, acknowledge, agree and stipulate that the exclusive contractual legal consideration provided, owed and flowing to any and all of them, collectively or individually or in any combination, under this Agreement shall be and is the following:

a. The settlement funds contained within the above-specified Settlement Payment;

b. The acknowledgements, agreements and stipulations made by the above-specified parties of the second part as recited in this Agreement; and

c. The obligations and duties imposed upon the parties of the second part by the terms of this Agreement including but not limited to entry into and effectuation stipulated dismissals (via the forms appended to this Agreement as "Attachment A" and "Attachment B") of the above-specified PRA Litigation and OPMA Litigation, and also hand-delivery to Hall & Gilliland PLLC on or before 4:30 p.m., on the second business day following the Yakima County Superior Court's entry of dismissals on the above-specified PRA Litigation and OPMA Litigation, of a non-redacted copy of the email dated July 29, 2020 that has been at issue on the above-specified PRA Litigation and PRA Request.

Accordingly and continuing further, the above-specified parties, each and all, acknowledge, agree and stipulate that none of them is entitled to any injunctive relief from any court, nor to any merits-based adjudication from any court, nor to any action, forbearance, practice or treatment from any or all of the above-specified parties of the first part (beyond what is expressly recited in this Agreement).

4. The above-specified parties of the second part, each and all, acknowledge, agree and stipulate that the exclusive contractual legal consideration provided, owed and flowing to any

and all of them, collectively or individually or in any combination, under this Agreement shall be and is the following:

a. The acknowledgements, agreements and stipulations made by the above-specified parties of the first part as recited in this Agreement; and

b. The obligations and duties imposed upon the parties of the first part by the terms of this Agreement including but not limited to entry into and effectuation stipulated dismissals (via the forms appended to this Agreement as "Attachment A" and "Attachment B") of the above-specified PRA Litigation and OPMA Litigation, and also the withdrawal and negation of the above-specified PRA Request.

Accordingly and continuing further, the above-specified parties of the second part, each and all, acknowledge, agree and stipulate that none of them is entitled to any money, recovery, award, relief, item, expense, cost or fee, collectively or individually or in any combination, nor to any injunctive relief from any court, nor to any merits-based adjudication from any court.

5. The method for the parties to approve, agree to and enter into this Agreement shall be as follows:

a. On or before 4:30 p.m., Friday, February 19, 2021, the above-specified parties of the first part, each and all, shall respectively sign and date one or more copies of this Agreement, shall hand-deliver such signed-and-dated copy(ies) to attorney D. R. (Rob) Case for him to hold as legal counsel for the above-specified parties of the second part, and shall not actually or attempt to revoke such signatures at any time prior to 4:30 p.m., Friday, February 26, 2021, because the above-specified parties of the first part, each and all, acknowledge, agree and stipulate that after they sign one or more copy(ies) of this Agreement that shall and will convert such signed copy(ies) into an unilateral contractual offer that is subject to potential acceptance by the above-specified parties of the second part consistent with the terms specified in the following subparagraphs of this paragraph 5;

b. On or before 4:30 p.m., Thursday, February 25, 2021, all necessary signatories shall sign and date a copy of the "Stipulation for Dismissal and [Proposed] Order of Dismissal With Prejudice and Without Any Award of Costs or Fees and Without Any Injunctive Relief" in the form appended to this Agreement as "Attachment A" as applicable to the above-specified PRA Litigation, and shall hand-deliver such signed-and-dated copy(ies) to attorney D. R. (Rob) Case for him to hold as legal counsel for the above-specified parties of the second part, and shall not actually or attempt to revoke such signatures at any time prior to 4:30 p.m., Friday, February 26, 2021.

c. Also on or before 4:30 p.m., Thursday, February 25, 2021, all necessary signatories shall respectively sign and date a copy of the "Stipulation for Dismissal and [Proposed] Order of Dismissal With Prejudice and Without Any Award of Costs or Fees and Without Any Injunctive Relief" in the form appended to this Agreement as "Attachment B" as applicable to the above-specified OPMA Litigation, and shall hand-deliver such signed-and-dated copy(ies) to attorney D. R. (Rob) Case for him to hold as legal counsel for the above-specified parties of the second part, and shall not actually or attempt to revoke such signatures at any time prior to 4:30 p.m., Friday, February 26, 2021.

d. Following his timely receipt of the signed-and-dated items, each and all, specified in subparagraphs 5.a. through 5.c. above, attorney D. R. (Rob) Case, as legal counsel for the above-specified parties of the second part, shall hold not immediately file or attempt to file the stipulated dismissals or either of them with the court and instead shall hold such signed-and-dated items pending the further actions and outcomes, in successive order, specified in subparagraphs 5.e. through 5.k. below;

e. Attorney D. R. (Rob) Case, as legal counsel for the above-specified parties of the second part, shall obtain party Lantz's approval of and entry into – via his personal signature – a copy of this Agreement;

f. Attorney D. R. (Rob) Case, as legal counsel for the above-specified parties of the second part, shall cause the publicly-disclosed advance written "Agenda" for the upcoming regularly-scheduled City Council meeting of Tuesday, February 23, 2021, to include a confidential Executive Session for the purpose of the City Council privately discussing issues pertaining to the above-specified PRA Litigation and OPMA Litigation, and also to include a corresponding proposed "Resolution" that if approved by the City Council as a body via a public vote will authorize the Mayor to enter into this Agreement on behalf of the City;

g. If the City Council as a body votes to approve the above-specified "Resolution", attorney D. R. (Rob) Case, as legal counsel for the above-specified parties of the second part, shall obtain the Mayor's signature on a copy of this Agreement so as to confirm the City's approval of and entry into this Agreement;

h. Attorney D. R. (Rob) Case, as legal counsel for the above-specified parties of the second part, shall obtain the personal approvals of and entries into this Agreement by – via corresponding respective personal signatures from – parties Wickenhagen, Matson, Vargas, Peterson, Bell, Costello and Russell, each and all;

i. Attorney D. R. (Rob) Case, as legal counsel for the above-specified parties of the second part, shall hand-deliver one or more copy(ies) of this Agreement that bear(s) signatures by all parties and also the above-specified Settlement Payment, both, to Hall & Gilliland PLLC on or before 4:30 p.m., Friday February 26, 2021;

j. Attorney D. R. (Rob) Case, as legal counsel for the above-specified parties of the second part, shall present such fully-signed copies of the stipulated dismissals on an ex parte basis to the Yakima County Superior Court for immediate entry, and shall hand-deliver a conformed copy of each entered stipulated dismissal to Hall & Gilliland PLLC; and

k. Attorney D. R. (Rob) Case, as legal counsel for the above-specified parties of the second part, shall, on or before 4:30 p.m., on the second business day following the Yakima County Superior Court's entry of dismissals on the above-specified PRA Litigation and OPMA Litigation, hand-deliver to Hall & Gilliland PLLC a non-redacted copy of the email dated July 29, 2020 that has been at issue on the above-specified PRA Litigation and PRA Request.

6. If every action and outcome specified in subparagraphs 5.a. through 5.k. above timely occurs, then this Agreement shall be binding and final, the above-specified PRA Litigation and OPMA Litigation shall be permanently dismissed and concluded, none of the above-specified

parties of the first part shall advance or attempt to advance any continued or additional claims or demands or lawsuits against any of the above-specified parties of the second part that are in any way related to the above-specified PRA Litigation or PRA Request or OPMA Litigation, and the above-specified PRA Request shall be deemed permanently withdrawn and negated. However, if one or more action(s) or outcome(s) specified in subparagraphs 5.a. through 5.k. above do not timely occur, then the signatures of each and all parties shall be deemed automatically rescinded, this Agreement (and the attached stipulated dismissals) shall have no binding effect or consequence for any party, and the above-specified parties of the first part shall immediately disgorge and return the entirety of the above-specified Settlement Payment (or equivalent and equal funds) to the City.

7. This Agreement and the transaction(s) contemplated by the terms of this Agreement are intended to be a compromised resolution and settlement of disputed claims allegations, issues and actual and possible liabilities, and any and all combinations thereof. Accordingly, no party is admitting or conceding any wrongdoing or liability.

8. This Agreement may be signed in one or more counterparts by any or all parties, with all signed copies constituting a singular final document.

\_\_\_\_\_  
Trent Wilkinson, plaintiff                      Dated

\_\_\_\_\_  
Timothy James Hall                              Dated

Hall & Gilliland PLLC  
\_\_\_\_\_  
Dated

By: \_\_\_\_\_  
Timothy James Hall

CITY OF SELAH, defendant  
  
By: \_\_\_\_\_  
D. R. ("Rob) Case, Municipal Attorney  
Larson, Berg and Perkins PLLC  
\_\_\_\_\_  
Dated

Also by: \_\_\_\_\_  
Sherry Raymond, Mayor

Also by: the City Council's public vote to approve the above-specified "Resolution"

\_\_\_\_\_  
Kevin Wickenhagen, personally              Dated  
Current Occupier of City Council Position 1

\_\_\_\_\_  
Jacquie Matson, personally                      Dated  
Current Occupier of City Council Position 2

\_\_\_\_\_  
Suzanne Vargas, personally                      Dated  
Current Occupier of City Council Position 3

\_\_\_\_\_  
Clifford Peterson, personally                      Dated  
Current Occupier of City Council Position 4

\_\_\_\_\_  
Roger Bell, personally                      Dated  
Current Occupier of City Council Position 5

\_\_\_\_\_  
Chris Lantz, personally                      Dated  
Former Occupier of City Council Position 5

\_\_\_\_\_  
Michael Costello, personally                      Dated  
Current Occupier of City Council Position 6

\_\_\_\_\_  
Russell Carlson, personally                      Dated  
Current Occupier of City Council Position 7



**“Attachment A”**

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF YAKIMA

TRENT WILKINSON,  
  
Plaintiff,

vs.

CITY OF SELAH, a Public Agency,  
  
Defendant.

NO. 20-2-02261-39

**STIPULATION FOR DISMISSAL AND  
[PROPOSED] ORDER OF DISMISSAL  
WITH PREJUDICE AND WITHOUT  
ANY AWARD OF COSTS OR FEES  
AND WITHOUT ANY INJUNCTIVE  
RELIEF**

STIPULATION

COME NOW the parties, via their respective undersigned attorneys of record, and hereby stipulate to the dismissal of this matter on a with prejudice basis, without any award of costs or fees to any party(ies), and without any injunctive relief in favor of any party(ies).

DATED this \_\_\_\_\_ day of February, 2021.

*HALL & GILLILAND PLLC*  
Attorneys for Plaintiff

*LARSON BERG & PERKINS PLLC*  
Attorneys for Defendant

By: \_\_\_\_\_  
TIMOTHY JAMES HALL (WSBA #36372)

By: \_\_\_\_\_  
D. R. (ROB) CASE (WSBA #34313)

**STIPULATION FOR DISMISSAL AND [PROPOSED]  
ORDER OF DISMISSAL WITH PREJUDICE AND  
WITHOUT ANY AARE OF COSTS OR FEES AND  
WITHOUT ANY INJUNCTIVE RELIEF - 1**

**LARSON BERG & PERKINS PLLC**  
105 North 3rd Street  
P.O. Box 550  
Yakima, WA 98907  
(509) 457-1515  
(509) 457-1027 (fax)

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[PROPOSED] ORDER

THIS MATTER having come before the court upon and for consideration of the preceding "Stipulation", and the court finding that good cause exists;

NOW THEREFORE, it is hereby ordered as follows:

1. This matter is dismissed with prejudice;
2. No party(ies) are awarded any costs or fees;
3. No injunctive relief is granted in favor of any party(ies); and
4. All instances of the word "Proposed" in brackets within the caption and footer of this document shall be crossed-out by defense counsel immediately prior to filing the original of this document with the clerk's office.

ENTERED this \_\_\_\_ day of \_\_\_\_\_, 2021.

By: \_\_\_\_\_  
Superior Court Judge

Jointly presented by:

**HALL & GILLILAND PLLC**  
Attorneys for Plaintiff

By: \_\_\_\_\_  
TIMOTHY JAMES HALL (WSBA #36372)

and by:

**LARSON BERG & PERKINS PLLC**  
Attorneys for Defendants

By: \_\_\_\_\_  
D. R. (ROB) CASE (WSBA #34313)

**“Attachment B”**

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF YAKIMA

TRENT WILKINSON,

Plaintiff,

vs.

CITY OF SELAH, a Public Agency; and  
SELAH CITY COUNCIL, a governing body,

Defendants.

NO. 20-2-02098-39

**STIPULATION FOR DISMISSAL AND  
[PROPOSED] ORDER OF DISMISSAL  
WITH PREJUDICE AND WITHOUT  
ANY AWARD OF COSTS OR FEES  
AND WITHOUT ANY INJUNCTIVE  
RELIEF**

STIPULATION

COME NOW the parties, via their respective undersigned attorneys of record, and hereby stipulate to the dismissal of this matter on a with prejudice basis, without any award of costs or fees to any party(ies), and without any injunctive relief in favor of any party(ies).

DATED this \_\_\_\_\_ day of February, 2021.

*HALL & GILLILAND PLLC*  
Attorneys for Plaintiff

*LARSON BERG & PERKINS PLLC*  
Attorneys for Defendants

By: \_\_\_\_\_  
TIMOTHY JAMES HALL (WSBA #36372)

By: \_\_\_\_\_  
D. R. (ROB) CASE (WSBA #34313)

**STIPULATION FOR DISMISSAL AND [PROPOSED]  
ORDER OF DISMISSAL WITH PREJUDICE AND  
WITHOUT ANY AARE OF COSTS OR FEES AND  
WITHOUT ANY INJUNCTIVE RELIEF - 1**

**LARSON BERG & PERKINS PLLC**  
105 North 3rd Street  
P.O. Box 550  
Yakima, WA 98907  
(509) 457-1515  
(509) 457-1027 (fax)

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[PROPOSED] ORDER

THIS MATTER having come before the court upon and for consideration of the preceding "Stipulation", and the court finding that good cause exists;

NOW THEREFORE, it is hereby ordered as follows:

- 1. This matter is dismissed with prejudice;
- 2. No party(ies) are awarded any costs or fees;
- 3. No injunctive relief is granted in favor of any party(ies); and
- 4. All instances of the word "Proposed" in brackets within the caption and footer of this document shall be crossed-out by defense counsel immediately prior to filing the original of this document with the clerk's office.

ENTERED this \_\_\_\_ day of \_\_\_\_\_, 2021.

By: \_\_\_\_\_  
Superior Court Judge

Jointly presented by:

**HALL & GILLILAND PLLC**  
Attorneys for Plaintiff

By: \_\_\_\_\_  
TIMOTHY JAMES HALL (WSBA #36372)

and by:

**LARSON BERG & PERKINS PLLC**  
Attorneys for Defendants

By: \_\_\_\_\_  
D. R. (ROB) CASE (WSBA #34313)

**STIPULATION FOR DISMISSAL AND [PROPOSED]  
ORDER OF DISMISSAL WITH PREJUDICE AND  
WITHOUT ANY AARE OF COSTS OR FEES AND  
WITHOUT ANY INJUNCTIVE RELIEF - 2**

**LARSON BERG & PERKINS PLLC**  
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**CITY OF SELAH**  
**CITY COUNCIL**  
**AGENDA ITEM SUMMARY**



Council Meeting      Action Item  
2/23/2021              R/S – 1

**Title:** Resolution authorizing the Mayor to extend a contractual offer to D. R. (Rob) Case to become the City’s full-time, directly-employed City Attorney and, if he accepts such offer, further authorizing the Mayor to sign and enter into an “Employment Contract” with him.

**From:** Donald Wayman, City Administrator

**Action Requested:** Approval

**Staff Recommendation:** Approval of the contract and Resolution

**Fiscal Impact:** None. The City Council previously approved the salary of \$160,000.00 per year for a full time City Attorney for Calendar year 2021.

**Funding Source:** 001 Current Expense; 103 Fire; 411 Water; 415 Sewer; 420 Garbage; 119 Transportation.

**Background / Findings & Facts:** The City Attorney position is created through SMC 1.10.012 and the duties of this position are provided in RCW 35.23.111. The City Attorney position shall be filled by appointment of the Mayor, subject to confirmation by a majority of the entire City Council. Mr. Case is the current contract City Attorney. He has been with the City of Selah since October 2019. He has provided excellent legal services during his tenure and has the confidence of the Mayor to continue as the full-time City Attorney.

**Recommended Motion:** Approval of Resolution authorizing the Mayor to enter into a contract and hire D.R. (Rob) Case as the City Attorney of Selah Washington.



**CITY OF SELAH**  
***CITY COUNCIL***  
***AGENDA ITEM SUMMARY***



**Record of all prior actions taken by the City Council and/or a City Board, City Committee, Planning Commission, or the Hearing Examiner (where applicable)**

Date:

Action Taken:

9/10/2019

Resolution authorizing the Mayor to sign a Contract for Legal Services with D. R. (Rob) Case (WSBA #34313)



**CITY OF SELAH, WASHINGTON**  
**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION** authorizing the Mayor to extend a contractual offer to D. R. (Rob) Case to become the City's full-time, directly-employed City Attorney and, if he accepts such offer, further authorizing the Mayor to sign and enter into an "Employment Contract" with him.

**WHEREAS**, the City of Selah has a need for full-time, directly-employed City Attorney;

**WHEREAS**, the City of Selah has previously budgeted funds for the payment of wages and benefits, and also for the payment of costs and expenses, for a full-time, directly-employed City Attorney;

**WHEREAS**, the City wishes to formally extend an offer to D. R. (Rob) Case (WSBA #34313) to become the City's full-time, directly-employed City Attorney, and if he accepts such offer to then enter into a binding written contract with him for such position; and

**WHEREAS**, the City's contractual offer to Mr. Case is set forth in the attached proposed "Employment Contract", which specifies the terms and conditions that would apply if he accepts such contractual offer, and which will be signed and entered into as the binding written contract if he accepts such offer;

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SELAH, WASHINGTON, HEREBY RESOLVES AS FOLLOWS:**

The Mayor is authorized to extend a contractual offer to D. R. (Rob) Case (WSBA #34313) to become the City's full-time, directly-employed City Attorney by presenting to Mr. Case a copy of the attached proposed "Employment Contract".

In addition, if Mr. Case accepts such contractual offer, the Mayor is authorized to sign and enter into – on behalf of the City – a binding written contract with Mr. Case in the form of such "Employment Contract".

**PASSED** this 23<sup>rd</sup> day of February, 2021.

\_\_\_\_\_  
Sherry Raymond, Mayor

ATTEST:

\_\_\_\_\_  
Dale Novobielski, Clerk/Treasurer

## EMPLOYMENT CONTRACT

This Employment Contract (hereinafter "Contract") is made and entered into by and between the City of Selah, a Washington municipal corporation (hereinafter "City"), and D. R. (Rob) Case (hereinafter "Employee"), on the date set forth below.

WHEREAS, the City desires to enter into a contractual relationship with Employee for the position of "City Attorney" pursuant to Selah Municipal Code section 1.10.012 and Employee has agreed to serve in this capacity under the terms and conditions of this Contract.

THEREFORE, in consideration of the terms and conditions of this Contract, the City and the Employee agree as follows:

### 1. Duties and Responsibilities

1.1 Title. Commencing on Thursday, April 1, 2021 (or on such later date as the parties mutually agree), the City will employ Employee as its City Attorney and Employee's title shall be "City Attorney".

1.2 Duties. Employee shall have, and agrees to perform in good faith and to the best of his ability, the duties and responsibilities of City Attorney consistent with the laws of the State of Washington and the ordinances and policies of the City, including but not limited to Selah Municipal Code section 1.10.012 and those duties referenced in RCW 35.23.111. Under the general direction of the Mayor and City Administrator or other designee of the Mayor (with the City Administrator being Employee's general day-to-day supervisor, but with the Mayor's directions superseding any conflicting or inconsistent directions from the City Administrator or other designee of the Mayor), Employee shall provide legal services to and for the City including but not limited to the following services:

- A. Reviewing and drafting of ordinances, resolutions, policies, requests for proposals, contracts, agreements, termination notices, disciplinary notices and other legal documents.
- B. Providing advice on legal issues and public policy.
- C. Representing the City in contested administrative hearings, civil lawsuits and appeals stemming from either, except in situations where different counsel is chosen by the City's insurer(s).
- D. Attending, and as appropriate participating in, public session council meetings, private session council meetings and periodic department meetings.

- E. Consulting with the City's Mayor, City Council as a body, Council member(s) and City Administrator regarding City affairs, and being generally available via telephone, email and/or in person for such consultations.

As exceptions to Employee's scope of services, Employee shall have no responsibility for providing any legal services with regard to criminal prosecution and/or infraction prosecution, as services on such matters shall be assigned to and completed by a separate City employee or independent contractor.

1.3 Devotion of Time and Effort. Subject to the "moonlighting" provisions specified below (in paragraphs and subparagraphs 8.7, 8.7.1, 8.7.2, 8.7.3, 8.7.4, 8.7.5 and 8.7.6): Employee shall devote his full time, energies, interests, and abilities to the performance of the duties and responsibilities of City Attorney and shall not engage in activities that conflict with or interfere with his performance of such duties and responsibilities. Employee agrees that so long as he remains employed by the City he will remain in the exclusive employ of the City and he shall not become employed by any other person or entity, provided that Employee may engage in occasional teaching on Employee's own time with advance approval of the Mayor or City Administrator (with the Mayor's decision superseding any conflicting or inconsistent decision by the City Administrator).

1.4 Work Schedule. Subject to the "moonlighting" provisions specified below (in paragraphs 8.7, 8.7.1, 8.7.2, 8.7.3, 8.7.4, 8.7.5, 8.7.6): The typical minimum work week shall be approximately 40 hours typically occurring on Monday through Friday from 8:00 am to 5:00 pm (not including breaks). However, Employee shall also work any additional hours and days that are reasonably required to discharge the duties and responsibilities of the office of City Attorney. On occasions when Employee works more than 40 hours per week or more than 8 hours per day or any hours during Saturday or Sunday or any holiday, Employee shall be allowed to establish a modified work schedule for subsequent hours or days so that his cumulative hours worked during any week will be approximately 40 total hours. In all situations, Employee shall utilize and submit time cards for all hours that Employee actually works even though Employee's position shall be an "exempt" position from state and federal hour-based compensation laws (consistent with paragraph 3.1 below).

## **2. At-Will Employment**

Employee shall be employed for an indefinite term. Employee's employment with the City is "at-will" and may therefore be terminated at any time by the City or Employee on a "without cause" basis or on a "with cause" basis (as defined in paragraphs 6.1 and 6.2 below).

### 3. Compensation

- 3.1 Base Annual Salary. As compensation to Employee for services rendered, upon hire Employee shall be paid a base annual salary of One Hundred and Sixty Thousand Dollars (\$160,000.00) gross, payable in accordance with the City's regular payroll periods and procedures and subject to all withholdings and deductions required by law. The position of City Attorney is exempt from overtime under state and federal law and Employee therefore shall not be eligible for overtime pay or compensatory time. Employee shall receive the same upward annual cost-of-living percentage adjustment that applies to the wages and salaries of the City's other management-level non-represented City employees as determined annually by the City Council, and thus Employee's base annual salary shall be increased effective January 1 of each calendar year by such percentage.
- 3.2 Retirement. Employee's position qualifies him for enrollment in Washington's Public Employees' Retirement System ("PERS"). City shall make all required employer contributions, as required by law.
- 3.3 Moving/Temporary Housing Reimbursement. None.
- 3.4 Expenses. The City agrees to directly pay, or reimburse to Employee, all reasonable and necessary expenses that are incurred for the benefit of the City or related to Employee's provision of services to the City, in accordance with City policy and subject to a requirement of preapproval whenever such expenses exceed Five Hundred Dollars (\$500.00) during any calendar month. This includes but is not limited to mileage fees, lodging fees, postage fees, filing fees, service fees, expert witness fees, books and treatises, internet service fees, software fees and licenses, legal research service fees (Westlaw Edge for Government state plan for Washington, or its equivalent), and malpractice insurance premiums or premiums for other insurance that applies to Employee and Employee's performance.
- 3.5 Professional Development. The City shall budget and pay for the professional dues and subscriptions of Employee for his continuation and full participation in state, local and national associations and organizations necessary for his continued professional participation, growth and advancement to better serve the interests of the City, which includes but is not limited to license fees and dues payable to the Washington State Bar Association, dues payable to the Yakima County Bar Association, and dues payable to the Washington State Association of Municipal Attorneys. The City further recognizes the value of having Employee participate in and be directly involved in local civic clubs or organizations. Accordingly, the City shall pay for reasonable membership

fees and dues to enable Employee to become an active member in local civic clubs and organizations.

#### **4. Benefits**

4.1 Health and Other Insurance. Employee is eligible to participate in the City's health and other insurance benefits on the same terms as those benefits are provided to other management-level non-represented City employees.

4.2 Vacation. Upon hire, Employee shall be allotted eighty (80) hours of accrued vacation. Thereafter, Employee shall accrue vacation on the same terms as other management-level non-represented City employees. Employee may rollover any accrued but unused vacation hours from one calendar year to the next subject to the City's then-existing policy (which policy is, at present, that a total of two hundred forty hours (240) may be rolled over, but the City reserves the right to potentially change that policy in the future).

4.3 Sick Leave. Upon hire, Employee shall be allotted eighty (80) hours of sick leave. Thereafter, Employee shall accrue sick leave on the same terms as other management-level non-represented City employees. Employee may rollover any accrued but unused sick leave hours from one calendar year to the next subject to the City's then-existing policy (which policy is, at present, that a total of two hundred forty hours (240) may be rolled over, but the City reserves the right to potentially change that policy in the future).

4.4 Holidays and Other Paid/Unpaid Leave. Employee shall receive holiday leave and other paid/unpaid leave benefits as the City may provide from time to time on the same terms as those benefits are provided to other management-level non-represented City employees.

4.5 Life Insurance. None.

4.6 City Vehicle. The City shall not be required to provide a City vehicle to Employee. However, in the event Employee uses his own vehicle for travel exceeding fifteen (15) cumulative miles on any day while on City business (but not including ordinary commutes to and from work daily), the City shall reimburse Employee for mileage in accordance with City policy.

4.7 Mobile Phone, Laptop and Portable Printer. The City shall provide Employee with a "smart" mobile phone, a laptop and a portable printer for use in accordance with City policy.

4.8 Other City Benefits and Policies. Employee will receive other benefits provided by, and be subject to any obligations included in, applicable City policies as may from time to time be adopted or amended by the City; provided that no such policy will be applicable to the extent that it conflicts with a term of this Contract.

## 5. Performance Standards and Evaluation

Employee will be evaluated on his job performance and satisfaction of established goals and objectives after roughly six (6) months of employment and also roughly annually thereafter or when otherwise deemed appropriate by the Mayor or City Administrator. The Mayor or City Administrator may, but are not required to, produce a written report for any such performance evaluation.

## 6. Termination

6.1 Termination on a "Without Cause" Basis. The City may at any time, in its unlimited and continuing discretion, terminate Employee's employment on a "without cause" basis at any time by providing written notice to Employee. In such event, the City will pay Employee his then-applicable base salary earned through his final day of employment (on a gross basis, and thus subject to all withholdings and deductions required by law) and the City will also pay Employee the cash-out value of his then-existing accrued but unused vacation (also on a gross basis, and thus also subject to all withholdings and deductions required by law).

6.1.1 Severance Payment on Gross Basis. Any severance payment by the City to Employee shall occur on a gross basis, and thus shall be subject to all withholdings and deductions required by law.

6.1.2 Three Months During Initial Four Years. In the event the City effectuates a "without cause" termination earlier than or on December 31, 2024, the City will pay Employee three (3) months of Employee's then-applicable base salary as severance pay.

6.1.3 Six Months During Fifth Year. In the event the City effectuates a "without cause" termination on or after January 1, 2025 but earlier than or on December 31, 2025, the City will pay Employee six (6) months of Employee's then-applicable base salary as severance pay.

6.1.4 Subsequent Years Also at Six Months, Absent a Contrary Vote by City Council. Commencing in 2022 and continuing uninterrupted thereafter, the City Council shall annually hold a public vote during June as to whether to negate extended severance coverage for Employee in the amount of six (6) months of Employee's then-applicable base salary for a "without cause" termination that might occur

during any calendar year subsequent to 2025. For any such vote to pass, it shall be required that members of the City Council holding a majority (or more) of the then-total positions of the City Council (which, at present, would be at least four of the seven total positions) mutually agree to a written Resolution that by its terms negates extended severance coverage to the year period specified in the Resolution. If any such vote does not pass, then such severance pay shall be automatically extended to and applicable for the next applicable year period as specified in subparagraphs 6.1.4.1, 6.1.4.2, 6.1.4.3 and 6.1.4.4 below – without the necessity of any formal written amendment of this Contract. In the event of a tied vote by the City Council, the Mayor may and shall cast the determinative final vote.

6.1.4.1 During June 2022, the City Council shall vote as to whether to negate continued applicability of such severance pay for a “without cause” termination that might be effectuated on or after January 1, 2026 but earlier than or on December 31, 2026.

6.1.4.2 During June 2023, the City Council shall vote as to whether to negate continued applicability of such severance pay for a “without cause” termination that might be effectuated on or after January 1 but earlier than or on December 31 of the calendar year specified in the corresponding Resolution (with such specified calendar year being 2027 if the vote during June 2022 did not pass; or being 2026 if the vote during June 2022 did pass).

6.1.4.3 During June 2024, the City Council shall vote as to whether to negate continued applicability of such severance pay for a “without cause” termination that might be effectuated on or after January 1 but earlier than or on December 31 of the calendar year specified in the corresponding Resolution (with such specified calendar year being 2028 if the votes during June 2022 and June 2023 both did not pass; or being 2027 if one but not both of the votes during June 2022 and June 2023 did pass and the other did not pass; or being 2026 if the votes during June 2022 and June 2023 both did not pass).

6.1.4.4 During June 2025 and for during each June thereafter, the City Council shall vote as to whether to negate continued applicability of such severance pay for a “without cause” termination that might be effectuated on or after January 1 but earlier than or on December 31 of the calendar year specified in the corresponding Resolution (with such specified calendar year being determined consistent with the formula specified in subparagraph 6.1.4.3

above).

6.1.4.5 This Contract shall be deemed automatically amended consistent with and immediately upon each outcome specified in subparagraphs 6.1.4.1, 6.1.4.2, 6.1.4.3 and 6.1.4.4 above.

6.2 Termination on a "For Cause" Basis. The City may at any time terminate Employee's employment on a "for cause" basis by providing written notice to Employee. "Cause" is defined to include but is not limited to any or all of the following acts or omissions by Employee: (i) dishonesty related to his employment; (ii) commission of negligence, recklessness or intentionality that results in actual and substantial financial harm to the City; (iii) failure to follow a lawful directive from the Mayor or City Administrator; (iv) failure to perform his duties and responsibilities under this Contract (provided that in non-emergency situations Employee has been given notice and a reasonable opportunity to cure the alleged failure); (v) commission of a felony or crime of moral turpitude; (vi) willful violation of City policy or other willful misconduct; or (vii) disbarment or suspension of his law license lasting longer than thirty-two (32) calendar days. In such event, the City will pay Employee his then-applicable base salary earned through the date of termination (on a gross basis, and thus subject to all withholdings and deductions required by law) and the City will also pay Employee the cash-out value of his then-existing accrued but unused vacation (also on a gross basis, and thus also subject to all withholdings and deductions required by law). However, Employee shall not be entitled to receive any severance pay. As a point of clarification relative to subpart (ii) above, an adverse or non-successful outcome (*i.e.*, a loss, partial loss or failure to win) on any legal matter or issue – including but not limited to any contested administrative hearing, civil lawsuit or appeal; any contract negotiation or invalidation; and the invalidation of any law, code section, ordinance, resolution, policy, procedure or rule – shall not be a basis for a "for cause" termination.

6.3 SMC Section 1.10.012. The following provision from the now-existing Selah Municipal Code section 1.10.012 is made a permanent and nonmodifiable part of this Contract (and thus superseding any potentially conflicting provision in paragraph 8.2 below): "The city attorney is subject to removal from office by the mayor with concurrence by a majority of the entire city council." Accordingly, neither the Mayor nor the City Administrator may unilaterally terminate Employee's employment, irrespective of the circumstances and irrespective of any attempted or actual modification of any provision of the Selah Municipal Code. Rather, for the City to terminate Employee's employment under any circumstance, it shall always be required that the Mayor and members of the City Council holding a majority (or more) of the then-total positions of the City Council (which, at present, would be at least four of the seven total positions) mutually agree to terminate Employee's employment and such members of the City



Council publicly vote to terminate Employee's employee.

6.4 Resignation/Retirement. Employee may at any time, in his unlimited and continuing discretion, resign and relinquish his employment by providing written notice to the Mayor or City Administrator. In such event, the City will pay Employee his then-applicable base salary earned through his final day of employment (on a gross basis, and thus subject to all withholdings and deductions required by law). Moreover, the City will also pay Employee the cash-out value of his then-existing accrued but unused vacation (also on a gross basis, and thus also subject to all withholdings and deductions required by law) if and only if and in exchange for Employee providing such notice to the Mayor or City Administrator at least thirty (30) calendar days prior to Employee's effective resignation date (or by such other lesser deadline as the Mayor or City Administrator may agree to), otherwise such gross cash-out payment to Employee shall be reduced by the number of days/hours that Employee would have been expected to work during the thirty-day period immediately following the latter of the date that Employee actually provided such notice or his effective resignation date. By contrast, Employee shall not be entitled to receive any severance pay.

6.5 Disability; Death. The City may terminate Employee's employment due to any permanent or temporary disability or incapacity (including but not limited to illness) that renders Employee unable to fully perform his duties and responsibilities for a cumulative or successive duration of thirty-two (32) calendar days during any 12-month period (and not necessarily judged on a calendar-year basis) by providing written notice to Employee or to a proper agent of Employee. Employee's employment shall be deemed automatically terminated upon Employee's death. In the event of termination of Employee's employment on either basis, the City will pay Employee or his estate Employee's then-applicable base salary earned through his final day of employment (on a gross basis, and thus subject to all withholdings and deductions required by law) and the City will also pay Employee or his estate the cash-out value of Employee's then-existing accrued but unused vacation (also on a gross basis, and thus also subject to all withholdings and deductions required by law). By contrast, neither Employee nor his estate shall be entitled to receive any severance payment.

## **7. Integration/Entire Agreement**

This Contract constitutes the entire agreement between the parties and supersedes all prior oral or written negotiations, offers, agreements, or understandings between the parties with respect to the subject matter of this Contract. No waiver, alteration, or modification of any of the provisions of this Contract will be binding unless in writing and signed by duly authorized representatives of the parties. To the extent that any provision of this Contract conflicts with any provision of any City policy or rule, the provisions of this Contract shall prevail and control. By contrast, to the extent that any provision of this

Contract conflicts with any provision of now-existing law including now-existing City code and ordinances, the provisions of now-existing law and now-existing City code and ordinances shall prevail and control. If any provision of this Contract is held to be unenforceable, the other provisions shall remain binding and enforceable to the fullest extent possible. The previous "Contract for Legal Services (City Attorney)" entered into between the parties on or about September 10, 2019 (and all amendments thereto) is hereby terminated and replaced by the terms and conditions of this Contract.

## **8. Other Terms and Conditions**

- 8.1 Any notice to the City under this Contract shall be furnished in physical written form by Employee to the Mayor or City Administrator either via hand-delivery to the recipient or via certified U.S. mail with return receipt requested to the recipient's then-applicable City mailing address. Any notice to Employee under this Contract shall be furnished in physical written form by the City to Employee either via hand-delivery or via certified U.S. mail with return receipt requested to Employee's then-applicable personal mailing address as recited on the City's employment records for Employee. Any hand-delivered notices shall be deemed effective as of the date of actual delivery, and any notices delivered via certified mail shall be deemed effective as of date recited on the return receipt as the date of actual delivery to the recipient.
- 8.2 The Mayor or City Administrator may at any time, in their unlimited and continuing discretion, establish, promulgate, and impose any new or clarified lawful policy or rule as to Employee's duties and responsibilities or Employee's performance by providing notice to Employee, provided that such policies and rules are not inconsistent or conflicting with the provisions of this Contract, with then-applicable City code or ordinances, with any other then-applicable law or with Employee's ethical and legal duties and responsibilities, and provided further that such policies and rules do not expand Employee's duties and responsibilities to matters that are capable of being performed by a non-attorney.
- 8.3 All now-existing or later-existing provisions of City code, City ordinances, City regulations, City policies and rules shall apply to and for Employee to the same extent that such apply to other employees of the City, except as may be specifically otherwise stated in this Contract or to the extent that such are inconsistent or conflicting with Employee's ethical and legal duties and responsibilities.
- 8.4 This Contract shall be interpreted, construed, and enforced according to the internal laws of the State of Washington (not including any choice-of-law or conflict-of-law laws).

- 8.5 All captions and section headings used in this Contract are for convenience only and do not alter the substantive effect of any provision of this Contract.
- 8.6 No waiver by either party of any breach or violation by either party of the provisions of this Contract shall be deemed a waiver of any subsequent breach or violation.
- 8.7 Moonlighting. The City acknowledges that Employee has been engaged in the private practice of law for many years prior to entering into this Contract including up to the date that he entered into this Contract, that Employee remains obligated to many preexisting clients and remains engaged on many preexisting matters and issues, and that Employee will not be able to fully finish representing such clients or fully complete work on such matters and issues prior to Employee entering into this Contract and thus prior to Employee becoming directly employed by the City. Accordingly, the City acknowledges and agrees that Employee (either personally or via a newly-formed one-member entity that he establishes) shall and does have the option to continue representing any or all of his preexisting clients (including but not limited to persons and entities) consistent with the terms and conditions specified in subparagraphs 8.7.1 and 8.7.2 below and thus temporarily overriding any provisions of this Contract that might purport to require Employee to devote his full time, energies, interests, and abilities to the performance of the duties and responsibilities of City Attorney (see paragraph 1.3 above) or to remain in the exclusive employ of the City (see paragraph 1.3 above) or to work any typical work day(s) or hour(s) for the City (see paragraph 1.4 above) or that might otherwise purport to in any way restrict or prohibit Employee from working for clients other than the City or from working on matters or issues related to the City.
- 8.7.1 Litigation Matters – Unlimited Moonlighting Period. The City acknowledges that most courts are closed or severely limited at present due to Covid-19 and that Employee cannot control when the courts will reopen nor when all of his preexisting litigation matters will be fully concluded. Thus, the City acknowledges and agrees that Employee shall and does have an unlimited period in which Employee may continue representing any or all of his preexisting clients on any or all of their preexisting litigation matters (including but not limited to civil litigation, criminal defense, and appeals) that Employee was already working on prior to entering into this Contract (including but not limited to appeals now existing or occurring in the future) throughout the United States despite Employee's entry into this Contract. The Mayor or City Administrator will receive a report not later than the 15<sup>th</sup> of May each year providing an update from Employee on remaining litigation matters. Employee agrees to endeavor to fully conclude all such preexisting litigation matters as soon as practicable.

- 8.7.2 Transactional Matters – Moonlighting Period of Approximately 18 Months. The City acknowledges that Employee is also working on multiple preexisting non-litigation matters for his preexisting clients and that Employee will need a period of time in which to conclude his work on those matters. Thus, the City acknowledges and agrees that Employee shall and does have until the conclusion of August 2022 in which Employee may continue representing any or all of his preexisting clients on any or all of their preexisting non-litigation matters (including but not limited to contract drafting, transactional work, negotiations, advice, and consultations) that Employee was already working on prior to entering into this Contract throughout the United States despite Employee's entry into this Contract. Employee agrees to endeavor to fully conclude all such preexisting non-litigation matters as soon as practicable.
- 8.7.3 For the ease of reference, Employee's continued work for his preexisting clients is referred to as "moonlighting". The City acknowledges and agrees that Employee's moonlighting may, and likely will, require Employee to be absent and unavailable during normal business hours on occasions and also for the totality of normal business days on occasions.
- 8.7.4 The City acknowledges and agrees that all compensation, entitlements, recoveries, title, interests and other awards that Employee may receive via moonlighting shall and will be solely and exclusively Employee's without any interest therein or portion thereof belonging to the City. Employee acknowledges and agrees that his moonlighting shall and will be performed independently from his performance as City Attorney, with the City having no responsibilities, obligations, duties, liabilities thereon or thereto. The City acknowledges and agrees that it shall and will pay Employee his full compensation and provide to Employee his full benefits during the moonlighting periods, without any reductions or setoffs for any reason.
- 8.7.5 Employee acknowledges and agrees that his moonlighting shall and will be restricted to, as specified above, representing his preexisting clients on their preexisting matters or issues that Employee was already working on prior to entering into this Contract. Thus, by contrast, Employee acknowledges and agrees that he shall not and will not accept any new client(s) or become engaged on any new matter(s) or issue(s) during his employment by the City under this Contract (except as authorized in subparagraph 8.7.6 below). Further, Employee agrees that if his representation of any preexisting client or his work on any preexisting matter or issue creates a conflict of interest with his employment by the City under this Contract, that Employee shall and will either cease representing such client, cease working on such matter or issue, or resign his

employment under this Contract.

8.7.6 Employee acknowledges and agrees that once he has finished representing all of his preexisting clients on their preexisting matters or issues that Employee was already working on prior to entering into this Contract, that the moonlighting periods shall and will forever cease and that Employee shall and will no longer work for any client other than the City or work on matters or issues unrelated to the City. However, as a partial modification to the preceding sentence, the City acknowledges and agrees that Employee shall and will always have an unrestricted and continuing right – even after the moonlighting periods cease – to represent himself or any member(s) of his family on any new matter or issue so long as he does so independently from his performance as City Attorney and that such representation does not conflict with Employee’s employment by the City.

**9. Counterparts**

This Contract may be executed in counterparts, and each counterpart will have the same force and effect as an original and will constitute an effective, binding agreement on the part of each party.

IN WITNESS WHEREOF, the undersigned have executed this Contract on the dates indicated below.

**CITY OF SELAH (“City”):**

**D. R. (ROB) CASE (“Employee”):**

\_\_\_\_\_  
Sherry Raymond, Mayor

\_\_\_\_\_  
D. R. (Rob) Case, WSBA #34313

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

**ATTEST:**

\_\_\_\_\_  
Dale Novobielski, Clerk/Treasurer