

RESOLUTION NO. 2895

RESOLUTION AUTHORIZING THE MAYOR TO SIGN A SEVEN-PAGE "SETTLEMENT AGREEMENT" BETWEEN THE CITY, CODEFENDANTS AND PLAINTIFFS ON THE SAFE LITIGATION

WHEREAS, the City is a named-defendant on pending litigation known as Selah Alliance for Equality, et al. v. City of Selah, et al., Eastern District of Washington case number 1:20-cv-03228-RMP; and


WHEREAS, representatives of the parties participated in a mediation session on November 10, 2021, and negotiated a prospective settlement of such litigation; and

WHEREAS, a seven-page "Settlement Agreement" has been drafted and will – if approved by the City Council – formally effectuate the settlement; and

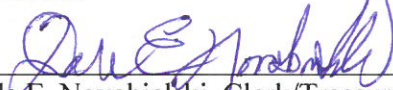
WHEREAS, City staff – including the Mayor, City Administrator and City Attorney – recommend that the Settlement Agreement be approved by the City Council;

NOW THEREFORE, BE IT RESOLVED THE CITY COUNCIL OF THE CITY OF SELAH, WASHINGTON, that the Mayor be and is authorized to sign the eight-page Settlement Agreement on behalf of the City in the form appended hereto.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF SELAH, WASHINGTON, this 25<sup>th</sup> day of January, 2022.

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

ATTEST:

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

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Rob Case, City Attorney

## SETTLEMENT AGREEMENT

This Settlement Agreement (this “Agreement”) is entered into by and between Plaintiffs Selah Alliance for Equality (“S.A.F.E.”), Courtney Hernandez, Reverend Donald Davis Jr., Laura Perez, Anita Callahan, Kalah James, Charlotte Town, Amanda Watson, and Anna Whitlock (collectively with S.A.F.E., “Plaintiffs”), and their counsel, on the one hand; and Defendants the City of Selah (“the City”), Mayor Sherry Raymond, and (former) City Administrator Donald Wayman (collectively, “Defendants”), and their respective counsel, on the other hand (and all parties are referred to as the “Parties” and are referred to singularly a “Party”). This Agreement is intended by the Parties to fully, finally, and forever resolve, discharge, and settle all the claims specified below, subject to the terms and conditions set forth and agreed to herein.

### RECITALS

**WHEREAS**, S.A.F.E. is a grassroots, community-led organization that seeks to spread the message of anti-racism and equality throughout the City of Selah.

**WHEREAS**, Courtney Hernandez, Reverend Donald Davis Jr., Laura Perez, Anita Callahan, Kalah James, Charlotte Town, Amanda Watson, and Anna Whitlock are members of S.A.F.E.

**WHEREAS**, on or about August 10, 2020, Plaintiffs designed and purchased yard signs to communicate messages of equality to the public including, “Black Lives Matter” and “Hate Has No Place in Selah.”

**WHEREAS**, on or about August 10, 2020, Plaintiffs placed these signs in public areas, specifically, the grassy strips between the sidewalk and street.

**WHEREAS**, after these signs were placed in the grassy strips, the Defendants removed some of the signs.

**WHEREAS**, on or about December 7, 2020, Plaintiffs filed a lawsuit against the Defendants – alleging, among other things, violation of the Plaintiffs’ freedom of speech rights enumerated in the United States Constitution and Washington constitution – in the United States District Court for the Eastern District of Washington, Case No. 1:20-cv-03228 (the “Action”).

**WHEREAS**, on or about November 10, 2021, representatives of the Parties participated in a successful mediation and negotiated a prospective settlement of the Action.

**WHEREFORE, IT IS HEREBY STIPULATED AND AGREED** by the Parties that the Action and claims released below against the Parties identified below shall be finally and fully compromised, settled, and resolved on the terms and conditions set forth in this Agreement, as a good faith, fair, reasonable, and adequate settlement.

### AGREEMENT

**NOW THEREFORE**, in consideration of the mutual promises as contained herein and acts in furtherance of this Agreement, the Parties agree as follows:

1. **Monetary Award.** The City will pay (via its risk insurance pool) Perkins Coie LLP, counsel for S.A.F.E., \$300,000.00 (the “Award”) by no later than fourteen (14) days after the date of the last person to sign this Agreement (the “Final Execution Date”). The Award represents the entire sum the City or any Defendant will pay to Plaintiffs and Plaintiffs’ counsel and is inclusive of attorneys’ fees, costs, and all other sums; provided however, that the City is also separately obligated to pay up to \$25,000.00 towards creation of a mural as specified in paragraph 3.f. below. Perkins Coie LLP is entirely responsible for apportioning the Award among Plaintiffs’ counsel and Plaintiffs.
2. **Stipulation of Dismissal.** The Parties shall file a stipulation of dismissal of the lawsuit with prejudice and without costs within ten (10) days of the timely payment of the Award.
3. **Non-Monetary Terms.** The City and Mayor Sherry Raymond will take the following actions described in subparagraphs 3.a. through 3.g. inclusive by the specified dates (collectively, “Non-Monetary Terms”) in further consideration of the mutual promises contained herein:
  - a. **Honorary Name.** The City will add a secondary honorary name of “Chief Owhi Park” to Volunteer Park. By no later than ninety (90) days after Final Execution Date, the City will post a permanent sign at the entrance of Volunteer Park displaying the honorary name. The City shall include the honorary name whenever referring to Volunteer Park in official City communications.
  - b. **Public Proclamation.** By no later than thirty (30) days after the Final Execution Date, Mayor Sherry Raymond will issue a public Proclamation telling area residents and visitors not to tamper with temporary signs, and that criminal prosecution may be pursued for those who tamper with temporary signs. The public Proclamation will also state that the City of Selah welcomes and serves all persons, regardless of their race, ethnicity, age, religion, sexual orientation, gender identity, gender expression, disability, economic status, or other diverse backgrounds. Mayor Sherry Raymond may include additional inclusive, positive, and supportive messages in the Proclamation, but the Proclamation shall include at least the aforementioned messages.
  - c. **Diversity of Applicant Pool.** By no later than ninety (90) days after the Final Execution Date, the City will implement a plan for increasing the diversity of the applicant pool for City employment opportunities (the “Plan”), which shall include sending all advertised job openings to a designated S.A.F.E. email account and posting all City employment opportunities on <https://www.diversityjobboard.com> and <https://www.pdnrecruits.com>, which target jobseekers of color and other underrepresented minorities. All physical advertisements (including but not limited to those in newspapers or magazines, and materials posted on bulletin boards) must reference the website(s) where the job posting is listed. The City must seek public comment on the Plan before it is finalized. The Plan shall be made publicly available on the City’s website: <https://selahwa.gov>.
  - d. **Revised Standards of Decorum.** By no later than thirty (30) days after the Last

Execution Date, consistent with constitutional requirements, the City will revise its “standards of decorum” for comments by members of the public during City Council meetings so as to permit criticism of City officials and employees by name as to official actions (the “Revised Standards of Decorum”). The Revised Standards of Decorum shall in no way limit commenters’ ability to criticize or question City officials’ ability to fulfill their job duties due to events, actions, or activities that occurred outside the scope of their duties as a City official. The City must seek public comment on the Revised Standards of Decorum before it is finalized. The Revised Standards of Decorum shall be made publicly available on the City’s website: <https://selahwa.gov>.

- e. **DEI Training for City Employees.** By no later than ninety (90) days after the Final Execution Date, the City will implement diversity, equity, and inclusion training (“DEI Training”) for all City employees, including but not limited to all officials, staff, and police officers—which shall be administered within thirty (30) days of being hired or otherwise beginning to fulfill their duties. Prior to the initial DEI Training of all current City employees, the City shall publicize the entity, individual, or organization that will administer the DEI Training on the City’s website: <https://selahwa.gov>.
  - f. **Mural.** The City shall appoint a mural Commission (“Commission”) consisting of five (5) total members, three of which shall be chosen by Mayor Sherry Raymond with at least one of those three being a current employee of the Selah School District, and the other two of which shall be chosen by attorney Joe Cutler on behalf of S.A.F.E. The Commission members shall be specifically identified within thirty (30) days of the Final Execution Date. The Commission shall be responsible for issuing a Request for Proposals (RFP), selecting one or more artists or creators, and recommending the design of a painted or applied mural on the City-owned retaining wall located on North First Street. The City shall have final authority to approve the recommended design. The City shall pay up to \$25,000.00 towards the mural. The Commission may seek additional non-City funds to use in designing and creating the mural. The mural shall communicate the message “all are welcome in Selah,” although those exact words need not be included. The mural shall be completed no later than one year from the Final Execution Date if possible.
  - g. **Selective Sign Enforcement.** The City agrees that it shall not enforce its sign code, SMC 10.38, or any subsequent version of the sign code, selectively against Plaintiffs. The City agrees not to adopt a revised version of SMC 10.38, or any subsequent version of a sign code, that violates the freedom of speech rights enumerated in the United States or Washington constitutions.
4. **Releases.** Upon the Final Execution Date, and in consideration for the Award, the Non-Monetary Terms, and for Defendants’ other promises recited in this Agreement, Plaintiffs shall unconditionally and irrevocably remise, release, forever discharge and covenant not to sue Defendants and each of their past, present, and future officials, representatives, employees, managers, successors, and insurers, or any agent acting or purporting to act for them or on their behalf, from any and all claims, counterclaims, actions, causes of action,



suits, setoffs, costs, losses, expenses, sums of money, accounts, reckonings, debts, charges, complaints, controversies, disputes, damages, judgments, executions, promises, omissions, duties, agreements, rights, and any and all demands, obligations and liabilities, of whatever kind or character, direct or indirect, whether known or unknown, at law or in equity, by right of action or otherwise, which were brought or which could have been brought in this lawsuit. This paragraph 4 shall not release Defendants from any obligations imposed on Defendants by this Agreement.

5. **No Anticipated Cases.** By their signatures below, counsel for Plaintiffs represent and agree that they have no present intention to bring any additional lawsuit(s) arising out of the underlying facts resulting in this Agreement, raising issues similar to those raised in the Action. Counsel for the Plaintiffs represent that they have no present intention to represent any plaintiff(s) against Defendants in a lawsuit raising issues similar to those raised in the Action.
6. **Continuing Jurisdiction.** For a period of five (5) years after the Final Execution Date, the enforcement of this Agreement will remain subject to the jurisdiction of the United States District Court for the Eastern District of Washington to ensure that all Parties comply with the terms herein. The United States District Court for the Eastern District of Washington shall have and retain continuing and exclusive jurisdiction arising from the failure of any Party to take all necessary steps in accordance with this Agreement. The Parties agree to cooperate and to take all necessary and appropriate steps to ensure the enforceability of this Agreement.
7. **Binding on Successors.** This Agreement binds and benefits the Parties' respective successors, assigns, legatees, heirs, and personal representatives.
8. **Governing Law.** This Agreement shall be interpreted in accordance with the laws of the State of Washington, without regard to conflict of laws principles.
9. **Construction and Interpretation.** No Party nor any of the Parties' respective attorneys will be deemed the drafter of this Agreement for purposes of interpreting any provision in this Agreement in any judicial or other proceeding that may arise between them. This Agreement has been, and must be construed to have been, drafted by all the Parties to it, so that any rule that construes ambiguities against the drafter will have no force or effect.
10. **Entire Agreement.** This Agreement constitutes the full and complete agreement of the Parties and supersedes any and all prior understandings, promises, representations and agreements, oral or written, with respect to the subject matter.
11. **Severability.** The invalidity of any provision of this Agreement (or any interpretation or construction thereof) shall not affect the validity and enforceability of the remaining provisions of this Agreement or its terms or interpretations.
12. **Modifications and Amendments.** No amendment, change or modification to this Agreement will be valid unless in writing signed by all Parties that would be impacted by such amendment, change or modification, and also by respective counsel who then represents each impacted Party. This Agreement may not be amended, modified or changed

orally.

13. **Effective Date.** This Agreement is effective and binding as of the date the Agreement is signed by *all of the necessary signatories* specified on pages 6-7 below.
14. **Counterparts.** This Agreement may be executed in counterparts, each of which constitutes an original, but all of which together constitutes one and the same instrument. Several signature pages may be collected and annexed to one or more documents to form a complete counterpart. Photocopies, PDFs, or facsimiles of executed copies of this Agreement may be treated as originals.
15. **Recitals.** The Recitals are incorporated by this reference and are part of the Agreement. This Agreement consists of sixteen (16) separately numbered paragraphs contained in seven (7) pages including signatures.
16. **Representations.** The Parties represent that they (1) have read this entire Agreement and understand its terms, (2) have been given a reasonable and adequate period of time to consider this Agreement before signing it, (3) fully understand the terms and effects of this Agreement, (4) fully understand their right to discuss all aspects of this Agreement with an attorney of their choice, and have availed themselves of this right, (5) are voluntarily executing this Agreement by their own free act and deed; and (6) understand that no payment or consideration has been promised to Plaintiffs for entering into and signing this Agreement which is not specified in this Agreement. Each Party further represents that the individuals signing this Agreement have the requisite authority to bind the Parties to the terms of the Agreement and are signing such Agreement as each respective Party's duly authorized agent or representative.

**[The remainder of this page is intentionally left blank. Signature pages follow.]**



**DEFENDANTS**

Sherry Raymond Dated: 1-25-2022  
Mayor Sherry Raymond  
Personally and on behalf of City

\_\_\_\_\_ Dated: \_\_\_\_\_  
Donald Wayman (former City Administrator)  
Personally

**DEFENDANTS' COUNSEL**

\_\_\_\_\_ Dated: \_\_\_\_\_  
Christopher J. Kerley (WSBA #16489)  
Among counsel for City and Mayor  
Sherry Raymond

\_\_\_\_\_ Dated: \_\_\_\_\_  
Kirk A. Ehlis (WSBA #22908)  
Among counsel for Donald Wayman

\_\_\_\_\_ Dated: \_\_\_\_\_  
D. R. (Rob) Case (WSBA #34313)  
Among counsel for all Defendants