



Selah City Council

AGENDAY ITEM SUMMARY

Meeting Date: 11/23/2021	Action Item
Agenda Number: N-2	

Title: Resolution Authorizing the Mayor to sign a Settlement and Release Agreement with former City Administrator Donald Wayman, and to Effectuate the Settlement Specified Therein

From: Rob Case

Action Requested: Approval

Staff Recommendation: To approve the attached Resolution in the form presented

Board/Commission Recommendation: Not Applicable

Fiscal Impact: \$350,000 as the financial component of the settlement, of which the City’s risk pool insurer (WCIA) will pay \$250,000

Funding Source: Fund 001

Background/Findings/Facts: On May 25, 2021, the Mayor terminated the employment of then-City Administrator Donald Wayman. Subsequently, Mr. Wayman advanced multiple tort allegations and claims concerning the termination. The City’s risk insurance pool (WCIA) retained attorney Mike Bolasina to represent the City in regard to Mr. Wayman’s allegations and claims. The two sides attended a mediation on November 5, 2021. A “Settlement and Release Agreement” was prepared and it has been signed by Mr. Wayman. The Mayor and the City’s risk insurance pool are now asking the City Council to authorize the Mayor to sign the Agreement and to effectuate the settlement specified therein. The primary component of the settlement will be the payment of \$350,000.00 to Mr. Wayman as a gross lump sum. The City’s risk insurance pool will pay \$250,000.00 of the total, and the City will pay the other \$100,000.00 from its general funds. A copy of the Agreement is submitted herewith. City Attorney Rob Case did not play any role in negotiating this settlement or drafting the Agreement.

Recommended Motion: I move to approve the Resolution in the form presented

Record of all prior actions taken by the City Council and/or City Board, City Committee, Planning Commission, or the Hearing Examiner (if not applicable, please state none).

Date:	Action Taken:
Click or tap to enter a date.	None

RESOLUTION NO. _____

**RESOLUTION AUTHORIZING THE MAYOR TO SIGN A SETTLEMENT AGREEMENT AND
RELEASE WITH FORMER CITY ADMINISTRATOR DONALD WAYMAN, AND TO
EFFECTUATE THE SETTLEMENT SPECIFIED THEREIN**

WHEREAS, on May 25, 2021, the Mayor terminated the employment of then-City Administrator Donald Wayman; and

WHEREAS, Mr. Wayman subsequently advanced multiple tort allegations and claims concerning the termination; and

WHEREAS, the City's risk insurance pool (WCIA) retained attorney Mike Bolasina to represent the City in regard to Mr. Wayman's allegations and claims; and

WHEREAS, the two sides attended a mediation on November 5, 2021, and an "Settlement Agreement and Release" was then prepared; and

WHEREAS, Mr. Wayman has already signed the Agreement, and the Mayor and the City's risk insurance pool are now asking the City Council to authorize the Mayor to sign the Agreement and to effectuate the settlement specified therein;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SELAH, WASHINGTON that the Mayor be and is authorized to sign the Settlement Agreement and Release with Mr. Wayman and to effectuate the settlement specified therein.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF SELAH, WASHINGTON this 23rd day of November, 2021.

Sherry Raymond, Mayor

ATTEST:

Dale E. Novobielski, Clerk/Treasurer

APPROVED AS TO FORM:

Rob Case, City Attorney

SETTLEMENT AND RELEASE AGREEMENT

THIS AGREEMENT is made and entered into this 11th day of November, 2021, by and between the City of Selah (the "City") and Donald Wayman ("Mr. Wayman").

RECITALS:

WHEREAS, Mr. Wayman was employed by the City as its city administrator; and

WHEREAS, on May 25, 2021, Mayor Sherry Raymond terminated Mr. Wayman's employment; and

WHEREAS, Mr. Wayman alleged that he was terminated in retaliation for whistleblowing activity, and requested a hearing before the Office of Administrative hearings, which was scheduled for January 10, 2022; and

WHEREAS, Mr. Wayman also alleged that he was terminated in retaliation for oppositional activity in violation of RCW 49.60.210, and threatened to make claims based on alleged statutory; and

WHEREAS, Mr. Wayman is represented by William Pickett, Esq. of The Pickett Law Firm; and

WHEREAS, the City and Mr. Wayman attended a mediation before retired judge Paris Kallas on November 5, 2021; and

WHEREAS, to assist him in transitioning to his next position, the City has offered Mr. Wayman the following benefits if he signs and does not revoke this Agreement; and

WHEREAS, Mr. Wayman and the City acknowledge that this Agreement is subject to approval by a majority of the Selah City Council at an open public meeting, and the Agreement is null and void if the City Council refuses to approve it; and

NOW THEREFORE, the City and Mr. Wayman mutually agree as follows:

1. If Mr. Wayman signs this Agreement and does not revoke it pursuant to Paragraph 10 below, Mr. Wayman shall receive the following separation benefits:
 - a. The sum of three hundred fifty thousand dollars (\$350,000.00) (hereinafter, "Total Settlement Amount") shall be paid to Mr. Wayman for general damages and attorney's fees and costs associated with his claims. A check for the Total Settlement Amount made payable to "Trust Account of Pickett Law Firm in trust for Donald Wayman" shall be delivered to William Pickett, Esq. on the later of December 5, 2021, or after the end of the revocation period set forth in Paragraph 10 below.
 - b. Mayor Raymond and council person Roger Bell will provide Mr. Wayman with letters of reference that comment positively on his performance as city administrator.
 - c. If contacted by a prospective employer of Mr. Wayman, the employer will be referred to Mayor Raymond or her successor in office who will provide only the following information: Mr. Wayman's position, start and end dates, and salary. Mayor Raymond or her successor will offer to provide the caller with copies of the letters of reference written by her and council person Bell.

2. In exchange for the consideration set forth in Paragraphs 1(a) through 1(c), Mr. Wayman forever releases and discharges the City, its past and present council persons, elected officials, officers, employees, attorneys, agents, affiliates, assigns, insurers, and successors, any other person acting on the City's behalf ("Releasees") from any and all claims, whether known or unknown, suspected or unsuspected, arising out of Mr. Wayman's employment with the City or separation therefrom, or arising on or before the date of this Agreement. This release shall include any claims arising under any federal, state, or local law prohibiting discrimination, harassment, or retaliation in employment, including claims for age discrimination under the ADEA or WLAD, as well as any claims for breach of contract, defamation, constitutional violations, FMLA interference, unpaid wages, salary, or other sums, emotional distress, personal injury, attorneys' fees, violation of the public records act, or any other statutory or common law claims.
3. In exchange for the consideration set forth in Paragraphs 1(a) through 1(c), Mr. Wayman shall dismiss with prejudice the whistleblower retaliation claim currently on file with the Office of Administrative Hearings. Mr. Wayman and the City agree to pay their own attorney's fees and costs associated with the hearing.
4. It is further understood that Mr. Wayman agrees to indemnify and hold harmless the City from any and all claims that may be brought by or on behalf of Mr. Wayman, his descendants, ancestors, dependents, heirs, executors, administrators, assigns and successors, or each or any of them, that arise from his employment at the City or separation therefrom arising on or before the date of this Agreement.
5. Mr. Wayman and the City agree that neither will initiate disclosure of this Agreement or the terms contained therein to third parties, except that Mr. Wayman may disclose this Agreement to members of his immediate family, tax advisors, legal advisors, and other professional advisors. However, Mr. Wayman and the City acknowledge that this agreement is a public record that is subject to disclosure upon request.
6. Mr. Wayman may file a charge with the Equal Employment Opportunity Commission or Washington Human Rights Commission regarding any claim of discrimination, harassment, or retaliation associated with his employment with the City. However, Mr. Wayman agrees not to seek or accept any damages from the City recovered from any administrative proceeding prosecuted by the Equal Employment Opportunity Commission or Washington Human Rights Commission.
7. Mr. Wayman and the City acknowledge that settlement of these claims is important for Mr. Wayman to move forward with his life, for the City to direct its efforts and resources to serving its residents, and for both Mr. Wayman and the City to conserve the cost that could be incurred as the result of protracted litigation. Mr. Wayman and the City acknowledge that their respective decisions to enter into this Agreement do not constitute an admission by any party that he or it has acted wrongfully with respect to any other party or any other person or entity or that any party has any rights whatsoever against any other party. Mr. Wayman and the City further acknowledge that the settlement is not to be construed as an admission of liability by the other, which is denied.
8. Mr. Wayman will hold harmless and indemnify the City if there is any liability, penalties, or fees associated with Mr. Wayman's nonpayment of any taxes owed on any sums paid to Mr. Wayman in accordance of this Agreement, except for the employer portion of payroll taxes.
9. Mr. Wayman and Mayor Raymond mutually agree to refrain from disparaging or commenting

negatively about one another to third parties. This provision does not prohibit either Mr. Wayman or Mayor Raymond from testifying truthfully in any legal proceeding where the witness is providing oral or written testimony under oath.

10. Mr. Wayman acknowledges that:

a. Pursuant to applicable law, he has been offered the opportunity to review a copy of this Agreement for a period of twenty-one (21) days (the "Review Period");

b. The City advised Mr. Wayman to consult with an attorney of his choice prior to signing the Agreement; and

c. The terms and conditions of this Agreement have not been amended, modified, or revoked during the Review Period. The City agrees that Mr. Wayman shall have seven (7) calendar days (the "Revocation Period") following the date on which Mr. Wayman signs this Agreement to revoke his acceptance of the Agreement, and this Agreement shall not become effective until the Revocation Period has expired.

11. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. In the event any dispute arises regarding the terms of this Agreement, the parties specifically understand and mutually agree that the dispute shall be decided by retired judge Paris Kallas, with each party paying its own fees and costs to resolve such dispute.

12. I HAVE READ AND UNDERSTAND THE FOREGOING TERMS OF THIS AGREEMENT. I UNDERSTAND THAT BY SIGNING THIS AGREEMENT, I AM WAIVING CERTAIN RIGHTS. I FREELY AND EXPRESSLY ACCEPT AND AGREE TO ALL OF THE TERMS AND CONDITIONS OF THIS SEPARATION AGREEMENT, RELEASE AND HOLD HARMLESS.

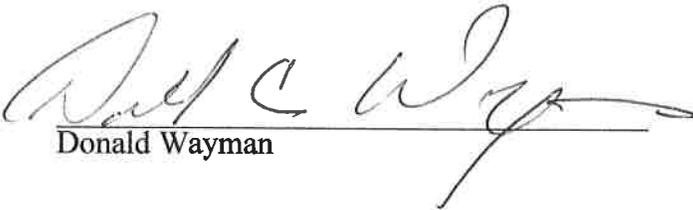
DATED this ___ day of November, 2021

The City of Selah

Sherry Raymond, Mayor,
After approval by the Selah City Council at an open public meeting

DATED this 11th day of November, 2021.

EMPLOYEE



Donald Wayman