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 23rd 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").

///
///
///
///

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”

Two Total Pages

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

By: _____
TIMOTHY JAMES HALL (WSBA #36372)

LARSON BERG & PERKINS PLLC
Attorneys for Defendant

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

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

[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)

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

“Attachment B”

Two Total Pages

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

By: _____
TIMOTHY JAMES HALL (WSBA #36372)

LARSON BERG & PERKINS PLLC
Attorneys for Defendants

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

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

[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)

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