

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 15th 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