

RESOLUTION NO. 3135

RESOLUTION AUTHORIZING THE MAYOR TO OFFER A CONTRACTUAL AMENDMENT TO THE CITY ATTORNEY AND, IF THE CITY ATTORNEY ACCEPTS SUCH OFFER, FURTHER AUTHORIZING THE MAYOR TO SIGN AND ENTER INTO THE AMENDMENT ON BEHALF OF THE CITY

WHEREAS, during February or March of 2021, the City entered into a twelve-page Employment Contract ("Contract") with D. R. (Rob) Case ("City Attorney" and/or "Employee"), with the employment relation under such Contract commencing on April 1, 2021; and

WHEREAS, such Contract remains in force and effect as of the present date and it has not been previously amended; and

WHEREAS, the City Council desires to authorize the Mayor to offer a contractual amendment to the City Attorney that will remove the annual vote during June of each year as to whether the period of financial severance coverage, if the City Attorney's employment is terminated by the City on a without cause basis, will or will not roll forward to a future year and, also, that will cap the amount of financial severance that would be owed irrespective of the year that the City Attorney's employment might be terminated by the City on a without cause basis; and

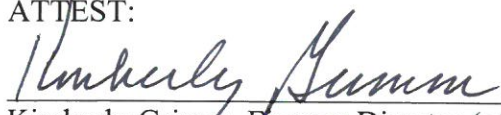
WHEREAS, a six-page Amendment to Employment Contract ("Amendment") has been prepared by City staff, and the terms thereof accurately reflect the specific contractual amendments that the City Council desires to authorize the Mayor to offer to the City Attorney; and

WHEREAS, the City Council finds that good cause exists;


NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SELAH, WASHINGTON, (1) that the Mayor be and is authorized to offer a contractual amendment to the City Attorney as set forth in the six-page Amendment appended hereto, and (2) that, if the City Attorney accepts such offer, the Mayor be and is authorized to sign and enter into the Amendment on behalf of the City.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF SELAH, WASHINGTON, this 9th day of July, 2024.


ATTEST:



Kimberly Grimm, Finance Director (a/k/a Clerk/Treasurer)


Roger Bell, Mayor

APPROVED AS TO FORM:


Rob Case, City Attorney

AMENDMENT TO EMPLOYMENT CONTRACT

Background:

During February or March of 2021, the City of Selah ("City") and D. R. (Rob) Case ("City Attorney" and/or "Employee") signed and entered into a written twelve-page Employment Contract ("Contract"), and the employment relation under such Contract commenced on April 1, 2021. Such Contract established an open-ended term, without any specific or contemplated end date. Such Contract remains in force and effect as of the present date and it has not been previously amended.

The parties now desire to amend to the Contract in limited regards. Specifically: (1) to eliminate the annual vote during June of each year as to whether financial severance coverage, if the City terminates the City Attorney's employment on a without cause basis, will or will not roll forward to a future year; and (2) to cap the amount of financial severance that would be owed irrespective of the year that the City Attorney's employment might be terminated by the City on a without cause basis.

Accordingly, the parties are now signing and entering into this written six-page Amendment to Employment Contract ("Amendment").

Preexisting Language:

At present (and prior to the instant Amendment taking effect), paragraph 6.1 of the Contract, which paragraph has the heading label "Termination on a 'Without Cause' Basis", and its subparagraphs, read and provide as follows:

- 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 uninterruptedly 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.

Effect of Preexisting Language:

At present (and prior to the instant Amendment taking effect), the effect of the above-quoted paragraphs from the Contract is as follows: (1) the City Council is required to hold a vote each June as to whether the applicability of financial severance will or will not roll forward to an additional future year; (2) the amount of financial severance that would be owed depends on which year the City Attorney's employment might be terminated by the City on a without cause basis, with the amount being three months of gross salary if the termination occurs during the year of 2024 and the amount being six months of gross salary if the termination occurs during the year of 2025 or a later year; and (3) the amount of financial severance is not capped in an overall dollar sense, but, as previously stated, would be calculated based on a number of months of the City Attorney's then-applicable gross salary.

Prior Votes and Current Status:

The City Council has voted each June following formation of the Contract, and the outcome of each vote has been that the applicability of financial severance has rolled forward to an additional future year following each vote. Coverage currently exist through the year of 2028, and the amount is not capped in a dollar sense.

Contractual Amendment & New Language:

The above-quoted preexisting language is now hereby amended, with some of the preexisting language remaining unchanged and a large portion of it being fully negated and replaced by entirely new language, as shown in the editing marks set forth below for ease of reference:

- 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 (Capped at \$100,000) During Fifth Year or Later. In the event the City effectuates as “without cause” termination during 2025 or thereafter, the City will pay Employee, as severance pay, the lesser of six (6) months of the Employee’s then-applicable base salary or the amount of one hundred thousand dollars (\$100,000.00).
- ~~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 uninterruptedly 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.~~

With the editing marks removed and thus in a “clean” presentation, this portion of the Contract will henceforth – following the instant Amendment – read and provide as follows:

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 (Capped at \$100,000) During Fifth Year or Later. In the event the City effectuates as “without cause” termination during 2025 or thereafter, the City will pay Employee, as severance pay, the lessor of six (6) months of the Employee’s then-applicable base salary or the amount of one hundred thousand dollars (\$100,000.00).

Effect of New Language – What Changes and What Does Not Change:

When the instant Amendment takes effect: (1) nothing will change with regard to the year of 2024; (2) for the year 2025 and thereafter, the amount of financial severance will be the lessor of six months of the Employee’s then-applicable salary or the amount of \$100,000, if the City terminates the City Attorney’s employment on a without cause basis; (3) the City Council will no longer need to vote each June as to whether the financial severance coverage will or will not roll forward to a future year, because coverage will permanently exist for all future years; and (4) nothing will change with regard to a termination on a with cause basis, and no financial severance will be owed if termination of that sort occurs.

Effective Date:

The parties agree that the amendments effectuated by this Amendment shall take effect and be applicable upon the parties’ mutual executions, and shall remain in force and effect indefinitely thereafter.

AGREED TO AND ENTERED INTO BY AND BETWEEN:

CITY OF SELAH (“City”)

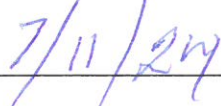
D. R. (ROB) CASE (“City Attorney” and/or
“Employee”)

By:


Roger Bell, Mayor


D. R. (Rob) Case

Dated:



Dated:

