

SETTLEMENT AND RELEASE AGREEMENT

THIS AGREEMENT is entered into as of the date fully executed below (“Effective Date”) by and between John “Juan” Orozco and the State of Washington.

RECITALS

WHEREAS, Mr. Orozco is currently employed by the City of Wapato as a City Administrator; and

WHEREAS, the State filed suit against Mr. Orozco, the City of Wapato, the Wapato City Council, and Wapato Mayor Dora Alvarez-Roa, alleging that Mr. Orozco’s appointment as City Administrator violated Washington’s Code of Ethics for Municipal Employees, RCW 42.23, and Open Public Meetings Act, RCW 42.30 (*State of Washington v. City of Wapato, et al*, Yakima County Superior Court, Case No. 19-2-02130-39, hereafter the “Lawsuit”);

WHEREAS, the parties wish to settle the Lawsuit without resort to further litigation;

NOW, THEREFORE, for and in consideration of the mutual promises and covenants contained herein, and for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties agree as follows:

1. Resignation. Mr. Orozco agrees to resign and terminate his position as City Administrator effective no later than 5 pm, July 19, 2019. Mr. Orozco further agrees to waive any right to severance, or any other compensation or benefits except for services rendered as of the Effective Date, he may have pursuant to any contract(s) or agreement(s) with the City of Wapato. Failure by Mr. Orozco to resign his position by the appointed time shall render this Agreement null and void. Orozco acknowledges he does not have any work-related injuries or illness.

2. Waiver of Severance. Upon his resignation and by no later than 5 pm on July 19, 2019, Mr. Orozco shall sign a release, attached hereto as Exhibit A, waiving any claims he may have against the City of Wapato related to his employment contracts and agreements with the City, including any right to receive severance from the City, or any other compensation or benefits except for services rendered as of the Effective Date.

3. Payment of Fine. Pursuant to RCW 42.23.050, within seven days of the Effective Date, Mr. Orozco shall pay a fine of \$500 to the City of Wapato.

4. No Future Employment with the City of Wapato. Mr. Orozco agrees that he will not apply for, seek, or accept any reinstatement or future elective or appointed office or employment of any type with the City of Wapato, including the City Council, and that the City of Wapato may disregard any application for employment submitted by Mr. Orozco. Mr. Orozco further agrees that he will not perform any services for the City of Wapato pursuant to any contract, and that the City of Wapato may disregard any application or bid by Mr. Orozco or any

company owned by, substantially controlled by, employing, or otherwise affiliated with Mr. Orozco.

5. Mutual Waiver and Release of Claims.

(a) With the exception of the obligations undertaken in this Agreement, the State hereby waives and releases the claims, causes of action, and rights pled in its complaint in the Lawsuit, namely, its claims that Mr. Orozco's appointment as City Administrator on September 4, 2018, violated the Code of Ethics for Municipal Employees and the Open Public Meetings Act. For the avoidance of doubt, this release covers all relief sought by the State in its complaint, including that Mr. Orozco be required to repay any and all salary paid under his City Administrator contract, but this release does not cover any claim or potential claim not explicitly pled in the State's complaint, including, without limitation, any additional claims under the Code of Ethics for Municipal Employees, the Open Public Meetings Act, or other statutes or common law causes of action.

(b) With the exception of the obligations undertaken in this Agreement, Mr. Orozco hereby waives and releases any and all claims, causes of action and rights, whether known or unknown, contingent or noncontingent, contractual or otherwise against the State or any of its agencies, and each of their respective officers, commissioners, trustees, departments, agents, representatives and employees, past and present, and each of their successors and assigns, and any other person or entity for whom the State could be held liable under any theory of recovery, arising from or in any way related to the Lawsuit. Mr. Orozco makes this commitment even though he understands that he may not, as of this date, know all of the claims he may lawfully have against the State and that he is relinquishing the right to pursue any claims that he could have pursued before courts or administrative agencies without having the opportunity to pursue those claims to a trial and have the damages set by a judge and/or jury.

6. Stipulation and Order of Dismissal. Within seven days of the State's confirmation that Mr. Orozco has paid the fine under paragraph 3 of this Agreement, the State shall take appropriate steps to dismiss Mr. Orozco from the Lawsuit.

7. Free and Voluntary Act of Mr. Orozco. Mr. Orozco agrees that he is entering into this Agreement freely and voluntarily and that he has been given adequate time to decide whether to sign this Agreement, and he signs it only after full reflection and analysis. Mr. Orozco further acknowledges that he has received an attorney's independent counsel and advice with regard to this settlement agreement and its terms; that he has read and understands the complete Agreement; and that neither the State nor its agents or representatives have made any representations to him concerning the terms or effects of this Agreement other than those contained herein.

8. No Admission of Liability. This Settlement and Release Agreement is the compromise of a disputed claim, and it shall not be construed as an admission by the State or Mr. Orozco of any liability, breach of any agreement between the State or Mr. Orozco, or violation by the State or Mr. Orozco of any statute, law or regulation.

9. Governing Law; Enforcement. Interpretation and enforcement of this Agreement shall be governed by the substantive and procedural laws of the State of Washington as of the Effective Date of this Agreement. Any suits brought to enforce the terms of this Agreement shall be brought in Yakima County Superior Court and no other court. In any such dispute, the prevailing party shall be entitled to recover its reasonable attorney's fees and costs, in addition to any other damages and remedies available at law or in equity.

10. Changes to Agreement. This Agreement may not be changed orally or by course of performance, but only in writing signed by all parties.

11. Severability. If any of the provisions of this Agreement shall prove to be invalid, void or illegal, it shall in no way affect, impair or invalidate any of the other provisions hereof.

12. Entire Agreement. This Agreement constitutes the entire agreement between the parties and all prior arrangements and negotiations between the parties are hereby deemed to be merged herein.

13. Not Construed Against Drafter. This Agreement has been jointly negotiated and prepared by the parties. In the event of a dispute regarding the interpretation of any provision of the Agreement, no part of this Agreement shall be construed against either party.

14. Counterparts and Facsimile Signatures. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. Delivery of any executed counterpart of a signature page to this Agreement by facsimile shall be as effective as delivery of an executed original counterpart of this Agreement.

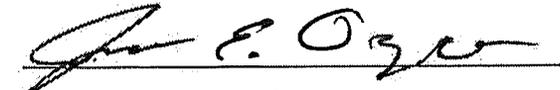
15. Authority. Mr. Orozco warrants that he has not assigned or otherwise transferred the claims made in this litigation, or any part thereof, and that he has full authority to settle this matter on his behalf.

16. No Waiver; Remedies. The failure of any party to insist upon strict adherence to any term of this Agreement on any occasion shall not be considered a waiver of such party's rights or deprive such party of the right thereafter to insist upon strict adherence to that term or any other term of this Agreement. The remedies provided in this Agreement are cumulative and not exclusive of any remedies provided by law.

(Signature on following page)

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the date first set forth above.

JOHN E. OROZCO


Date: 7-19-2019

OFFICE OF THE ATTORNEY GENERAL:

ANDREW R.W. HUGHES, WSBA #49515
Assistant Attorney General

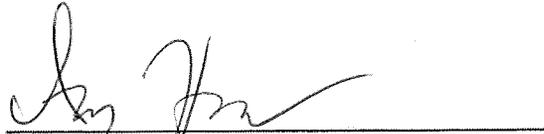

Date: 19 July 2019

Exhibit A

SETTLEMENT AND RELEASE AGREEMENT

THIS SETTLEMENT AND RELEASE AGREEMENT (the "Agreement") is entered into this date by and between Juan Orozco ("Orozco"), and the City of Wapato ("City"), collectively referred to as the "Parties."

I. RECITALS

A. Orozco and the City entered into that certain Employment Agreement, dated September 4, 2018 ("Original Agreement") for purposes of employing Orozco as the City Administrator of the City.

B. Due to concerns regarding the legality of certain terms in the Original Agreement, Orozco and the City subsequently entered into that certain Amended and Restated Employment Agreement, dated June 5, 2019 ("Restated Employment Agreement") for purposes of confirming Orozco's continued employment as City Administrator. The Restated Employment Agreement provided that if Orozco was terminated without cause, he would be eligible for severance benefits if he executed a release agreement substantially in the form attached to said Agreement.

C. On June 7, 2019, the Washington State Attorney General's Office filed a lawsuit in Yakima County Superior Court, Cause No. 19-2-02130-39 ("Lawsuit") against the City and Orozco, alleging violations of the Open Public Meetings Act and the Code of Ethics for Municipal Officers. The relief requested in the Lawsuit included, but was not limited to, a requirement that Orozco repay the City for any money paid to him by the City pursuant to the Original Agreement.

D. In order to avoid the costs associated with defending the Lawsuit, the Attorney General proposed settlement with Orozco on the condition that Orozco resign his employment with the City (without accepting severance) and execute a written release agreement to release the City, along with its elected officials, officers, agents, employees, volunteers, insurers, attorneys, or successors and assigns, from any and all claims for liability associated with his service to or employment with the City and/or at issue in the Lawsuit.

E. Orozco has agreed to accept the offer of settlement proposed by the Attorney General to terminate the Lawsuit and now desires to enter into this Agreement with the City (which Agreement was referenced and included as part of the Attorney General's offer of settlement).

II. AGREEMENT

In consideration of the foregoing recitals and mutual agreements contained in this Agreement, the Parties agree as follows:

1. The recitals set forth above are incorporated herein as if set forth in full
2. The Restated Employment Agreement is hereby terminated effective July 19, 2019. Orozco's active employment with the City shall be deemed to have ceased on July 19, 2019, and as

of that date, Orozco has no further rights or benefits of employment with City. As a condition of settlement of the Lawsuit, Orozco further acknowledges and agrees that he shall not be entitled to severance pay or any other benefit provided by the Employment Agreement.

3. Orozco, with the intention of binding himself, as well as his heirs, family members, executors and assigns, hereby fully and forever releases, waives and discharges City, along with its elected officials, officers, agents, employees, volunteers, insurers, attorneys, or successors and assigns from and agrees not to sue concerning any claim, duty, obligation or cause of action relating to any matters of any kind, whether presently known or unknown, suspected or unsuspected, that Orozco may possess arising from any omissions, acts or facts that have occurred up until and including the effective date of this Agreement. This release includes, without limitation, (i) claims for any and all sums payable to Orozco as a result of or in connection with Orozco's employment by City; and (ii) any and all claims, demands, rights, causes of action, and compensation of every kind and nature (including penalties, fines or interest) relating to or arising from Orozco's employment relationship with City and the termination of such employment relationship, including, without limitation, any and all statutory or common law claims for misrepresentation, breach of fiduciary duty, or breach of duty under applicable state law; along with any and all claims for: i) wrongful discharge of employment; ii) breach of contract, both express and implied; iii) workplace or sexual harassment; iv) retaliation; v) breach of a covenant of good faith and fair dealing, both express and implied; vi) negligent or intentional infliction of emotional distress; vii) negligent or intentional misrepresentation; viii) negligent or intentional interference with contract or prospective economic advantage; ix) defamation; x) negligence; xi) personal injury; xii) assault or battery; xiii) invasion of privacy; xiv) false imprisonment; xv) conversion; and xvi) violation of any federal, state or municipal statute, including, but not limited to the following: Title VII of the Civil Rights Act of 1964 (as amended), the Civil Rights Acts of 1991 and 1993, the Age Discrimination in Employment Act of 1967 ("ADEA"), the Older Workers Benefit Protection Act, Equal Pay Act of 1963, the Fair Pay Act of 2011, the Pregnancy Discrimination Act of 1978; the Consolidated Omnibus Budget Reconciliation Act, the Orozco Polygraph Protection Act, the Orozco Retirement Income Security Act, the Americans with Disabilities Act (as amended), the Genetic Information Non-Discrimination Act, the Fair Labor Standards Act (as amended), the Worker Adjustment and Retraining Notification Act of 1988, the Internal Revenue Code, the Law Against Discrimination of the State of Washington, the Washington Minimum Wage Act, the Washington Family Leave and Family Care Acts, and the Washington Equal Pay Act, along with any and all claims arising out of any other federal or state laws, or regulations or common law relating to employment or employment discrimination. This release also specifically includes any and all claims for attorneys' fees and costs, along with any and all claims for consequential injuries or damages, whether KNOWN or UNKNOWN, anticipated or unanticipated, direct or indirect, fixed or contingent, related to or arising, directly or indirectly, out of any aspect of Orozco's service to, employment with, or separation from City and/or at issue in the Lawsuit. The parties intend that this release shall fully discharge City to the maximum extent permitted by law.

4. No presently existing claim, right, cause of action, or demand is reserved, and Orozco expressly agrees that this release extends to and waives and releases any and all claims, damages, demands, costs, expenses, causes of action, and compensation of every kind and nature that Orozco or his family members are entitled to or may be entitled to or has as a result of employment with or separation from City.

5. Orozco agrees he has not and will not file any lawsuit or complaint for damages against City and any other affiliated entities or entities in which City holds an interest, along with its respective elected officials, officers, insurers, employees, volunteers, agents, attorneys, and successors and assigns, concerning any claims released in this Agreement.

6. Orozco agrees to cooperate reasonably and fully with the City and its respective elected officials, officers, agents, insurers, employees, volunteers, attorneys, successors or assigns in the City's prosecution or defense of any matter brought by or against the City or its respective, elected officials, officers, agents, insurers, employees, volunteers, attorneys, successors or assigns, about which he has any knowledge or expertise that was acquired in the course of his elected service to or employment with the City, or any action that is brought by reason of his acts or omissions, real or alleged, in connection with his service as an elected official or employment with the City. The City shall pay for Orozco's reasonable travel and witness fees in meeting his obligations under this paragraph as required by statute.

7. City and Orozco agree to act in good faith towards each other so as not to harm the reputation or business interests of either in any way, which obligation shall include, but is not limited to, a promise that the Parties will not disparage the services or reputation of each other.

8. Orozco represents and agrees that he will not seek employment with City, or any subsidiary of City, or any joint venture in which City participates, at any time, and that if he does so, City or any subsidiary of City or joint venture in which City participates shall have the absolute right to refuse to employ him, without recourse by Orozco or Orozco's marital community, or his heirs, successors, and assigns.

9. No waiver of the terms or other modification of this Agreement, including any covenant, condition or limitations herein contained, shall be valid unless in writing and duly executed by the party to be charged herewith. Upon execution of this Agreement, all previous agreements between the parties shall be revoked.

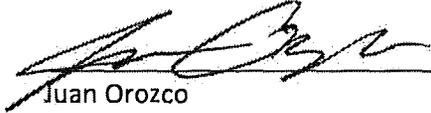
10. The Parties agree that this Agreement shall be governed by the laws of the state of Washington and that venue for any action under this Agreement shall be in Yakima County.

11. This Agreement contains the entire, full, and final agreement between the Parties regarding the settlement of the Lawsuit. The Parties further state that they have had the opportunity to read the foregoing Agreement and have had it fully explained to them by their attorneys. The Parties understand and appreciate the foregoing words and terms, their effect and sign this Agreement voluntarily of their own free will and accord.

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12. This Agreement may be signed in counterparts, each of which shall be an original, but all of which shall constitute one and the same Agreement. Signatures transmitted by facsimile or via PDF email shall be deemed valid execution of this Agreement, binding on the Parties.

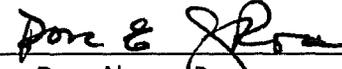
Orozco:



Juan Orozco

Date: 7-19-2019

City of Wapato



By: Dora Alvarez Roa
Its: Mayor

Date: 7-19-2019