

RESOLUTION NO. 2017-23

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WAPATO, WASHINGTON APPROVING THE EMPLOYMENT AGREEMENT - POLICE CHIEF BETWEEN THE CITY OF WAPATO AND DAVID SIMMONS

WHEREAS, David Simmons has been employed by the City of Wapato (the "City") since October 2016 as the City's interim police chief; and

WHEREAS, the City administration has been pleased with Mr. Simmons' performance as interim police chief; and

WHEREAS, pursuant to Revised Code of Washington 35.23.021 and Wapato Municipal Code 2.08.030, the police chief is an appointive position who serves at the pleasure of the Mayor; and

WHEREAS, the Mayor of the City extended an offer to Mr. Simmons to serve as the City's full-time police chief, contingent upon the City Council's approval of an Employment Agreement – Police Chief that has been negotiated by the City and Mr. Simmons. A copy of the Employment Agreement is attached hereto as Exhibit "A"; and

WHEREAS, the City Council of the City of Wapato finds that it is in the best interest of the City and the residents of the City to enter into an agreement with David Simmons for his services as Police Chief; now therefore,

BE IT RESOLVED BY THE CITY COUNCIL FOR THE CITY OF WAPATO, WASHINGTON, AS FOLLOWS:

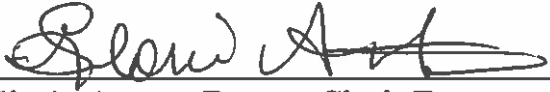
1. The City Council of the City of Wapato authorizes the Mayor, Tony Guzman, to execute the Employment Agreement – Police Chief between the City of Wapato and David Simmons in the form attached hereto as Exhibit "1."

ADOPTED BY THE CITY COUNCIL this 3rd day of April, 2017.



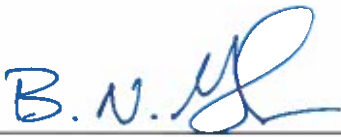
Tony Guzmán, Mayor

ATTEST:



Gloria Acosta, Deputy Clerk-Treasurer

APPROVED AS TO FORM:



Brett Goodman, City Attorney

1st Touch Date: 4/3/17

2nd Touch Date: 4/3/17

**CITY OF WAPATO
Employment Agreement
Police Chief**

THIS AGREEMENT, made and entered into this 3rd day of April, 2017 by and between the City of Wapato, Washington ("City") and David Simmons ("Employee").

R E C I T A L S:

- A. City desires to employ the services of Employee as Police Chief of the City of Wapato; and
- B. It is the desire of the City to establish certain conditions of employment for Employee; and
- C. It is the desire of the City to (1) secure and retain the services of Employee and to provide inducement for Employee to remain in such employment, (2) to make possible full work productivity by assuring Employee's morale and peace of mind with respect to future security; (3) to act as a deterrent against malfeasance or dishonesty for personal gain on the part of Employee; and (4) to provide a means for terminating Employee's services at such time as Employee may be unable fully to discharge Employee's duties due to disability or when City may otherwise desire to terminate Employee's services; and
- D. Employee desires to accept employment as Police Chief of City of Wapato, and to begin his regular employment on April 3, 2017.

City and Employee agree as follows:

Section 1. Duties.

The City hereby agrees to employ David Simmons as the Police Chief of the City to perform the functions and duties specified in City ordinances, and the job description attached as Exhibit A and to perform such other legally and ethically permissible and proper duties and functions as the City Council shall from time to time assign. The Employee shall devote full time to the performance of his duties. The Employee shall not engage in any other business activity, regardless of whether such activity is pursued for profit, gain, or other pecuniary advantage without prior written permission from the Mayor.

Section 2. Term.

- A. Nothing in this agreement shall prevent, limit, or otherwise interfere with the right of the Mayor to terminate the services of Employee at any time, subject only to the provisions set forth in Section 12 of this agreement.

- B. Employee agrees to remain in the employ of City for a period of three years from the date that this agreement is executed and, except as set forth in Section 1, neither to accept other employment nor to become employed by any other employer until this termination date, unless the termination date is affected as otherwise provided in this agreement. This provision shall not restrict Employee from using vacation or personal leave for approved teaching, consulting or other activities provided these activities do not conflict with the regular duties of the Employee.
- C. In the event written notice is not given by either party to terminate this agreement at least ninety (90) days prior to the termination date, this agreement shall be extended for successive one-year periods on the same terms and conditions as provided herein.
- D. In the event Employee wishes to voluntarily resign the position during the term of this agreement, Employee shall be required to give the City four weeks written notice of such intention, unless such notice is waived by the Mayor with the approval of the City Council. Employee will cooperate in every way with the smooth and normal transfer to the newly appointed individual. Employee shall not be entitled to any severance pay or other benefits which would have accrued to him if his employment had been terminated by the City.
- E. Employee must meet all of the certification requirements for a Chief of Police in Washington State as required by the Criminal Justice Training Commission as outlined in 35.21.333 and 43.101.095 RCW and 39-07 WAC. Failure to meet those standards shall automatically terminate this contract, and the employee will not be eligible for the severance provisions outlined in Section 12 of this contract.

Section 3. Salary.

Beginning April 1st, 2017, City agrees to pay Employee an annual salary of \$81,689.30. In addition, City agrees to annually review the salary of Employee. Any future increase(s) shall be determined by the City Council.

Section 4. Hours of Work.

It is recognized that Employee must devote a great deal of time outside the normal office hours to business of the City, and to that end Employee will be allowed to take compensatory time off as Employee shall deem appropriate during normal office hours, so long as the business of the department is not adversely affected. Work in excess of an average of forty (40) hours per week is deemed part of the professional responsibility for which the Employee shall not be paid overtime. The Employee shall be allowed flexibility in setting his office hours or hours of work when necessary to accommodate the needs of the police department.

Section 5. Automobile.

The City shall provide a police vehicle to Employee for his sole and exclusive use for travel while on duty, travel between his residence and work, and for any work related travel. Employee is permitted and encouraged to take the police car home so that he can travel to and from work in the event of an emergency. The vehicle will be fueled, insured and maintained at the City's expense. De-Minimis personal use of the vehicle by the Employee shall be permitted.

Section 6. Residence

Employee must maintain his personal residence within twenty (20) miles of the Wapato Police Department facility.

Section 7. Health, Welfare and Retirement.

Employee shall receive the same benefits as are provided for the other non-represented Department Directors within the City. This shall include fully paid medical, dental and vision insurance for the employee and his family. In addition, the employee shall be provided term life insurance in the same amount as provided for other Department Directors. The City shall contribute on behalf of the Employee into the LEOFF II retirement system as required and at the rate specified by the Washington State Department of Retirement Systems.

Vacation. Employee shall be credited four (4) weeks of vacation leave on the effective date of this agreement. On January 1, 2018 and each successive January 1 thereafter during the term of this Agreement, Employee shall accrue, in advance, five (5) weeks of vacation leave. Aside from accrual of vacation leave as set forth in this paragraph, all other provisions of the City's Personnel Policy shall apply to Employee's vacation leave.

Holidays: Employee shall receive paid holidays in accordance with the City's current policies and practices for non-represented Department Directors, which may be amended by action of the City Council.

Sick Leave: Employee shall earn sick leave pursuant to the City's Personnel Policy. Employee shall be credited with any accrued sick leave earned while serving as the Interim Police Chief prior to the date of this agreement.

Uniforms. City shall provide the appropriate uniforms necessary to perform the functions of the position. At the request of the Employee, the City shall provide a duty firearm and patrol rifle along with the necessary duty related equipment. The City shall provide footwear to the Employee, not to exceed \$200.00 per budget year.

Section 8. No reduction of Salary or Benefits

City shall not at any time during the term of this agreement reduce the salary, compensation, or other financial benefits of the Employee by a greater percentage than applicable to across the board decreases to the City's police officers or other similarly situated non-represented Department Directors of the City, except that this Agreement may be amended at any time by mutual consent of the parties.

Section 9. Expenses, Dues and Subscriptions.

City shall pay all reasonable and necessary business expenses of the Employee incurred in the performance of his duties, or as an official representative of the City, including attendance by him at civic events, subject to the availability of funds.

City agrees to budget and to pay for the professional dues and subscriptions of Employee necessary for the continuation and full participation in national, regional, state and local associations and organizations necessary and desirable for Employee's continued professional participation, growth and advancement, and for the good of the City.

Section 10. Professional Development.

- A. The City hereby agrees to annually budget and allocate sufficient funds to pay the expenses of the Police Chief's necessary travel and living expenses to represent the City at conferences or meetings of national and state committees or commissions upon which the Police Chief serves as a member, said membership on said state commissions or committees being subject to the approval of the Mayor, and for such other official meetings or travel as are reasonably necessary for the professional advancement of the Police Chief as approved by the Mayor.
- B. City also agrees to budget and to pay for the travel and subsistence expenses of Employee for short courses, institutes and seminars that are necessary for his professional development and for the good of the City.

Section 11. Professional Liability.

The City agrees that it shall defend, hold harmless, and indemnify the Employee from all demands, claims, suits, actions, errors, or other omissions in legal proceedings brought against the Employee in his individual capacity or in his official capacity, provided the incident arose while the Employee was acting in good faith within the scope of his employment. This section will survive the termination of the Agreement and inure to the benefit of the heirs of the Employee.

The City may compromise and settle any such claims or suit and pay the amount of any settlement or judgement rendered.

Section 12. Suspension and Termination.

A. The Mayor may, by written notice, discipline, suspend or terminate the Employee at any time during the term of this Agreement. Employee understands and acknowledges that Employee holds an exempt, management position and serves at the pleasure of the Mayor pursuant to RCW 35.23.021 and Wapato Municipal Code 2.08.030. Employee understands and acknowledges that Employee is exempt by state law and the Wapato Municipal Code from the Civil Service Rules of the City. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the City to terminate the services of the Police Chief at any time, for any reason, subject only to the severance provisions set forth in subsection B below. To the extent any policy of the City, in writing or based on past practice, is inconsistent with this Agreement, this Agreement shall control.

B. **Termination by City Without Cause.** If the Mayor determines, at any time and for any reason, that the Mayor has lost confidence in Employee, Employee may be terminated from employment by the City upon thirty (30) days advance notice. In lieu of providing thirty (30) days prior written notice of termination, City may place Employee on paid administrative leave status during the thirty (30) day notice period or any portion thereof.

In the case of the City's termination of Employee without cause, within ten (10) days of Employee's final day of employment, City shall pay to Employee a sum equal to five (5) months' base salary, benefits and any accrued but unused vacation leave, less any applicable or legally required deductions, as severance. Payment of any termination or severance pay pursuant to this section is expressly conditioned upon Employee's execution of a written release, in a form approved by the City Attorney, of all actual and potential claims against the City, its elected or appointed officers, employees, or agents, for any claims arising out of Employee's employment or Employee's termination of employment with the City. Without limitation of the foregoing, this release shall specifically include claims arising under the federal Civil Rights Act, the federal Equal Pay Act, the Washington state, local and federal laws against discrimination including without limitation, RCW Title 49, the Americans with Disabilities Act and Age Discrimination in Employment Act.

In the event of a newly elected or appointed Mayor, the City may not terminate the employee during the first sixty (60) calendar days of the Mayor being sworn into office except for cause.

C. **Termination by the City for Cause.** If the Mayor finds that there is cause to terminate Employee for any of the causes listed in this subsection, Employee shall be terminated immediately from employment by City. A settlement of all outstanding earnings shall be made as provided by law, and no other compensation shall be paid to Employee. Nothing in this section is intended to require any prior suspension, paid or unpaid, as a required disciplinary or pre-termination measure.

Causes for this action shall be:

- 1) Inefficiency, incapacity, conduct unbecoming, or insubordination, as opposed to mere personality difference.
- 2) Malfeasance – defined as a wrongdoing or misconduct by a public official in the line of work, or the commission of an act that is positively unlawful.
- 3) Misfeasance – defined as the doing of a lawful act in an unlawful or improper manner so that there is an infringement on the rights of others.
- 4) Nonfeasance – defined as the failure to do what the Mayor requires to be done, as long as it is not illegal and does not constitute a conflict of interest.
- 5) Material breach of the Agreement by the Employee;
- 6) Substantial dependence on any addictive substance, including, but not limited to, alcohol, cocaine, marijuana, LSD, or any other controlled substance or narcotic drug, the determination of what constitutes a substantial dependence being a conclusive determination of the City;
- 7) Violation of Federal, state or City laws, policies and rules as respects inappropriate gender-based conduct, gender-based discrimination, inappropriate conduct based on physical limitations, or disability-based discrimination;
- 8) Arrest for a criminal offense, the filing of a complaint, information or indictment alleging a crime or conviction, by a court of competent jurisdiction, of any crime;
- 9) Theft or personal use of public property in violation of the laws of this state;
- 10) Conviction, by a court of competent jurisdiction, of domestic violence, of any offense which renders Police Chief unable to possess a firearm, or which renders the Police Chief unable to be insurable at standard rates under the automobile insurance or liability insurance offered to City by its insurance pool; and,
- 11) Operation of a City owned vehicle while under the influence of or affected by alcohol or drugs. Such impairment may be evidenced by

a test of Police Chief's breath performed by any law enforcement officer or a test of Police Chiefs' blood performed by a qualified technician with a percent of blood alcohol in excess of .08 or the presence of any drug which is illegal under state or federal law whether criminal charges result or not.

D. Appeal of Just Cause Determination to City Council. Employee shall be entitled to a public hearing of any suspension or termination for just cause, if he so requests, in writing delivered to the Mayor, within ten (10) days of the decision to suspend or terminate employee for just cause. If a hearing is requested, the City Council shall determine whether the Employee was suspended or terminated for just cause. If the Council, acting with a quorum, finds just cause by majority vote, the suspension or termination shall be sustained. If the Council finds that just cause does not exist, the suspension or termination shall be deemed to be one without cause.

Section 13. Notices

All notices, requests, demands and other communications under this Agreement shall be in writing and shall be effective upon delivery by hand or three (3) business days after deposit in the United States mail, postage prepaid, certified or registered, and addressed to City at the address below, and or at the last known address maintained in the Employee's personnel file. Employee agrees to notify the City in writing of any change in his address during his employment.

City Notice Address: Wapato City Hall
 Attn: City Clerk/Treasurer
 205 East 3rd Street
 Wapato, WA. 98951

Employee Notice Address: [Deliver to last updated address in personnel file]

Section 14. General Terms and Conditions.

- A. This Agreement shall become effective upon signing by both parties.
- B. Integration - This Agreement sets forth and establishes the entire understanding between City and Employee relating to the employment of Employee by the City. Any prior discussions or representations by or between the parties are merged into and rendered null and void by this Agreement. This Agreement may be amended in writing at any time by mutual consent of the parties.
- C. For the purposes of the Fair Labor Standards Act, the Police Chief's position shall be deemed an exempt employee.

- D. This Agreement shall prevail over any conflicting provisions of any personnel manual, rule or regulation enacted by the City. This Agreement shall be governed by the laws of the State of Washington.
- E. Binding Effect - This Agreement shall be binding on City and Employee as well as their heirs, assigns, executors, personal representatives and successor in interest.
- F. Enforcement – The prevailing party in any action brought to enforce this Agreement or resolve any dispute or controversy arising under the terms and conditions hereof shall be entitled to payment of reasonable attorneys' fees and costs.
- G. Arbitration. Any claim or controversy that arises out of or relates to this Agreement, any breach of it, or Employee's employment relationship with the City, will be settled by arbitration in Yakima County, Washington in accordance with the rules then in effect of the American Arbitration Association. Judgment upon the award rendered may be entered in the Yakima County Superior Court.

Section 15. Severability.

If any court of competent jurisdiction holds any provision of this Agreement to be invalid, unenforceable, or void, the remainder of this Agreement shall remain in full force and effect.


Section 16. Acknowledgment.

Employee acknowledges that he has had the opportunity to consult legal counsel in regard to this Agreement, that he had read and understands this Agreement, that he is fully aware of its legal effect, and that he has entered into it freely and voluntarily and based on his own judgement and not on any representations or promises other than those continued in this Agreement.

IN WITNESS WHEREOF, CITY has caused this Agreement to be signed and executed on its behalf by its Mayor and duly attested to by its City Clerk, and Employee has signed and executed this Agreement as of the date and year first written above.

CITY OF WAPATO

EMPLOYEE

By: 
Tony Guzman, Mayor

By: 
David Simmons

ATTEST:

By: 
Sue Pearson, City Clerk/Treasurer

APPROVED AS TO FORM:

By: 
City Attorney