

RESOLUTION NO. 1257

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EDMONDS, WASHINGTON, DECLARING VOID TWO PURPORTED AGREEMENTS THAT WERE SIGNED BY MAYOR MIKE COOPER AND EXECUTIVE ASSISTANT KIMBERLY COLE .

WHEREAS, a document entitled “CR2A Agreement Between the City of Edmonds and Kimberly Cole” was signed by Mayor Mike Cooper and Kimberly Cole on September 22, 2011; and

WHEREAS, a second document entitled “Separation Agreement and General Release between Kimberly Cole and City of Edmonds” was signed by Mayor Mike Cooper and Kimberly Cole on approximately September 23, 2011; and

WHEREAS, pursuant to RCW 35A.11.010, the City Council is vested with the authority to contract on behalf of the City of Edmonds; and

WHEREAS, the City Council has delegated some contracting authority to the Mayor, specifically the authority to contract for goods and services valued at less than \$100,000.00; and

WHEREAS, the two purported separation agreements are not contracts for goods or services; and

WHEREAS, the City Council has not delegated any other authority for the Mayor to enter into employment separation agreements on behalf of the City; and

WHEREAS, the CR2A Agreement Between the City of Edmonds and Kimberly Cole, signed on September 22, 2011, and the Separation Agreement and General Release between Kimberly Cole and City of Edmonds, September 23, 2011, were signed by the Mayor in the absence of such authority, now therefore,

THE CITY COUNCIL OF THE CITY OF EDMONDS, WASHINGTON, HEREBY RESOLVES AS FOLLOWS:

Section 1. Ultra Vires Act. The Mayor’s actions in purportedly executing two separation agreements with Kimberly Cole were ultra vires actions in that he had no authority to enter into such agreements, notwithstanding initial advice to the contrary.

Section 2. Agreements Declared Void. The September 22, 2011 CR2A Agreement Between the City of Edmonds and Kimberly Cole and the September 23, 2011 Separation Agreement and General Release between Kimberly Cole and City of Edmonds are void *ab initio*, have no legal effect, and the City of Edmonds shall not be bound by them.

Section 3. No Payment. Because the two purported agreements are void, the City shall not make any payment pursuant to the two purported agreements.

RESOLVED this 4<sup>th</sup> day of October, 2011.

CITY OF EDMONDS



COUNCIL PRESIDENT STROM PETERSON

ATTEST:

  
CITY CLERK, SANDRA CHASE

FILED WITH THE CITY CLERK:	10/04/2011
PASSED BY THE CITY COUNCIL:	10/04/2011
RESOLUTION NO. 1257	

**CR2A Agreement Between the City of Edmonds and Kimberly Cole**

The parties signed hereunder agree to the following:

1. The two parties will agree on the separation of Kimberly Cole from the City of Edmonds effective upon signed.
2. Neither party agrees to speak to the press regarding any matter related to her employment at the City of Edmonds for 1 year from the point of this agreement and separation.
3. Within 30 days of separation, the City of Edmonds will compensate Kimberly Cole \$65,000 in a one-time lump sum payment. The City of Edmonds will be responsible for the costs associated with a continuation of the current level of health care benefits to Ms. Cole for a period of 12 months from the date of this agreement.
4. Kimberly Cole will be allowed 30 minutes to clean out her office with the appropriate supervision in place, and will be escorted at all times while on City of Edmonds premises.
5. All rights to a future legal remedy for claims against the City of Edmonds are reserved by Kimberly Cole.
6. The City of Edmonds agrees not to contest any application for unemployment benefits by Kimberly Cole.
7. The parties agree to release the following statement to the City of Edmonds staff:

“By mutual agreement, and unrelated to any disciplinary action, Kimberly Cole is no longer employed by the City of Edmonds.”

8. The City of Edmonds commits to complete the current work load assigned to Kimberly Cole in a timely manner, and will produce a memorandum explaining the reasons for any lack of timely work product completion and not a function of Kimberly Cole’s work performance.

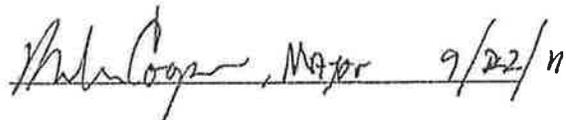
Signed by:



For Kimberly Cole

9/22/11

Date



For the City of Edmonds

Date

**SEPARATION AGREEMENT AND GENERAL RELEASE  
BETWEEN  
KIMBERLY COLE AND CITY OF EDMONDS**

**I. RECITALS**

1. This Separation Agreement and General Release ("Agreement") is between Kimberly Cole her marital community or domestic partnership, heirs, administrators, representatives, executors, attorneys, successors and assigns ("You" or "Your") and the City of Edmonds its affiliates, employees, members, directors, officers, agents, attorneys, successors, and assigns ("EMPLOYER"), collectively, the "Parties."
2. You have been employed by EMPLOYER since August 1, 2010.
3. Both You and EMPLOYER are desirous of resolving all matters, known or unknown, arising out of Your employment with EMPLOYER and separation from EMPLOYER according to the terms, conditions and consideration included in this Agreement.
4. This Agreement is dated for reference purposes September 23, 2011, which is the date EMPLOYER delivered this Agreement to You for Your consideration.

**II. AGREEMENT**

This Agreement represents the entire understanding and agreement between the parties concerning Your employment with and separation from employment with EMPLOYER. This Agreement supersedes any prior oral understandings, agreements or representations between the parties.

All payments made in accordance with this Agreement are less lawful or authorized deductions, including withholding for federal and any state taxes. EMPLOYER makes no representations as to the tax consequences to You. You acknowledge that You have had adequate time to consult a financial advisor or accountant before signing this Agreement.

Based on the above set out recitals, the parties agree that only if all conditions of this Agreement are met will the following terms apply:

**A. EMPLOYER'S OBLIGATIONS**

1. Separation Date. You understand that EMPLOYER is separating You from employment. The effective date of Your separation from employment is September 22, 2011 ("Separation Date").
2. Personnel File. Your Personnel File will reflect "resignation" as the reason for Your separation from employment.
3. Separation Pay. EMPLOYER will pay You <sup>eighty four thousand</sup> ~~Seventy Seven~~ Thousand dollars (\$84,000) as separation pay, less all lawful and authorized deductions. This separation pay, to which You otherwise would not be entitled, is paid in consideration for Your signature on this Agreement. EMPLOYER will make this separation payment to You on EMPLOYER's next regularly scheduled payroll date after the Effective Date of this Agreement.
4. Unemployment. If requested by the Washington State Employment Security Division ("Division"), EMPLOYER will inform the Division that it will not contest Your application for unemployment and will not appear at any hearing. EMPLOYER will do so, so long as in

*h*

EMPLOYER's opinion, the reasons given by You for separation are accurate. Characterizing Your separation to the Division as resignation is acceptable to EMPLOYER.

5. COBRA Continuation Coverage. Your normal participation in EMPLOYER's group medical/dental will terminate on the last day of the month in which the Separation Date fell. If You would like to continue coverage after September 30, 2011, coverage thereafter will be made available to You and Your eligible dependents pursuant to current federal law (COBRA), at EMPLOYER's expense for a period of twelve (12) months from the beginning date of Your COBRA eligibility. Following Your separation from employment, information will be provided to You regarding this coverage.
6. Termination of Benefits. Your participation in all other EMPLOYER benefit plans and programs ended or will end either (a) on the Separation Date, or (b) on the last day of the month in which the Separation Date fell, if so provided in the applicable benefit plan or program. Your rights under any pension benefit plans in which You may have participated will be determined in accordance with the written plan documents governing those plans.

## **B. YOUR OBLIGATIONS**

1. Your Authority. You represent and warrant that You have all necessary authority to enter into this Agreement (including, on behalf of Your marital community or domestic partnership, if any) and that You have not transferred any interest in any claims to Your spouse, domestic partner or any third party.
2. No Additional Compensation. You expressly acknowledge and agree that You have no claims or entitlement to additional compensation or benefits from EMPLOYER, past, present or future, except as set out in this Agreement.
3. Benefits. You agree that You have already been informed of all rights and options pertaining to other benefits, entitlements or continuations, such as pension programs.
4. Representations Regarding Employment Status. You understand that Your Separation Date is the date that Your employment with EMPLOYER ended. You understand that You are not authorized to represent Yourself as affiliated in any way with EMPLOYER after this date, even if You receive severance payments after the Separation Date.
5. References. You will instruct all prospective employers to direct requests for references to EMPLOYER's Mayor However; You agree and acknowledge that EMPLOYER may state that its policy is to provide only dates of employment, current or last position held and current or last compensation level.
6. Return of Property. On Your Separation Date You will deliver to EMPLOYER's Mayor all EMPLOYER property, including keys, documents, computers, and other physical items or repositories of any confidential or proprietary information not on EMPLOYER premises, but within Your possession or control, whether stored in traditional files or in any electronic or digital media.
7. Cooperation Regarding Other Claims and Preservation of Privilege. If any claim is asserted by or against EMPLOYER as to which You have relevant knowledge, You will reasonably cooperate with EMPLOYER in the prosecution or defense of that claim, including by providing truthful information and testimony as reasonably requested by EMPLOYER. You will also

continue to respect and preserve the attorney-client privilege and work product doctrine as to those legal matters to which You were privy during Your employment.

8. Agreement Confidentiality. As further specific consideration, You agree that the terms of this Agreement are intended to be confidential between the Parties. Except in response to a lawful subpoena, court order or governmental administrative request, or as otherwise permitted by law, neither You, nor EMPLOYER, will discuss the terms of this Agreement with any third party, including but not limited to, members of the press, and any current or former employee of EMPLOYER except where necessary for the full implementation of this Agreement. The sole exceptions are that You may discuss the terms of this Agreement with Your spouse or domestic partner, Your attorney(s), and tax advisor(s).
9. Waiver and Release of Claims.
  - a. You hereby release (a) EMPLOYER (b) each of their past and present members, officers, managers, agents, employees, representatives, administrators, insurers, and fiduciaries, and (c) the predecessors, successors, transferees and assigns of each of the persons and entities described in this sentence, from any claims of wrongful termination.
  - b. Any and all rights pertaining to complaints, actions, or future legal remedies for claims against EMPLOYER are reserved by You, unless expressly waived in Section 9(a) of this Agreement.
10. Affirmations.
  - a. You affirm that as of the date of this Agreement You have not filed, caused to be filed, or presently are a party to any claim, complaint, or action against EMPLOYER in any forum or form.
  - b. You acknowledge that in the event You are hired in the future by EMPLOYER that EMPLOYER may terminate Your employment at-will and without notice.
  - c. You acknowledge that this Agreement does not limit either Party's right, where applicable, to file or participate in an investigative proceeding of any federal, state or local governmental agency. You acknowledge that nothing in this Agreement affects Your rights under any ERISA plan, nor does it affect any legal rights that may arise after the Effective Date.

**C. NONADMISSION**

This Agreement shall not be construed as an admission by You or EMPLOYER of any liability to each other, breach of any agreement between EMPLOYER and Yourself, or violation of any statute, law or regulation, nor shall it be construed as an admission of any deficient performance or violation of any statute, law or regulation or professional obligation by You.

**D. GOVERNING LAW**

This Agreement is governed by the laws of the State of Washington that apply to contracts executed and to be performed entirely within the State of Washington.

**E. HEADINGS NOT CONTROLLING**

The headings in the Agreement are for convenience only and shall not affect the meaning of the terms as set out in the text.

**F. ATTORNEY'S FEES**

In any dispute involving this Agreement, each party shall be responsible for their own attorney's fees and costs.

**G. SEVERABILITY**

It is further understood and agreed that if any of the provisions of this Agreement are held to be invalid or unenforceable, the remaining provisions shall nevertheless continue to be valid and enforceable.

**H. EFFECTIVE DATE**

This Agreement shall become effective when it is signed by You and EMPLOYER.

**I. COMPLETE AGREEMENT**

This Agreement represents and contains the entire understanding between the parties in connection with the subject matter of this Agreement. It is expressly acknowledged and recognized by all parties that there are no oral or written collateral agreements, understandings or representations between the parties other than as contained in this document. Any modifications to this Agreement must be in writing and signed by both parties to be effective.

**J. COUNTERPARTS**

This Agreement may be executed in duplicate originals, each of which is equally admissible in evidence, and each originally shall fully bind each party who executed it. A facsimile copy of the signature may be submitted as proof of execution, but the original signature page shall be sent by U.S. Mail to the EMPLOYER no later than three (3) days after signature.

**ACCEPTANCE OF AGREEMENT**

I agree and accept this Agreement. This Agreement is the final and complete expression of all Agreements between me and EMPLOYER on all subjects and supersedes and replaces all prior discussions, representations, agreements, policies, and practices. I acknowledge that I am not signing this Agreement relying on anything not set out herein.

This Agreement consists of four (4) pages.

  
\_\_\_\_\_  
Kimberly Cole

9/23/11  
\_\_\_\_\_  
Date

Agreed by EMPLOYER

  
\_\_\_\_\_  
Mike Cooper, Mayor

9/23/11  
\_\_\_\_\_  
Date