

RESOLUTION NO. 2014-521

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
MILL CREEK, WASHINGTON, AUTHORIZING A
SEPARATION AGREEMENT WITH KENNETH ARMSTRONG**

WHEREAS, the City Council adopted Resolution No. 2014-518 that will effectively terminate Kenneth Armstrong's employment on December 30, 2014, if he does not file a written reply to the resolution by December 29, 2014; and

WHEREAS, Resolution No. 2014-518 further directs the City Attorney to prepare a Separation Agreement consistent with Mr. Armstrong's employment agreement; and

WHEREAS, the City Attorney prepared such agreement, presented it to Mr. Armstrong, and Mr. Armstrong requested the agreement be modified to extend his paid administrative leave to January 2, 2015, in order to allow him one additional month of health insurance benefits;

NOW THEREFORE, the City Council of the City of Mill Creek, Washington resolves as follows:

Section 1. The City Council authorizes the Acting City Manager to execute the separation agreement attached as Exhibit A to this Resolution (Agreement) if Kenneth Armstrong signs and returns the Agreement by December 23, 2014. If the Agreement is executed by December 23, 2014, and Mr. Armstrong does not revoke his acceptance of the agreement pursuant to the terms therein, Mr. Armstrong shall be allowed to resign effective January 2, 2015, and remain in paid administrative leave status until that time. If the Agreement is not timely executed or Mr. Armstrong timely revokes his acceptance, the removal terms of Resolution No. 2014-518 shall remain in full force and effect.

APPROVED in open meeting this 2nd day of December, 2014, by a vote of
6 for, 0 against, and 0 abstaining. (Mayor Pro Tem
Hainsworth absent)


PAM PRUITT, MAYOR

ATTEST/AUTHENTICATED:



KELLY M. CHELIN, CITY CLERK

APPROVED AS TO FORM:

SHANE MOLONEY, CITY ATTORNEY

FILED WITH THE CITY CLERK: 12/2/14

PASSED BY THE CITY COUNCIL: 12/2/14

EFFECTIVE DATE: 12/2/14

RESOLUTION NO.: 2014-521

SEPARATION AGREEMENT

1. Parties

This Separation Agreement ("Agreement") is entered into by and between the City of Mill Creek, 15728 Main Street, Mill Creek, Washington ("City") and Kenneth Armstrong ("Armstrong").

2. Recitals

A. On November 25, 2014, the City of Mill Creek City Council passed Resolution No. 2014-518, stating its intent to terminate Armstrong pursuant to the procedures dictated by RCW 35A.13.130 and RCW 35A.13.140. At the same meeting, the Council passed Resolution No. 2014-519, placing Armstrong on paid administrative leave.

B. So long as Armstrong does not file a written reply to Resolution No. 2014-518 with the City Clerk by December 29, 2014, that Resolution will serve as the final Resolution removing and terminating Armstrong from his employment with the City, effective December 30, 2014.

C. In City Contract 2012-1030 ("Services Contract"), the Parties agreed that if the City Council passed a resolution to remove Armstrong's employment for any reason other than "cause" as defined by the Services Contract, Armstrong would have the option of receiving compensation in the amount of three months of his base salary, less any salary received by Armstrong as paid administrative leave after a resolution of removal. The accrual period for such compensation started upon passage of Resolution No. 2014-518 on November 25, 2014. For Armstrong to exercise his option to receive said compensation, Armstrong must first voluntarily resign in lieu of filing a reply to the resolution of removal, and sign a release of all claims against the City, its elected and appointed officers, employees and agents, for all claims arising out of Armstrong's employment or Armstrong's termination of employment with the City.

D. The Parties agree Armstrong's termination was for reasons other than "cause" as defined by the Services Contract and Armstrong wishes to waive his right to file a reply to Resolution No. 2014-518 and the public hearing that would result from his filing such reply.

E. Both parties wish to resolve all issues relating to Armstrong's employment and ending of employment with the City on the terms and conditions set forth below. The terms and conditions of this Agreement are intended to be consistent with the Services Contract, but to avoid any potential conflicting interpretations, the parties agree that this Agreement will replace and supersede the Services Contract.

F. The City has provided Armstrong with at least 21 days to consider this Agreement and to seek legal advice if he chooses to do so. Armstrong has consulted with an attorney of his choice, or has voluntarily elected not to do so, and understands that by signing this Agreement he is waiving all potential claims against the City.

3. Terms and Conditions

WHEREFORE, in consideration of the recitals and the mutual benefits and promises of this Agreement, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

A. Armstrong hereby waives any right he may have under RCW 35A.13.140 to a public hearing regarding his termination and agrees not to file a reply to Resolution No. 2014-518. Armstrong hereby agrees to resign his employment with the City effective January 2, 2015. Until that time, Armstrong shall remain on paid administrative leave, without any authority to act on behalf of the City. Armstrong acknowledges the City may begin its search for a replacement city manager before the effective date of his removal/resignation. So long as this Agreement is executed and ratified according to the terms herein, the City Council agrees that this Agreement will supersede Resolution 2014-518 so that Armstrong will be allowed to resign effective January 2, 2015.

B. Except for his car allowance benefit, Armstrong shall be paid his regular salary and benefits through January 2, 2015, and shall be paid his accrued and unused vacation time, all in accordance with the City's usual procedures. Armstrong's car allowance benefit will be paid for December 2014, but not January 2015. The Parties agree that payment of Armstrong's salary from November 26, 2014, to January 2, 2015, satisfies the requirements for pay in RCW 35A.13.140 and will be deducted from the three months of Termination Pay contemplated by Section 7.B of the Services Contract. Except for as provided in Paragraph 3.C below, no salary or benefits shall be paid or accrue after January 2, 2015. Armstrong may avail himself of the usual benefits and rights of employees who end their employment with City (e.g., continuation of medical insurance coverage upon his payment of premiums under COBRA, rollover of vested retirement or deferred compensation accounts, etc.).

C. In consideration for the release of claims set forth in Paragraph 3.D below and waiver in 3.A above, Armstrong shall be paid an amount equal to three (3) months of his regular base salary as a lump sum, less federal taxes and other required withholding, all in accordance with the City's usual procedures, and less the salary paid to Armstrong between November 26, 2014 and January 2, 2015, while he was on paid administrative leave. Such payment shall be made by January 20, 2015, but no earlier than the time this Agreement is ratified by the City Council nor earlier than the revocation period described in Paragraph 3.E below and provided that this Agreement has not been revoked by Armstrong pursuant thereto.

D. In consideration for the payment specified in Paragraph 3.C above, Armstrong for himself and his marital community if any (collectively for purposes of this Paragraph 3.D, "Armstrong"), expressly waives all claims, known or unknown, against the City, its officers, elected officials, employees, and agents (collectively for purposes of this Paragraph 3.D, "City"), and expressly releases the City from all claims that Armstrong may have in any way connected with or arising from his employment with the City and the termination thereof. This waiver and release includes but is not limited to all claims for wages, bonuses, employment benefits, and damages of any kind connected with or arising out of any contracts (express or implied), any covenant of good faith and fair dealing (express or implied), any theory of wrongful discharge,

and any other claim whether at common law or arising from or under any local, state or federal law, including Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, as amended by the Older Workers' Benefit Protection Act, the Americans with Disabilities Act, the Washington Law Against Discrimination, the Family and Medical Leave Act, the Fair Labor Standards Act, the Uniformed Services Employment and Reemployment Act of 1994, and RCW 35A.13.130 et. seq. Armstrong warrants and represents that he has received all benefits and rights he is entitled to receive under the local, state and federal statutes or claims listed above, and that he has not filed and will not file any complaints or lawsuits against the City for the matters covered under this Paragraph 3.D.

E. For this Agreement to be effective, Armstrong must sign and return this Agreement to the City Attorney on or before December 23, 2014. Armstrong acknowledges that he had at least twenty-one (21) days to consider this Agreement before signing, should Armstrong choose to avail himself of such time period. Armstrong has a period of seven (7) days after delivering the executed Agreement to the City Attorney in which to revoke his acceptance, and if not so revoked, this Agreement shall be final. Should Armstrong revoke his acceptance, Resolution 2014-518 will remain in effect and this Agreement shall be void.

F. The provisions of this Agreement are severable, and if any part is found to be unlawful or unenforceable, the other provisions shall remain fully valid and enforceable to the maximum extent allowed by law.

G. Armstrong represents and agrees that he has read this Agreement, understands its terms and the fact that it releases all claims he might have against the City, its officers, elected officials, employees and agents, understands that he has the right to consult counsel of his choice and has either done so or knowingly and voluntarily waived the right to do so, and enters into this Agreement without duress or coercion of any kind.

H. This Agreement sets out the entire understanding of the parties and supersedes all prior agreements and understandings, express or implied, pertaining to the terms of Armstrong's employment with the City and the termination of his employment relationship. Armstrong acknowledges that he has not relied on any representation or statement by any representative of the City concerning the subject matter of this Agreement.

I. This Agreement is subject to ratification by the Mill Creek City Council, which shall occur no later than its next regular meeting following expiration of the 7-day revocation period described in Paragraph 3.E above.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the dates stated below.

City of Mill Creek

Kenneth Armstrong

Landy Manuel Date
Acting City Manager

Kenneth Armstrong Date

ATTEST:

Kelly Chelin, City Clerk

APPROVED AS TO FORM:

Shane Moloney, City Attorney