

Exhibit 1

TO: Citizens of Mukilteo
FROM: Mukilteo City Council
DATE: May 20, 2019
RE: Follow-Up on Severance Agreement Issue

In 2018, the City Council undertook an examination into the approval of severance payments to departing City employees over the last several years. This issue was also reviewed by the Washington State Auditor's Office as part of the City's annual audit. The following provides background information and findings as a result of the City Council's examination.

From as far back as November 2005 until February 2018, the Mayor had a practice of entering into "agreements regarding termination and severance benefits" ("Termination Benefits Agreements") with newly hired employees that outlined the terms of any future separation with the City and typically committed to the payment of up to two (2) months of the employee's base salary. Upon termination, the City then entered into a "Severance Agreement, Release and Hold Harmless" contract ("Severance Agreement") with the departing employee. The Severance Agreements provided for the payment of varying amounts of severance in exchange for releasing the City from any potential claims or damages that had or could have arisen during the period of employment. At times, the actual severance payouts were different than what had previously been agreed to in the Termination Benefits Agreements executed at the time of hiring. In addition, the City paid departing employees for the value of their accrued, unused leave balances and other benefits, sometimes contrary to the City's personnel policies.

The Employee Handbook does not provide for entering into Termination Benefits Agreements upon hire, Severance Agreements upon separation, or any other type of employment agreement (with the exception of Collective Bargaining Agreements), nor does the Employee Handbook provide for severance payments.

In total, the City has paid approximately \$252,936 to 12 former employees who separated from the City between 2014 and 2018. Some of these payments were made in consideration to settle pending or reasonably anticipated litigation. In addition, the payments included payouts for benefits as provided in the Employee Handbook. The current City Council was unaware that

the practice of entering to Termination Benefits and Severance Agreements was occurring, and, once the practice became known, some members of the City Council and citizens raised concerns. Thus, the City Council determined that the fiscally responsible thing to do was to undertake an examination into this practice, and specifically into whether the Mayor had the authority to enter into these agreements in the first place.

In optional municipal code cities such as Mukilteo, the Mayor and the City Council each have important but distinct roles to play in personnel and contracting matters. The general public policy of the municipality is usually a matter for the legislative body to determine. It is then the Mayor's role to see that the policies are implemented.

City Council and Mayor powers and duties are described in RCW 35A.11.020 and RCW 35A.12.100, respectively. The role of creating and funding new positions rests with the City Council, which can create new positions when it prepares the annual budget or later through budget amendment. The City Council is also responsible for determining the salary, wage, and benefits of the positions it creates. RCW 35A.11.020.

Once positions have been created, however, the Mayor has broad authority to fill and oversee the positions. RCW 35A.12.100. The decision whether to hire a person into an open position, as well as any subsequent demotion or firing decisions, belongs to the Mayor, as chief executive, unless the City Council has reserved to itself the right to confirm the Mayor's personnel choices for specified positions. The City Council can, but is not required to, pass legislation establishing a hiring process for the Mayor to follow. RCW 35A.12.090. Such process might include mandatory advertising of job openings, setting minimum qualifications, and setting requirements for job applications and interviews. If the Council does create a hiring process, that process must be followed by the Mayor in making his or her selection. If not, the process is left to the Mayor's discretion.

With respect to approval of contracts, that power falls squarely under the purview of the City Council. See RCW 35A.11.010 (“[B]y and through its legislative body, [each] municipality [governed under RCW Title 35A] may contract and be contracted with[.]”). Absent a delegation of power to the Mayor or other unusual circumstances, the Mayor has no authority to enter into contracts on his or her own. However, in many cities, including Mukilteo, the legislative body has delegated some of its contracting authority to others. For example, pursuant to Mukilteo's Procurement Policies, contracts may be approved by Departments, the City Administrator, the Mayor, or the City Council depending on the value and type of purchase. However, those contracts are limited to “general” purchases, public works, professional and personal services, and architectural and engineering services. The City's Procurement Policies are silent on the specific authority to enter into employment contracts of any kind.

Chapter 43.09 RCW grants the Washington State Auditor's Office (“SAO” or “Auditor”) “the power to examine all the financial affairs of every local government and its officers and employees.” RCW 43.09.260 requires an audit of the City's financial affairs by the Auditor at

least once every three years. As part of the 2017 accountability audit and in response to specific requests to do so, the SAO reviewed Mukilteo's contract authority and the employment agreements described above. It is important to note that the SAO has no role in taking a position on the City's management decisions. The SAO looks for compliance with laws and policies, rather than making calls on whether the City's management decisions are good or bad decisions.

To that end, the SAO determined that the City's delegation in this particular instance is unclear. The Mayor had a "reasonable basis" to believe that she had been delegated the authority to enter into the contracts. The SAO did not find any bad intent or have any reason to doubt the truthfulness of the Mayor's statements. This, at the very least, made it unclear whether the Mayor had implied authority to enter into the contract. In addition, the SAO found it is not unusual for City Councils to delegate such authority to the Mayor. Thus, the SAO did not have enough information to make a finding here, and instead issued a management letter to point out the lack of sufficient internal controls and then help provide future guidance to the City. The management letter provided, in relevant part:

The City Council believes severance payments must be approved by the Council, in accordance with RCW 35A.11.010, whereas the Mayor stated she understood past City practice had been that the Mayor could enter into such agreements without Council approval.

Our audit found the City had not established a clear delegation of authority of what types of payments require Council approval and which items could be approved solely by the Mayor. Specifically, there is no provision in the City Code or other adopted procedures regarding such agreements. Although the Council subsequently passed a motion on August 6, 2018, "to require all severance and separation agreements, labor agreements and memorandums of understanding to receive prior approval by Council, and as amended," the motion was not supported by an approved written resolution or ordinance clarifying the conditions for which Council approval must be obtained.

The SAO then recommended that the City adopt a formal policy by resolution or ordinance regarding this contracting authority. The SAO did, however, acknowledge that it was likely impossible for the City Council to know that this practice had been occurring.

The majority of the City Council disagrees with the SAO's determination that the City's delegation was unclear and believes this contracting authority lies clearly within the purview of the Council pursuant to the RCWs. Furthermore, while the Auditor's determination is persuasive, it is not determinative. While there is still the potential that the courts would find that the contracts were improperly executed, a definitive answer could be costly and would take additional time.

At this time, the City Council is providing this information to the public in the interest of transparency.