

**RESOLUTION NO. 1368**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DAYTON, WASHINGTON, AUTHORIZING THE MAYOR TO EXECUTE AN EMPLOYMENT AGREEMENT WITH JAMES S. COSTELLO FOR SERVICES AS PUBLIC WORKS DIRECTOR FOR THE CITY OF DAYTON.**

**WHEREAS**, the City Council of the City of Dayton has been duly elected and is authorized to enter into contracts pursuant to RCW 35A.12.190; and

**WHEREAS**, James S. Costello has served the City since March 1, 1995 and currently serves as the City's Public Works Director, and

**WHEREAS**, the City desires to continue to employ James S. Costello to serve as Public Works Director and said James S. Costello desires to continue with the City in the position of Public Works Director of the City of Dayton; and

**WHEREAS**, the City and James S. Costello wish to establish terms and conditions under which the employment relationship will continue; and

**WHEREAS**, an employment agreement has been prepared in the form attached hereto as Exhibit "A".

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF DAYTON, WASHINGTON, DO HEREBY RESOLVE AS FOLLOWS:**

**Section 1.** The employment agreement between the City of Dayton and James S. Costello, in the form attached hereto as Exhibit "A" is hereby authorized and approved.

**Section 2.** The Mayor is hereby authorized to execute the employment agreement on behalf of the City of Dayton. The Mayor and his designee(s) are hereby authorized to implement such administrative procedures as may be necessary to carry out the directions of this legislation.

**Section 3.** This resolution shall take effect and be in full force upon passage and signatures hereon.

Approved and signed this 13 day of FEBRUARY, 2019.

**CITY OF DAYTON**



Craig George, Mayor

02/13/2019 Agenda:  
No. 7 (A)

Attested by:

A handwritten signature in blue ink, appearing to read "Trina Cole", written over a horizontal line.

~~Debra M. Hays, Deputy City Clerk~~  
TRINA COLE

Approved as to Form:

A handwritten signature in blue ink, appearing to read "Quinn Plant", written over a horizontal line.

Quinn Plant, City Attorney

Exhibit "A"  
Resolution No. 1368

City of Dayton  
Public Works Director  
Employment Agreement

**THIS AGREEMENT** is made this 13 day of FEBRUARY, 2019, between the City of Dayton, hereinafter referred to as "Employer" and James S. Costello, the City of Dayton's Public Works Director, hereinafter referred to as "Employee".

**WHEREAS**, the City of Dayton is organized as a municipality under the Revised Code of Washington (RCW 35A.12) as a non-charter, code city, Mayor/Council form of government, and

**WHEREAS**, James S. Costello has served the City since March 1, 1995 and currently serves as City's Public Works Director, and

**WHEREAS**, the City desires to continue to employ James S. Costello to serve as Public Works Director and said James S. Costello desires to continue with the City for the position of Public Works Director of the City of Dayton; and

**WHEREAS**, the purpose of this Agreement is to establish terms and conditions under which the relationship will continue; and

**NOW, THEREFORE**, in consideration of the mutual promises and agreements set forth herein, the Employer and the Employee do hereby agree as follows.

AGREEMENT

**Section 1: Term.**

- A. Effective Date.** This Agreement shall become effective on the date executed by both parties.
- B. Term of Agreement.** This Agreement contemplates a three (3) year term of employment commencing on the Effective Date.
- C. Renewal.** This Agreement may not be renewed.

**Section 2: Duties and Authority.**

The Employee shall operate within the statutory authority of strong Mayor - Council form of government, as set forth in RCW Chapter 35A.12. The Employee shall be responsible for executing the policies of the City established by the City Council in its ordinances, motions, and resolutions, and/or as assigned from time to time by the Mayor as provided in Chapter 1-4A of the Dayton Municipal Code. The Employee shall perform all duties described in the position description, if any, for the Public Works Director.

**Section 3: Compensation.**

- A. **Base Salary.** Employee's salary shall be set and paid in accordance with the City of Dayton Personnel Policies and Procedures for other non-represented full-time City employees. Employee shall be considered for future salary adjustments, all in accordance with the salary increase schedule for other non-represented City employees.
- B. **COLA.** The Employer agrees to increase the Employee's compensation each year by the same Cost Of Living Adjustment (COLA) granted to other regular full-time City employees starting in the year 2019.
- C. **Merit Program.** The Employee is eligible to participate in the Employer's Merit Award Program as established in accordance with the City of Dayton Personnel Policies and Procedures, so long as that program remains in effect and as provided.
- D. **Salary Reduction.** The Employer agrees not to reduce the salary or other financial benefits paid to the Employee in a percentage greater than any reduction applicable to all City employees.
- E. **Automatic Amendment.** This Agreement shall be automatically amended to reflect any salary adjustments that are provided or required by the City of Dayton Personnel Policies and Procedures manual.
- F. **Longevity.** The Employer shall pay longevity pay in accordance with the City of Dayton Personnel Policies and Procedures manual.

**Section 4: Health, Life Insurance and Disability Benefits**

- A. **Medical/Dental/Vision.** The Employer agrees to provide and to pay the premiums for medical, dental, and vision insurance for the Employee and his/her dependents for coverage levels equal to that which is provided to all other regular full-time City employees.
- B. **Life/Disability.** The Employer agrees to provide Employee with the same life, disability, and other insurance policies provided to, or as may be provided to, all other regular full-time City employees.

**Section 5: Vacation Leave, Sick Leave and Holidays**

- A. Employee shall maintain his existing vacation and sick leave schedule in accordance with the City of Dayton Policies and Procedures for other regular non-represented full-time employees of the City.
- B. **Recognized Holidays.** The Employee shall receive the same paid recognized City holidays as all other regular non-represented full-time City employees.

**Section 6: Retirement, Deferred Compensation, and Miscellaneous Financial Benefits**

- A. **Retirement Plan. Retirement Plan.** The Employer agrees to continue to contribute to the state employee retirement plan (PERS) and Social Security/Medicare
- B. **Additional Benefits.** The Employee is entitled to receive any and all other financial benefits that currently are or may be offered to regular full-time City employees as provided in the City of



Dayton Personnel Policies and Procedures manual.

### **Section 7: General Business Expenses**

- A. Professional Organizations and Development.** Subject to sufficient budget resources, the Employer agrees to budget for and to pay for the following:
1. Professional dues and subscriptions of the Employee necessary for continuation and full participation in national, regional, state, and local associations and organizations necessary and desirable for the Employee's continued professional participation, growth, and advancement, and for the good of the Employer;
  2. Travel and subsistence expenses of the Employee for professional and official travel, meetings, and occasions to adequately continue the professional development of the Employee and to pursue necessary official functions for the Employer, including but not limited to the ICMA Annual Conference, the state league of municipalities, and such other national, regional, state, and local governmental groups and committees in which the Employee serves as a member;
  3. Travel and subsistence expenses of the Employee for short courses, institutes, and seminars that are necessary for the Employee's professional development and for the good of the Employer.
- B. General Expenses.** The Employer recognizes that certain expenses of a work-related nature may be incurred by the Employee and agrees to reimburse or to pay said work-related expenses in the same manner as other City employees in accordance with City of Dayton Personnel Policies and Procedures.
- C. Civic Organizations.** The Employer acknowledges the value of having the Employee participate and be directly involved in local civic clubs or organizations. Accordingly, the Employer shall pay for the reasonable membership fees, meals, and/or dues to enable the Employee to become an active member in local civic clubs or organizations.

### **Section 8: Termination**

- A. Termination by the City without cause.** Consistent with RCW 35A.12.090, the Employee may be terminated from employment with the Employer by the mayor for any reason or for no reason at all. In the event the Employee is terminated during the three (3) year term of this Agreement for any reason than for "cause," as defined in Section 8.C of this Agreement, the Employer will be responsible for paying the Employee's compensation, as determined pursuant to Section 3 of this Agreement, for a period of one month for each year the Employee has been employed by the City, up to a maximum of 12 months, from the effective date of termination. The Employee shall not be entitled to health, life insurance and disability benefits, as described in Section 4 of this Agreement, subsequent to the effective date of termination.
- B. Termination by the Employee.** The Employee may terminate his employment with the Employer through voluntary resignation. The Employee shall endeavor to provide at least forty-five (45) days' notice, but not less than thirty (30) days' notice of his intent to terminate his employment, unless both Parties agree otherwise. The Employer may, at its option, discharge the Employee immediately and pay salary and benefits as if the Employee were fully employed until the end of the notice period.

**C. Termination for Cause.**

1. The Employee may be terminated for "cause" if the Employer has a fair and honest cause or reason to terminate the Employee regulated by good faith on the part of the Employer and based on facts:
  - a. that are supported by substantial evidence; and
  - b. that are not based upon any arbitrary, capricious, or illegal reason. Acts, errors, or omissions that discredit the City, or materially impair the provision of orderly services to the citizens of the City, as determined by the mayor, shall constitute "cause".
  
2. The following are additional examples of the types of conduct that may constitute "cause" and result in termination for cause-this list is not exhaustive nor is it intended to identify all possible bases for termination for "cause":
  - a. Consumption or possession of alcohol, illegal drugs, or controlled substances on the job, or arriving at work under the influence of alcohol, illegal drugs, or controlled substances;
  - b. Violation of a lawful duty;
  - c. Insubordination;
  - d. Conviction of a felony or misdemeanor involving moral turpitude;
  - e. Acceptance of fees, gratuities, or other valuable items in the performance of the Employee's official duties for the City; or
  - f. Engaging in any transaction or activity that is in conflict with or incompatible with the proper discharge of official duties.
  
3. The procedure for implementing termination for cause shall be in accordance with the principles of due process as hereafter set forth:
  - a. Prior to termination, the Employer shall notify the Employee of the reason(s) he/she is being terminated for cause and provide the Employee with an opportunity to respond prior to any final action being taken. Said response may be oral, in writing, or both oral and written.
  - b. The purpose of the foregoing procedure is to permit the Employee to intelligently respond to the reason(s) for termination for cause before a decision is irreversibly made, thus providing the Employer with an opportunity to re-evaluate the proposed decision in light of the Employee's response.
  
4. Upon termination for cause under this Section, this Agreement shall be terminated and no further salary or benefits may be paid to the Employee.

**Section 9: Employee Evaluations**

The Mayor shall review and evaluate the performance of the Employee in accordance with the City of Dayton Personnel Policies and Procedures for other non-represented full-time City employees.

**Section 10: Hours of Work.**

It is recognized that the Employee must devote time outside normal office hours on business for the Employer, and to that end the Employee shall be allowed to establish an appropriate work schedule. As a guideline, as a minimum the Employer expects approximately forty (40) hours of service per



week. The Employee's classification is "Exempt" and this position is not covered by the FLSA or eligible for overtime compensation. However, because the Employee must also devote considerable professional time outside of normal office hours, the Employer agrees that the Employee will be allowed to take time off during normal work hours in exchange for professional time devoted outside of normal office hours, provided such time off is not disruptive to the needs of the City.

**Section 11: Compliance with Laws and the City Employee Handbook**

In performing the services contemplated by this Agreement, the Employee shall faithfully observe and comply with all federal, state, and local laws, ordinances, and regulations applicable to the services to be rendered under this Agreement. The Employee shall also abide by the Employer's policies and procedures as outlined in the City of Dayton Employee Handbook, as currently adopted and as amended from time to time, unless they conflict with this Agreement, in which case this Agreement shall prevail.

**Section 12: Discrimination Prohibited**

With regard to the work performed by the Employee under this Agreement, the Employee shall not discriminate on the grounds of race, color, national origin, religion, creed, age, gender, marital status, sexual orientation, or the presence of any physical, sensory, or mental disability in any aspect of the Employee's work including, but not limited to, the selection and retention of employees, procurement of materials or supplies, or the letting of contracts.

**Section 13: Indemnification and Professional Liability Insurance**

The Employer agrees to indemnify, insure, and hold harmless, including separate legal counsel if the Employer cannot represent the Employee, for any and all civil legal actions brought against the Employee arising from the lawful discharge of his/her duties during his/her employment as City Manager. The Employer shall also provide professional liability insurance to cover actions taken by the Employee during the course and scope of his/her employment.

**Section 14: Bonding**

The Employer shall bear the full cost of any fidelity or other bonds required of the Employee under any law or ordinance.

**Section 15: Confidentiality.**

The Employee agrees that his position is a managerial position and acknowledges that he will occupy a position of confidentiality involving personnel and legal matters.


**Section 16: General Provisions**

- A. **Entire Agreement.** This Agreement constitutes the entire Agreement of the parties with respect to the subject matter of this Agreement and supersedes and replaces any prior written or oral agreements or understandings between the parties.
- B. **Amendments.** The parties by mutual written agreement may amend any provision of this Agreement during the life of the Agreement. Such amendments shall be incorporated and made a part of this Agreement.
- C. **No Waiver.** The waiver by any party of a breach or violation of any term of this Agreement by the other party shall not operate or be construed as a waiver of any subsequent breach.

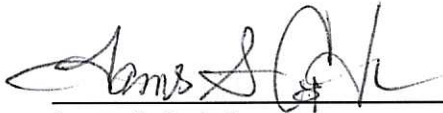
- D. Severability.** If any term of this Agreement is held to be illegal, void, or unenforceable for any reason, in full or in part, such holding shall not affect the validity and enforceability of any remaining provisions of this Agreement and said remaining provisions shall be deemed to be in full force and effect.
- E. Assignment.** This Agreement is for the services of a specific individual chosen for his/her unique qualifications and is not assignable. Subject to the foregoing, payments due shall inure to the benefit of and be binding upon their respective successors in interest, heirs, and assigns.
- F. Attorneys' Fees.** In the event of mediation, arbitration, or litigation between the parties arising out of or in any way related to any term set forth in this Agreement, each party shall pay all of its own attorney's fees, costs, and expenses.
- G. Governing Law and Venue.** This Agreement shall be made in and shall be governed by and interpreted in accordance with the laws of the State of Washington. The venue for any dispute related to this Agreement shall be Columbia County, Washington.
- H. Independent Counsel.** The Employee acknowledges that the drafter of this Agreement is the Employer's legal representative to whom the Employee does not look to for any legal counseling or legal advice with regard to this transaction. The Employee further acknowledges that he/she has been advised to consult with independent legal counsel and has had an opportunity to do so. By signing this Agreement, the Employee acknowledges that he/she has consulted with independent legal counsel of his/her choice or has knowingly waived the right to do so. There shall be no presumption of draftsmanship in favor of or implied against any party hereto.
- I. Headings.** The headings in this Agreement are intended solely for convenience of reference and shall be given no effect in the interpretation of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this agreement this 13 day of FEBRUARY, 2019.

CITY OF DAYTON

  
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Craig George, Mayor

EMPLOYEE

  
\_\_\_\_\_  
James S. Costello

Attested by:



02/13/2019 Agenda:  
No. 7 (A)



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Debra M. Hays, Deputy City Clerk