

# CITY COUNCIL REPORT



Meeting Date: July 1, 2013  
General Plan Element: *Provide for the orderly administration of the affairs of the City*  
General Plan Goal: *Fiscal management*

## **ACTION**

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Adopt Resolution No. 9479 authorizing Contract Nos. 2013-126-COS and 2013-127-COS providing for settlement of *Susan Quinet and Michelle Ruiz v. City of Scottsdale*, pending in United States District Court, Cause Number CV 12-02743-JWS.

## **Background**

This case involves two former employees of the City ("Plaintiffs") whose positions were eliminated effective May 2012 as part of a reduction in force. The Plaintiffs allege that they were subject to discrimination and an offensive work environment during their employment with the City and that they made complaints about it. Plaintiffs further claim that they were terminated from City employment in retaliation for their complaints. Plaintiffs filed suit against the City seeking an award of damages and attorney's fees in an unspecified amount. Suit has been brought against the City by Susan Quinet and Michelle Ruiz.

The City denies liability. However, in an effort to resolve this matter and avoid the uncertainty of trial, the Plaintiffs and the City have agreed to a settlement of the litigation for \$60,000 for Susan Quinet and \$100,000 for Michelle Ruiz, subject to Council approval. The terms of the settlement are set forth in Contract Nos. 2013-126-COS and 2013-127-COS.

## **ANALYSIS & ASSESSMENT**

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### **Recent Staff Action**

The City Attorney's office, assisted by other City staff, has worked to negotiate the proposed settlement.

### **Significant Issues to be Addressed**

The City needs to decide whether to accept the proposed settlement and limit its risk in any future litigation. If plaintiffs prevail on their claims in litigation, they will be entitled to recoup their attorney's fees as well as an award of damages.

### Community Involvement

No community involvement is necessary on this item.

## RESOURCE IMPACTS

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### Available funding

Funding is available in the Risk Management budget.

### Staffing, Workload Impact

Staff from the City Attorney's Office, assisted by other departments, has participated in the defense of this matter. Substantial staff time will be saved if the litigation is terminated.

### Future Budget Implications

None

### Cost Recovery Options

The City's tort defense and settlement expenses may be recovered in the primary property tax rate for the next year.

## OPTIONS & STAFF RECOMMENDATION

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### Recommended Approach

Staff recommends that Council adopt Resolution No. 9479 authorizing Contract Nos. 2013-126-COS and 2013-127-COS providing for settlement of *Susan Quinet and Michelle Ruiz v. City of Scottsdale*, pending in United States District Court, Cause Number CV 12-02743-JWS.

### Description of Option B

Not approve Resolution No. 9479 and continue the litigation.

### Proposed Next Steps

If the contract is approved the actions set forth in the contract necessary for the settlement of *Susan Quinet and Michelle Ruiz v. City of Scottsdale* will be taken by staff and the case will be dismissed with prejudice.

Responsible Department(s):

Risk Management  
City Attorney's Office

**STAFF CONTACTS (S)**

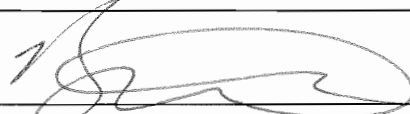
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Edward M. Howard, Risk Management Director, [thoward@scottsdaleaz.gov](mailto:thoward@scottsdaleaz.gov)

Bruce Washburn, City Attorney, [bwashburn@scottsdaleaz.gov](mailto:bwashburn@scottsdaleaz.gov)

**APPROVED BY**

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\_\_\_\_\_  
Bruce Washburn, City Attorney  
(480) 312-2405  
[bwashburn@scottsdaleaz.gov](mailto:bwashburn@scottsdaleaz.gov)

\_\_\_\_\_  
Date 6/27/13

**ATTACHMENTS**

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1. Resolution No. 9479
2. Contract No. 2013-126-COS
3. Contract No. 2013-127-COS

RESOLUTION NO. 9479

A RESOLUTION OF THE COUNCIL OF THE CITY OF SCOTTSDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING THE SETTLEMENT OF SUSAN QUINET AND MICHELLE RUIZ V. CITY OF SCOTTSDALE, CAUSE NO. CV 12-02743-JWS CURRENTLY PENDING IN THE UNITED STATES DISTRICT COURT AND AUTHORIZING THE MAYOR TO EXECUTE THE APPROVED SETTLEMENT CONTRACTS, CONTRACT NO. 2013-126-COS AND CONTRACT NO. 2013-127-COS ON BEHALF OF THE CITY.

WHEREAS, Susan Quinet and Michelle Ruiz brought suit against the City of Scottsdale; and

WHEREAS, it is in the best interest of the City to effectuate a settlement of the pending litigation on the terms and conditions set forth in Contract Nos. 2013-126-COS and 2013-127-COS;

NOW, THEREFORE, BE IT RESOLVED by the City of Scottsdale, Maricopa County, Arizona, as follows:

Section 1. That the City Council hereby authorizes and directs the Mayor to execute Contract Nos. 2013-126-COS and 2013-127-COS.

Section 2. That the City Manager, the City Attorney, the City Treasurer and their respective staffs are authorized and directed to execute such documents and take such other actions as are necessary to carry out the purpose of this Resolution and the provisions of Contract Nos. 2013-126-COS and 2013-127-COS.

PASSED AND ADOPTED by the Council of the City of Scottsdale this 1st day of July, 2013.


ATTEST:

CITY OF SCOTTSDALE, an Arizona  
municipal corporation

By: \_\_\_\_\_  
Carolyn Jagger, City Clerk

By: \_\_\_\_\_  
W. J. "Jim" Lane, Mayor

APPROVED AS TO FORM:  
OFFICE OF THE CITY ATTORNEY

By:  \_\_\_\_\_  
Bruce Washburn, City Attorney

**SETTLEMENT AGREEMENT  
AND RELEASE**

This Settlement Agreement and Release of All Claims ("Agreement") is entered into by and between Susan Quinet (referred to as "Plaintiff") and the City of Scottsdale (referred to as "Defendant" or "City"). Plaintiff and Defendant shall be referred to collectively as the "Parties".

RECITALS

A. Plaintiff has filed a lawsuit against the City of Scottsdale that is currently pending in the United States District Court for the District of Arizona as Cause Number CV 12-02743-JWS (hereinafter referred to as the "Lawsuit").

B. The Parties now desire to settle and fully resolve the Lawsuit and release and discharge all legal or equitable claims that Plaintiff may have, whether known or unknown, arising from the events as alleged in, or related to, the Lawsuit, upon the terms and conditions set forth in this Agreement.

AGREEMENT

In consideration of the promises and releases set forth below, the Parties agree as follows:

1. *Settlement Payment.* The total payment for the settlement of this matter shall be sixty thousand dollars (\$60,000.00) (the "Settlement Payment"). Plaintiff and her attorney acknowledge and agree that this Settlement Payment is the full and entire amount that they will ever receive in connection with the Lawsuit.

2. *Method of Payment.* The Parties acknowledge that this Agreement is not binding on the City unless and until it is approved by the Scottsdale City Council. The City intends to submit this Agreement to the Council for its consideration at the regularly scheduled Council meeting currently set for July 1, 2013.

If the Council does not approve the Agreement then neither party is bound by this Agreement and the settlement shall not take place. If the Council approves the Agreement then the City will promptly submit the Agreement to the Mayor for signature, and upon his signing the Agreement the City will promptly arrange for the tender of the Settlement Payment to Plaintiff Susan Quinet by check sent to the Plaintiff in care of her attorney, Marshall Martin, as promptly as possible after the Mayor has signed the Agreement (estimated to be not more than five business days after signing). Plaintiff's attorney, Marshall A Martin, Esq., will not be a payee on the Settlement Payment. The City will issue a 1099 form to Plaintiff Susan Quinet indicating the payment was "other income."

3. *All Claims of Any Kind.* Plaintiff expressly acknowledges and agrees that the settlement amount is for all claims for all injuries and/or damages, whether known to the Parties at the time of the execution of this document or not, which have resulted or may result, or which may be discovered and which may have been caused by events alleged in or related to the Lawsuit. Plaintiff intends by the execution of this instrument to release all claims, including such unknown damages and/or injuries, against Defendant, its officers, agents, employees, attorneys, elected and appointed officials, and any other persons in any way associated with Defendant, whether

sounding in tort or contract or arising from statute, including all federal and state law claims of any nature whatsoever.

4. *No Admission of Liability.* It is understood and expressly agreed that neither the payment of the Settlement Payment nor anything contained within this Agreement shall be construed as an admission of any liability whatsoever on the part of Defendant. The Parties acknowledge and agree that the Settlement Payment is made in compromise and settlement of a disputed claim and that by entering into this Agreement and performing the settlement neither party intends to admit the correctness of the other party's contentions.

5. *Liens.* Plaintiff will satisfy any and all unpaid and unsatisfied hospital or medical bills and/or liens, including, but not limited to, ERISA liens, liens pursuant to A.R.S. § 33-931 et seq., liens falling under the rubric of *Andrews v. Samaritan Health System*, 201 Ariz. 379, 36 P.3d 57 (App. 2001); *Blankenbaker v. Jonovich*, 205, Ariz. 383, 71 P.3d 910 (Ariz. 2003); *Maricopa County v. Barfield*, 75 P.3d 714 (App. 2003), and that she will indemnify and hold harmless Defendant, its agents and representatives, from any and all claims, demands, actions and causes of action, and all liability whatsoever, including, but not limited to costs, attorneys' fees or judgment which might arise from an unpaid or unsatisfied hospital or medical bill and/or lien or lien of any other kind which might apply to the proceeds paid herein.

6. *Tax Indemnification.* Any tax obligation arising from the Settlement Payment will be Plaintiff's sole responsibility. Further, Plaintiff will indemnify and agrees to hold the City harmless for any tax liability, penalties or interest imposed

upon or assessed against Plaintiff or the City by any taxing authority arising from the Settlement Payment.

7. *Dismissal.* Plaintiff hereby agrees that upon the City's payment of the Settlement Payment described above in Paragraph 2, the parties will stipulate to dismiss the Lawsuit with prejudice.

8. *Review of Agreement.* The Parties expressly acknowledge that they have entered this Agreement knowingly and voluntarily and that each party has had the opportunity to receive the advice of counsel with respect to the Agreement and the settlement of this matter.

9. *Binding Nature of Agreement; Assignment.* This Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, personal representatives, successors and assigns, except that no party may assign, delegate or transfer any of its rights or obligations under this Agreement without prior written consent of the other parties hereto.

10. *Arizona Law.* In the event of any dispute arising from the terms of this Settlement Agreement and Release, Arizona law shall apply and govern.

11. *Entire Agreement.* This Agreement constitutes the entire integrated agreement between the Parties and supersedes any and all prior and/or contemporaneous agreements, promises, representations, negotiations, statements and/or understandings of the Parties.

12. *Cancellation.* Pursuant to A.R.S. § 38-511, the City may, within three years after its execution, cancel this Agreement without penalty or further obligation if



any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the City is, at any time while the Agreement is in effect, an employee or agent of any other Party in any capacity or a consultant to any other Party with respect to the subject matter of the Agreement.

IN WITNESS WHEREOF, I have hereunder set my hand this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
Susan Quinet, Plaintiff

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Marshall A. Martin, Esq., Attorney for Plaintiff

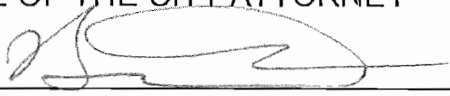
CITY OF SCOTTSDALE, an Arizona  
municipal corporation

By \_\_\_\_\_  
W. J. "Jim" Lane, Mayor

ATTEST:

\_\_\_\_\_  
Carolyn Jagger, City Clerk

APPROVED AS TO FORM:  
OFFICE OF THE CITY ATTORNEY

By:   
Bruce Washburn, City Attorney

**SETTLEMENT AGREEMENT  
AND RELEASE**

This Settlement Agreement and Release of All Claims ("Agreement") is entered into by and between Michelle Ruiz (referred to as "Plaintiff") and the City of Scottsdale (referred to as "Defendant" or "City"). Plaintiff and Defendant shall be referred to collectively as the "Parties".

RECITALS

A. Plaintiff has filed a lawsuit against the City of Scottsdale that is currently pending in the United States District Court for the District of Arizona as Cause Number CV 12-02743-JWS (hereinafter referred to as the "Lawsuit").

B. The Parties now desire to settle and fully resolve the Lawsuit and release and discharge all legal or equitable claims that Plaintiff may have, whether known or unknown, arising from the events as alleged in, or related to, the Lawsuit, upon the terms and conditions set forth in this Agreement.

AGREEMENT

In consideration of the promises and releases set forth below, the Parties agree as follows:

1. *Settlement Payment.* The total payment for the settlement of this matter shall be one hundred thousand dollars (\$100,000.00) (the "Settlement Payment"). Plaintiff and her attorney acknowledge and agree that this Settlement Payment is the full and entire amount that they will ever receive in connection with the Lawsuit.

2. *Method of Payment.* The Parties acknowledge that this Agreement is not binding on the City unless and until it is approved by the Scottsdale City Council. The City intends to submit this Agreement to the Council for its consideration at the regularly scheduled Council meeting currently set for July 1, 2013.

If the Council does not approve the Agreement then neither party is bound by this Agreement and the settlement shall not take place. If the Council approves the Agreement then the City will promptly submit the Agreement to the Mayor for signature, and upon his signing the Agreement the City will promptly arrange for the tender of the Settlement Payment to Plaintiff Michelle Ruiz by check sent to the Plaintiff in care of her attorney, Marshall Martin, as promptly as possible after the Mayor has signed the Agreement (estimated to be not more than five business days after signing). Plaintiff's attorney, Marshall A Martin, Esq., will not be a payee on the Settlement Payment. The City will issue a 1099 form to Plaintiff Michelle Ruiz indicating the payment was "other income."

3. *All Claims of Any Kind.* Plaintiff expressly acknowledges and agrees that the settlement amount is for all claims for all injuries and/or damages, whether known to the Parties at the time of the execution of this document or not, which have resulted or may result, or which may be discovered and which may have been caused by events alleged in or related to the Lawsuit. Plaintiff intends by the execution of this instrument to release all claims, including such unknown damages and/or injuries, against Defendant, its officers, agents, employees, attorneys, elected and appointed officials, and any other persons in any way associated with Defendant, whether

sounding in tort or contract or arising from statute, including all federal and state law claims of any nature whatsoever.

4. *No Admission of Liability.* It is understood and expressly agreed that neither the payment of the Settlement Payment nor anything contained within this Agreement shall be construed as an admission of any liability whatsoever on the part of Defendant. The Parties acknowledge and agree that the Settlement Payment is made in compromise and settlement of a disputed claim and that by entering into this Agreement and performing the settlement neither party intends to admit the correctness of the other party's contentions.

5. *Liens.* Plaintiff will satisfy any and all unpaid and unsatisfied hospital or medical bills and/or liens, including, but not limited to, ERISA liens, liens pursuant to A.R.S. § 33-931 et seq., liens falling under the rubric of *Andrews v. Samaritan Health System*, 201 Ariz. 379, 36 P.3d 57 (App. 2001); *Blankenbaker v. Jonovich*, 205, Ariz. 383, 71 P.3d 910 (Ariz. 2003); *Maricopa County v. Barfield*, 75 P.3d 714 (App. 2003), and that she will indemnify and hold harmless Defendant, its agents and representatives, from any and all claims, demands, actions and causes of action, and all liability whatsoever, including, but not limited to costs, attorneys' fees or judgment which might arise from an unpaid or unsatisfied hospital or medical bill and/or lien or lien of any other kind which might apply to the proceeds paid herein.

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upon or assessed against Plaintiff or the City by any taxing authority arising from the Settlement Payment.

7. *Dismissal.* Plaintiff hereby agrees that upon the City's payment of the Settlement Payment described above in Paragraph 2, the parties will stipulate to dismiss the Lawsuit with prejudice.

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any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the City is, at any time while the Agreement is in effect, an employee or agent of any other Party in any capacity or a consultant to any other Party with respect to the subject matter of the Agreement.

IN WITNESS WHEREOF, I have hereunder set my hand this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
Michelle Ruiz, Plaintiff

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Marshall A. Martin, Esq., Attorney for Plaintiff

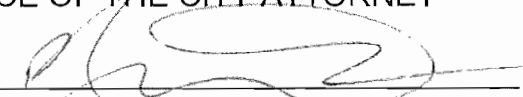
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Bruce Washburn, City Attorney