

# CITY COUNCIL REPORT



Meeting Date: October 10, 2016  
 General Plan Element: *Provide for the orderly administration of the affairs of the City*  
 General Plan Goal: *Fiscal management*

## ACTION

Consider adopting Resolution No. 10585 authorizing the Mayor to enter into Contract No. 2016-155-COS on behalf of the City, in order to settle a lawsuit entitled *Nicole Rerucha v. City of Scottsdale*, currently pending in the United States District Court, District of Arizona, Case Number No. CV-15-01145-PHX-NVW, for the amount of \$135,000.

## Background

Nicole Rerucha, a former City employee, was medically separated from the City's employment in 2012 after her doctor placed her on work restrictions that only allowed her to work two days a week. She brought a suit against the City alleging discrimination because the City failed to provide her an alternative work schedule as a reasonable accommodation. The City denies liability. The parties entered into mediation before a Federal Magistrate and reached a settlement, subject to Council approval, in the amount of \$135,000, which includes the Plaintiff's attorney's fees and costs. Plaintiffs are awarded attorney's fees and costs when successful in this type of a case. City staff is recommending that the City Council approve this settlement because the cost, uncertainty and risk of going forward to trial in this case far outweigh the amount of the negotiated settlement.

The City has been represented in this matter by attorneys from the law firm Udall Shumway PLC, assisted by City personnel from the City Attorney's Office and the Risk Department, pursuant to a pre-existing contract for legal services in risk litigation matters, Contract No. 2015-032-COS.

## ANALYSIS & ASSESSMENT

### Recent Staff Action

Staff from the City Attorney's office and Risk Management department participated in a formal settlement conference with a Federal Magistrate in United States District Court on September 16, 2016 to reach a negotiated settlement with the Plaintiff contingent upon Council approval.

### Policy Implications

None.

### Significant Issues to be Addressed

None.

**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 operating budget.

**Staffing, Workload Impact**

Approval of the proposed settlement brings this claim to a conclusion and will eliminate the need for staff resources from Risk Management and other Departments to be spent on this case.

**Future Budget Implications**

No further budget outlays in connection with this representation are anticipated at this time.

**Cost Recovery Options**

None at this time.

**OPTIONS & STAFF RECOMMENDATION**

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**Recommended Approach**

**Adopt Resolution No. 10585** authorizing the Mayor to enter into Contract No. 2016-155-COS on behalf of the City, in order to settle a lawsuit entitled *Nicole Rerucha v. City of Scottsdale*, currently pending in the United States District Court, District of Arizona, Case Number No. CV-15-01145-PHX-NVW, for the amount of \$135,000.

**Proposed Next Steps**

If the settlement is approved, City representative(s) will execute settlement documents as proposed and the City will pay the settlement amount within a reasonable time thereafter.

**RESPONSIBLE DEPARTMENT(S)**

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Risk Management  
City Attorney's Office

**STAFF CONTACTS (S)**

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Katherine Callaway, Risk Management Director, [kcallaway@scottsdaleaz.gov](mailto:kcallaway@scottsdaleaz.gov)  
Bruce Washburn, City Attorney, [bwashburn@scottsdaleaz.gov](mailto:bwashburn@scottsdaleaz.gov)

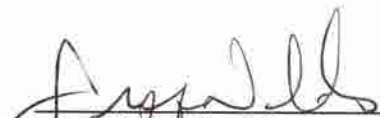
**APPROVED BY**

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

\_\_\_\_\_  
Date 9/26/16



\_\_\_\_\_  
Jeff Nichols, City Treasurer  
(480) 312-2364  
[jenichols@scottsdaleaz.gov](mailto:jenichols@scottsdaleaz.gov)

\_\_\_\_\_  
Date 9/27/16

**ATTACHMENTS**

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1. Resolution No. 10585
2. Settlement Agreement No. 2016-155-COS

RESOLUTION NO. 10585

A RESOLUTION OF THE COUNCIL OF THE CITY OF SCOTTSDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING THE SETTLEMENT OF *NICOLE RERUCHA V. CITY OF SCOTTSDALE* CURRENTLY PENDING IN UNITED STATES DISTRICT COURT AND AUTHORIZING AND DIRECTING THE MAYOR TO EXECUTE CONTRACT NO. 2016-0155-COS.

WHEREAS, the City has determined that it is in its best interest to enter into a settlement with the Plaintiffs and claimants in *Nicole Rerucha v. City of Scottsdale*.

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

Section 1. The Mayor is authorized and directed to execute Contract No. 2016-155-COS on behalf of the City of Scottsdale for the payment of \$135,000 in full settlement and release of all claims in *Nicole Rerucha v. City of Scottsdale*, currently pending in the United States District Court.

Section 2. That the City Manager, City Attorney and City Treasurer and their respective staffs are authorized and directed to take such other actions as are necessary to fully execute and carry out the purpose of this Resolution and Contract No. 2016-0155-COS.

PASSED AND ADOPTED by the Council of the City of Scottsdale this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

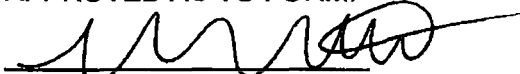
CITY OF SCOTTSDALE, an Arizona  
municipal corporation

ATTEST:

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

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

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Bruce Washburn, City Attorney  
By: Sherry R. Scott  
Deputy City Attorney

**SETTLEMENT AGREEMENT AND RELEASE**

This Settlement Agreement and Release (hereinafter "Agreement") is entered into as of October 10, 2016 by and between (a) Nicole Rerucha (hereinafter "Employee") and (b) City of Scottsdale (hereinafter "Employer") and collectively, Employee and Employer shall be referred to as the "Parties."

**BACKGROUND**

WHEREAS, the Employee was a former employee of Employer; and

WHEREAS, Employee was first employed by Employer on or about June 6, 2004; and

WHEREAS, the Employee was medically separated from her employment with Employer on or about March 20, 2012;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, Employee and Employer agree as follows:

**AGREED TERMS**

1. Payment by Employer. Employer will pay Employee the total sum of one hundred thirty-five thousand dollars (\$135,000.00) (the "Settlement Payment") as provided herein. The Settlement Payment will be in the form of two checks. One check will be made payable to Nicole Rerucha which represents projected back pay for the time period of March 21, 2012, through December 31, 2012, of Twenty Thousand Dollars (\$20,000.00) minus applicable deductions including but not limited to federal withholdings, state withholdings, Medicare, Social Security, and possibly a Arizona State Retirement System pension withholding which will be sent to the Employee's home address. The second check will be made payable to Nicole Rerucha and the Kirtley Law Firm in the amount of One Hundred Fifteen Thousand Dollars which represents general damages in the amount of Fifty Two Thousand, Three Hundred Seventy Five Dollars (\$52,375.00), and attorney's fees and costs in the amount of Sixty Two Thousand, Six Hundred Twenty-Five Dollars (\$62,625.00), which will be sent to Employee's attorney. The Settlement Payment shall be paid within one week of the Scottsdale City Council approval the terms and conditions of the settlement. Employer shall provide an executed copy of this Agreement to counsel for Employee not later than the date that Employer must pay the Settlement Payment.

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Rerucha's Initials

The Parties acknowledge and agree that they are solely responsible for paying any attorneys' fees and costs they incurred and that neither Party nor its attorney(s) will seek any award of attorneys' fees or costs from the other Party, except as provided herein.

2. Taxes. Employee shall be solely responsible for, and is legally bound to make payment of, any taxes determined to be due and owing (including penalties and interest related thereto) by it to any federal, state, local or regional taxing authority as a result of the Settlement Payment. Employee understands that Employer has not made, and it does not rely upon, any representations regarding the tax treatment of the sums paid pursuant to this Agreement. Moreover, Employee agrees to indemnify and hold Employer harmless in the event that any governmental taxing authority asserts against Employer any claim for unpaid taxes, failure to withhold taxes, penalties or interest based upon the issuance of the Settlement Payment.

3. Mutual Release. The Parties, on behalf of themselves, their predecessors, successors and all persons acting by, through, under or in concert with them, and each of them, hereby release and discharge the other Party, together with their predecessors, successors and all persons acting by, through, under or in concert with them, and each of them, from all known and unknown charges, complaints, claims, grievances, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts, penalties, fees, wages, medical costs, pain and suffering, mental anguish, emotional distress, expenses (including attorneys' fees and costs actually incurred) and punitive damages, of any nature whatsoever, known or unknown, which either Party has, or may have had, against the other Party, whether or not apparent or yet to be discovered, or which may hereafter develop, for any acts or omissions related to or arising from:

- (a) the separation of employment (hereinafter the "Dispute");
- (b) any agreement between the Parties;
- (c) any other matter between the Parties; and/or
- (d) any claims under any federal, state, or local law, rule or regulation.

This Agreement resolves any claim for relief that is, or could have been alleged, no matter how characterized including, without limitation, compensatory damages, damages for breach of contract, bad faith damages, reliance damages, liquidated damages, damages for humiliation and embarrassment, punitive damages, costs and attorneys' fees related to or arising from the Dispute.

4. Outstanding or Known Future Claims/Causes of Action. Employee affirms that she has filed suit in the Federal District Court, for the District of Arizona, identified as Case No. 2:15-CV-01145-NVW, but agrees she will dismiss said case with prejudice and

  
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currently knows of no existing act or omission by the Employer that may constitute a claim or liability excluded from the release in paragraph 3 above.

5. Acknowledgment of Settlement. The Parties acknowledge that (a) the consideration set forth in this Agreement, which includes, but is not limited to, the Settlement Payment, is in full settlement of all claims or losses of whatsoever kind or character that they have, or may ever have had, against the other Party, as broadly described in paragraph 3 above, including by reason of the Dispute and (b) by signing this Agreement, and accepting the consideration provided herein and the benefits of it, they are giving up forever any right to seek further monetary or other relief from the other Party, as broadly described in paragraph 3 above, for any acts or omissions up to and including the Effective Date, as set forth in paragraph 3, including, without limitation, the Dispute.

6. No Admission of Liability. The Parties acknowledge that the Settlement Payment was agreed upon as a compromise and final settlement of disputed claims and that payment of the Settlement Payment is not, and may not be construed as, an admission of liability by Employer and is not to be construed as an admission that Employer engaged in any wrongful, tortious or unlawful activity. Employer specifically disclaims and denies any liability to Employee and engaging in any wrongful, tortious or unlawful activity.

7. Contact by Prospective Employers. Employee agrees that she will direct any prospective employer to either Donna Brown, Human Resources Director, or Pam Harrison, Sr. HR Representative for any confirmation of past employment. They will only advise as to the tenure dates and Employee's duties.

8. Agreement is Legally Binding. The Parties intend this Agreement to be legally binding upon and shall inure to the benefit of each of them and their respective predecessors, successors and all persons acting by, through, under or in concert with them. Moreover, the persons and entities referred to in paragraph 3 above, if not a Party, are third-party beneficiaries of this Agreement.

9. Entire Agreement. The recitals set forth at the beginning of this Agreement are incorporated by reference and made a part of this Agreement. This Agreement constitutes the entire agreement and understanding of the Parties and supersedes all prior negotiations and/or agreements, proposed or otherwise, written or oral, concerning the subject matter hereof. Furthermore, no modification of this Agreement shall be binding unless in writing and signed by each of the parties hereto.

10. New or Different Facts: No Effect. Except as provided herein, this Agreement shall be, and remain, in effect despite any alleged breach of this Agreement or the discovery or existence of any new or additional fact, or any fact different from that which either Party now knows or believes to be true. Notwithstanding the foregoing, nothing in

  
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Rerucha's Initials

this Agreement shall be construed as, or constitute, a release of any Party's rights to enforce the terms of this Agreement.

11. Interpretation. Should any provision of this Agreement be declared or be determined by any court to be illegal or invalid, the validity of the remaining parts, terms or provisions shall not be affected thereby and said illegal or invalid part, term or provision shall be deemed not to be a part of this Agreement. The headings within this Agreement are purely for convenience and are not to be used as an aid in interpretation. Moreover, this Agreement shall not be construed against either Party as the author or drafter of the Agreement.

12. Governing Law and Choice of Forum. This Agreement is made and entered into within and shall be governed by, construed, interpreted and enforced in accordance with the laws of the State of Arizona, without regard to the principles of conflicts of laws. Any action to enforce this Agreement shall be brought only in Maricopa County Superior Court.

13. Reliance on Own Counsel. In entering into this Agreement, the Parties acknowledge that they have relied upon the legal advice of their respective attorneys, who are the attorneys of their own choosing, that such terms are fully understood and voluntarily accepted by them, and that, other than the consideration set forth herein, no promises or representations of any kind have been made to them by the other Party. The Parties represent and acknowledge that in executing this Agreement they did not rely, and have not relied, upon any representation or statement, whether oral or written, made by the other Party or by that other Party's agents, representatives or attorneys with regard to the subject matter, basis or effect of this Agreement or otherwise.

14. Counterparts. This Agreement may be executed by the Parties in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

15. Authority to Execute Agreement. By signing below, each Party warrants and represents that the person signing this Agreement on its behalf has authority to bind that Party and that the Party's execution of this Agreement is not in violation of any by-law, covenants and/or other restrictions placed upon them by their respective entities.

16. Effective Date. The terms of the Agreement will be effective when an executed copy of this Agreement is delivered to said counsel for Employer as described in paragraph 1 above (the "Effective Date").

**READ THE FOREGOING DOCUMENT CAREFULLY BEFORE SIGNING. IT INCLUDES A RELEASE OF KNOWN AND UNKNOWN CLAIMS.**

  
Rerucha's Initials

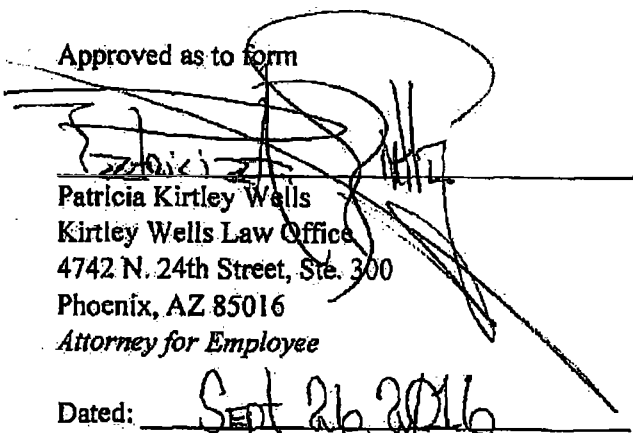


**IN WITNESS WHEREOF**, and intending to be legally bound, each of the Parties hereto has caused this Agreement to be executed as of the date(s) set forth below.

Nicole Rerucha  
Nicole Rerucha, *Employee*

Dated: 09.26.2016

Approved as to form

  
Patricia Kirtley Wells  
Kirtley Wells Law Office  
4742 N. 24th Street, Ste. 300  
Phoenix, AZ 85016  
*Attorney for Employee*

Dated: Sept 26, 2016

IN WITNESS WHEREOF, the City of Scottsdale by its Mayor and City Clerk have hereunto subscribed their names this 10th day of October, 2016.

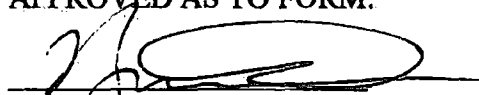
CITY OF SCOTTSDALE, an Arizona  
municipal corporation

ATTEST:

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

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

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Bruce Washburn, City Attorney