

# CITY COUNCIL REPORT



Meeting Date: June 4, 2013  
General Plan Element: *Provide for the orderly administration of the affairs of the City*  
General Plan Goal: *Fiscal management*

## ACTION

**Adopting Resolution No. 9420 authorizing settlement.** Adopt Resolution No. 9420 authorizing the Mayor to enter into Contract No. 2013-066-COS on behalf of the City, contingent upon all necessary future Court approvals and the City Attorney's future approval of all settlement agreement language, terms and signatures and specifically authorizing the Treasurer to take all future actions necessary to deposit said funds in a trust account pending all necessary future approvals and a fully executed settlement agreement in order to settle the lawsuit entitled *Loxas v. City of Scottsdale, et al.*, Case No.12-CV-02015-PHX-SMM currently pending in the United States District Court.

## Background

This case involves the police shooting of John Loxas, Jr. (Loxas) on February 14, 2012, after the Scottsdale Police Department was called to his house and neighborhood after receiving a 911 call from a neighbor seeking police assistance and stating that Mr. Loxas had been walking around his neighborhood with a gun and threatening another person with the gun. Events unfolded after the Police arrived, which resulted in the shooting death of Mr. Loxas.

Loxas family members have made claims and filed suit against the City and several former and current Scottsdale Police Department officers in United States District Court seeking attorney's fees and damages in an unspecified amount. Before filing the case, the Claimants filed a Notice of Claim with the City seeking seven million seven hundred and fifty thousand dollars (\$7.75 Million) to settle their claims. Plaintiffs increased their settlement demand during litigation.

The City retained private counsel to litigate this case and the case is currently in discovery at this time.

The City is self-insured for this matter up to \$2,000,000. Any additional expenses or costs related to this case will be paid for by the City's private insurance carrier.

## **ANALYSIS & ASSESSMENT**

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### **Recent Staff Action**

The Parties recently participated in settlement discussions, along with the City's private insurance carrier. Following litigation and settlement negotiation, the Plaintiffs agreed to settle the case for 4.25 million dollars, contingent upon the City Council's approval. Plaintiffs are currently seeking Court approval of this settlement and until Court approval is obtained, the parties cannot agree to the wording of a final settlement agreement. However, the settlement agreement will be substantially similar to the attached draft settlement agreement, as approved by the City Attorney.

## **RESOURCE IMPACTS**

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### **Available funding**

The settlement will funded by the Risk Management operating budget and the City's insurance carrier. The City Treasurer will deposit the balance of its \$2,000,000 self-insured retention (the amount remaining after all outstanding defense costs and fees have been satisfied) to a trust account pending all necessary future approvals.

The balance due to satisfy the settlement agreement will be paid by the City's excess insurance carrier.

### **Staffing, Workload Impact**

Settlement will eliminate expenditure of staff resources from the City Attorney's Office, Risk Management and Police Department on this complex and large case and eliminates the risk and uncertainty of trial.

### **Future Budget Implications**

The Risk Management Department reserved \$2,000,000 for defense and indemnity on this case.

### **Cost Recovery Options**

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

Excess insurance will provide coverage beyond the City's \$2,000,000 self-insured retention.

## OPTIONS & STAFF RECOMMENDATION

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### Recommended Approach

Adopt Resolution 9420.

### Proposed Next Steps

Transfer the remainder of the City's self-insured retention amount to a trust account pending all necessary further approvals. Finalize the wording of the draft settlement agreement, which should be substantially similar to the draft settlement agreement attached, subject to the future approval of the Court and City Attorney. The primary terms, including the total settlement amount will not change.

### RESPONSIBLE DEPARTMENT(S)

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Risk Management  
City Attorney's Office

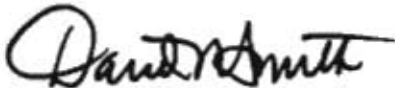
### STAFF CONTACTS (S)

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Bruce Washburn, City Attorney, [bwashburn@scottsdaleaz.gov](mailto:bwashburn@scottsdaleaz.gov)  
Sherry R. Scott, Deputy City Attorney, [sscott@scottsdaleaz.gov](mailto:sscott@scottsdaleaz.gov)

### APPROVED BY

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David Smith, City Treasurer  
(480) 312-2364  
[dsmith@scottsdaleaz.gov](mailto:dsmith@scottsdaleaz.gov)

5.30.13

Date



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

5/29/13

Date

### ATTACHMENTS

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1. Resolution No. 9420
2. Draft of Contract No. 2013-066-COS (exact contract wording is subject to change based on the future approval of the Court and City Attorney)

RESOLUTION NO. 9420

A RESOLUTION OF THE COUNCIL OF THE CITY OF SCOTTSDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING THE SETTLEMENT OF *LOXAS V. CITY OF SCOTTSDALE, ET AL.*, CURRENTLY PENDING IN UNITED STATES DISTRICT COURT AND AUTHORIZING THE MAYOR TO EXECUTE CONTRACT NO. 2013-066-COS CONTINGENT UPON ALL NECESSARY FUTURE COURT APPROVALS AND SUBJECT TO THE CITY ATTORNEY'S FUTURE APPROVAL OF THE FINAL SETTLEMENT AGREEMENT FORM AND TERMS.

WHEREAS, the City has determined that it is in its best interest to enter into a settlement with the Plaintiffs and claimants in *LOXAS V. CITY OF SCOTTSDALE, ET AL.*

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

Section 1. The Mayor is authorized to execute Contract No. 2013-066-COS on behalf of the City for the settlement of *LOXAS V. CITY OF SCOTTSDALE, ET AL.*, contingent upon and subject to all necessary future Court approvals and the City Attorney's future approval of the final settlement agreement form, language, terms and necessary signatures in order to fully settle the lawsuit entitled *Loxas v. City of Scottsdale, et al.*, Case No.12-cv-02015-PHX-SMM 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 execute such documents and take such other actions as are necessary to carry out the purpose of this Resolution and that the City Treasurer and his respective staff are specifically authorized to make a future deposit and payment of the City's remaining self-insured retention amount to an outside trust account pending all necessary approvals and a fully executed settlement agreement.

PASSED AND ADOPTED by the Council of the City of Scottsdale this 4th day of June, 2013.

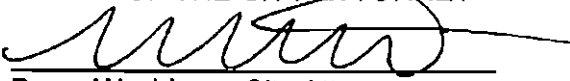
CITY OF SCOTTSDALE, an Arizona  
municipal corporation

ATTEST:

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

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

APPROVED AS TO FORM:  
OFFICE OF THE CITY ATTORNEY

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

## SETTLEMENT AGREEMENT

### AND

### RELEASE

This Settlement Agreement and Release of All Claims ("Agreement") is entered into by and between Alexandria Loxas, in her capacity as personal representative of the Estate of John Loxas, Jr., and as the surviving daughter of decedent John Loxas, Jr., on her own behalf and on behalf of her minor child, Neo Loxas, and on behalf of all who may have a statutory right of recovery; and John Loxas, Sr. on his own behalf (referred to herein as "Plaintiffs"), and the City of Scottsdale and Alan Rodbell, Brian McWilliams, John Cocca, Sean Duggan, Joe Kertesz, Bernie Hill, Marc McCoy, Hugh Lockerby and other as-yet unknown Scottsdale Police Officers (collectively referred to as the "City") and James Peters (the City and Peters are collectively known as "Defendants"). Plaintiffs and Defendants shall be referred to collectively as the "Parties" and Starr Indemnity (the "Insurer").

#### **I. RECITALS**

A. Plaintiffs have filed a lawsuit against the Defendants, which lawsuit is presently pending in the United States District Court for the District of Arizona, Case No. CV12-02015-PHX-SMM (hereinafter referred to as the "Lawsuit").

B. The Defendants deny any and all liability in connection with the claims asserted in the Lawsuit.

C. The Parties now desire to settle and fully resolve the Lawsuit and release and discharge all claims that Plaintiffs may have, whether known or unknown, direct or derivative, fixed or contingent, arising from the events as alleged in, or related to, the Lawsuit, upon the terms and conditions set forth in this Agreement.

#### **II. 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 Four Million Two Hundred Fifty Thousand Dollars (\$4,250,000.00) (the "Settlement Payment"), such sum includes all costs and attorney fees. Plaintiffs and their attorneys acknowledge and agree that this Settlement Payment is the full and entire amount that they will ever receive in connection with the Lawsuit. The Settlement Payment shall be paid to Plaintiffs as set forth below:

The division of the Settlement Payment among Plaintiffs, statutory beneficiaries and their attorneys will be determined by Plaintiffs' and as approved by the Probate Court.



2. **General Release.** Plaintiffs expressly acknowledge and agree that the Settlement Payment 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, direct or derivative, fixed or contingent, 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. Plaintiffs intend by the execution of this instrument to release and forever discharge all claims as of the effective date of this Agreement, including such unknown damages and/or injuries, against Defendants James Peters, the City, its officers, agents, employees, attorneys, elected and appointed officials, any other persons acting in concert with them and the Insurer, whether sounding in tort or arising from statute, including all federal and state law claims of any nature whatsoever. Further, Plaintiffs agree to defend, indemnify and hold harmless James Peters and the City, their agents and representatives and the Insured, 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 or settlement which might arise from Neo Loxas, Ruby Hartley, known and unknown statutory beneficiaries, and any other person known to Plaintiff who may have a claim against the Defendants James Peters, the City, its officers, agents, employees, attorneys, elected and appointed officials, any other persons acting in concert with them and the Insurer related to the incident on February 14, 2012 involving John Loxas, Jr.

3. **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 the Defendants. 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 neither party intends to admit the correctness of the other party's contentions.

4. **Liens.** Plaintiffs will satisfy any and all unpaid and unsatisfied hospital or medical bills and/or liens arising from the Lawsuit, including, but not limited to, 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. Janovich*, 205 Ariz. 383, 71 P.3d 910 (Ariz. 2003); *Maricopa County v. Barfield*, 75 P.3d 714 (App. 2003), and that they will indemnify and hold harmless James Peters and the City, their agents and representatives and the Insured, from any and all claims, demands, actions and causes of action, and all liability whatsoever, including, but not limited to claims, costs, attorneys' fees or judgment or settlement 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.

5. **Dismissal of Lawsuit.** Plaintiffs hereby agree, upon receipt of the fully executed Agreement and Settlement Payment, to promptly take such actions as are necessary to dismiss with prejudice the Lawsuit with each party to bear that party's attorneys' fees and costs.

6. **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 and that they agree to all provisions contained in the Agreement.

7. **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.

8. **Arizona Law.** The release does not limit the Parties' rights to enforce the terms of the Agreement. In the event of any dispute arising from the terms of this Settlement Agreement and Release, Arizona law shall apply and govern, however, to the extent that federal laws of the United States control interpretation or enforcement of this Agreement, such federal law shall control.

9. **Confidentiality.** The Parties agree to keep all information regarding the Lawsuit, including the terms and conditions of this settlement, confidential except as required by law to be disclosed. As this Settlement Agreement relates to allegations for which liability by Defendants is expressly denied, it is a material inducement for the Parties to enter into this compromise and settlements of their disputes and differences that the monetary terms of and provisions of the settlement and the terms of this Agreement shall be kept confidential to extent allowed by law, including but not limited to Facebook or MySpace, or through any publically available internet website, including but not limited to any globs or YouTube.

Plaintiffs, nor their counsel, or any party in privity to such party, shall in any way use or refer to this Agreement, of its terms or its negotiations, execution, implementation or communications generated in connection with any form of publicity or advertising. Further, Plaintiffs' attorneys will not use the fact of this settlement in any advertising or promotional material, including the fact of the settlement on any website.

10. **Conditions of Settlement.** This settlement is contingent upon the approval through the Maricopa County Superior Court Probate Division ("Probate Court"). Upon approval from the Probate Court, in consideration of the full discharge of claims, payment shall be made in accordance with Paragraph 1, above.

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. **Headings.** The headings of the paragraphs of this Agreement are for reference and convenience only and shall not be considered in interpreting this Agreement.

13. **Construction.** The Parties acknowledge that this Agreement represents a compromise and settlement, that it is not a contract of adhesion, and that it shall not be construed against the drafter should any dispute as to the meaning or effect of any of its provisions arise.

14. **Cancellation.** Pursuant to A.R.S. § 38-511, the City may cancel this Agreement within three years after its execution if any person significantly involved in initiating, negotiating, securing, drafting or creating the Agreement on behalf of the City is at any time while the Agreement is in effect an employee or agent of any other party to the Agreement in any capacity or a consultant to any other party of the Agreement with respect to the subject matter of the Agreement.

DATE: \_\_\_\_\_

\_\_\_\_\_  
Alexandria Loxas, as personal representative of the  
Estate of John Loxas, Jr. and as the surviving daughter of

decedent John Loxas, Jr., on her own behalf and on behalf of all who may have a statutory right of recovery, and Neo Loxas, the minor child of Alexandria Loxas

DATE: \_\_\_\_\_

\_\_\_\_\_  
John Loxas, Sr., on his own behalf, and statutory beneficiary

DATE: \_\_\_\_\_

\_\_\_\_\_  
Ruby Hartley, on her own behalf, and statutory beneficiary

DATE: \_\_\_\_\_

\_\_\_\_\_  
Jon Loevy  
Elizabeth Mazur  
Elizabeth Wang  
Daniel J. Pochoda  
Kelly Flood  
James Duff Lyall  
*Attorneys for Plaintiffs*

**CITY OF SCOTTSDALE, an Arizona  
Municipal Corporation**

DATE: \_\_\_\_\_

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

ATTEST:

APPROVED AS TO FORM:

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

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