

CITY COUNCIL REPORT



Meeting Date: April 25, 2017
 General Plan Element: *Provide for the orderly administration of the affairs of the City*
 General Plan Goal: *Fiscal management*

ACTION

Adopt Resolution No. 10795 authorizing and directing the City Manager to enter into Contract No. 2017-072-COS to settle the City of Scottsdale v. Hing in the amount of \$2,500,000 plus statutory interest from September 9, 2016 until paid (two million five hundred thousand dollars) and pursuant to the specific terms set forth in Contract No. 2017-072-COS in order to acquire the subject property, fully resolve the City's condemnation case in *City of Scottsdale v. Hing*, Case No. CV2016-008978 currently pending in the Maricopa County Superior Court, and resolve and release the property owner's related claims and alleged damages against the City.

Background

This litigation stems from the filing of a civil complaint in condemnation by the City seeking to acquire a portion of Hing's property for the public purpose of the construction of Fire Station number 603. The City filed the complaint on July 23, 2016 and in response, the property owners filed a notice of claim against the City of Scottsdale and other City Official's alleging claims related to and arising out of the acquisition or condemnation of the property. The notice of claim was subsequently amended on December 8, 2016 adding the Scottsdale Athletic Club as a claimant. This amended claim against the City seeks 100 million dollars in damages.

Subject to the final approval of City Council, the recommended negotiated settlement resolves the property owners' claims, resolves the condemnation case and acquires this property for in the amount of two million five hundred thousand plus statutory interests from September 9, 2016 until paid. The City has reached a tentative settlement of the condemnation litigation and all related claims against the City in Contract No. 2017-072-COS, which fully acquires the subject property.

ANALYSIS & ASSESSMENT

Recent Staff Action

Staff from the City Attorney's Office as well as attorneys from the outside counsel firm of Gust Rosenfeld have worked in defense of this matter. The parties engaged in settlement negotiations, and have reached an agreement subject to Council approval.

Policy Implications

Each litigation is unique. There are no known broader policy implications inherent in this decision other than to enter into this settlement agreement in order to fully resolve the litigation and all related claims while acquiring the subject property for the stated public purpose of constructing a fire station.

Significant Issues to be Addressed

Given the significant issues and the risk of litigation and the additional costs of moving forward to a trial, the City Attorney's Office and outside counsel, believe a settlement resolving the condemnation case and all other related claims against the City in the amount of \$2,500,000 plus statutory interest and pursuant to the specific terms of the negotiated settlement agreement (Contract No. 2017-072-COS) is in the best interests of the City. Settlement will resolve the uncertainty of litigation and any potential additional claims.

Community Involvement

No community involvement is necessary on this item as this matter is in litigation.

RESOURCE IMPACTS

Available funding

Funding is available in the CIP project budget BC04 for the Fire Station 603 Relocation as it is part of the land acquisition expense.

Staffing, Workload Impact

Approval of the proposed settlement brings this litigation to a conclusion and will eliminate the need for staff resources from the City Attorney's Office and the expenses of outside counsel as well as reducing the workload of the staff from other Departments which assisted in this case and also eliminate the risk and uncertainty of litigation and unknown future claims.

Future Budget Implications

Staff anticipates that the proposed settlement of \$2,500,000 plus statutory interest from September 9, 2016 until paid pursuant to the specific terms set forth in Contract No. 2017-072-COS will not result in any additional funding needs to complete the Fire Station 603 project. While the settlement exceeds the estimate for land acquisition in the initial budget for the project staff is working to achieve offsetting savings in other areas of the project budget.

Cost Recovery Options

None.

OPTIONS & STAFF RECOMMENDATION

Recommended Approach

Adopt Resolution No. 10795 authorizing and directing the City Manager to execute the settlement and release of the condemnation litigation and the property owner's related claims against the City in the amount of two million five hundred thousand dollars (\$2,500,000) plus statutory interest from September 9, 2016 until paid as set forth in Contract No. 2017-72-COS.

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)

City Attorney's Office – Civil Division
Capital Projects

STAFF CONTACTS (S)

Bruce Washburn, City Attorney, bwashburn@scottsdaleaz.gov

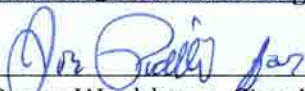
APPROVED BY



Dan Worth, Director of Public Works
(480) 312-5555
dworth@scottsdaleaz.gov

4-18-17

Date



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

4-18-17

Date

ATTACHMENTS

1. Resolution No. 10795
2. Contract No. 2017-072-COS

RESOLUTION NO. 10795

A RESOLUTION OF THE COUNCIL OF THE CITY OF SCOTTSDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING AND DIRECTING THE CITY MANAGER TO ENTER INTO CONTRACT NO. 2017-072-COS FOR THE PURPOSE OF SETTLING AND FULLY RESOLVING THE CITY OF SCOTTSDALE V. HING, ET AL., CAUSE NO. CV2016-008978 CURRENTLY PENDING IN MARICOPA SUPERIOR COURT AND ALL RELATED ALLEGED CLAIMS AGAINST THE CITY, ITS CITY OFFICIALS AND CITY EMPLOYEES.

WHEREAS, The City of Scottsdale filed a condemnation complaint against Robert Ong Hing and Alice Y. Hing seeking to acquire property for the public purpose of constructing and relocating Fire Station 603;

WHEREAS, on July 11, 2016 the property owners filed a notice of claim against the City and certain City Officials alleging claims arising out of the condemnation of the subject property. The property owners subsequently amended their notice of claim on December 8, 2016 adding the Scottsdale Athletic Club as a claimant;

WHEREAS, The City has decided to resolve the condemnation case and fully resolve the related claims against the City in a negotiated settlement agreement and release of all claims; and

WHEREAS, it is in the best interest of the City to effectuate settlement in the matter of City of Scottsdale v. Hing, Maricopa County Superior Court Case No. CV2016-008978 as well as resolve all other related claims asserted against the City by the property owners in order to fully acquire the subject property for the stated public purpose without further litigation.

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

Section 1. That the City Council authorizes payment of \$2,500,000 plus statutory interest from September 9, 2016 until paid to be paid from the CIP Project BCO4 for the settlement of City of Scottsdale v. Hing, Maricopa County Superior Court Case No. CV2016-008978 and all related claims the property owners have asserted against the City.

Section 2. That the City Manager is authorized and directed to execute Contract No. 2017-072-COS to effect the settlement generally described above and that the City Manager, City Treasurer and City Attorney and their respective staffs are authorized and directed to take any such other actions as are necessary to carry out the purpose of this Resolution.

PASSED AND ADOPTED by the Council of the City of Scottsdale this _____ day of April, 2017.

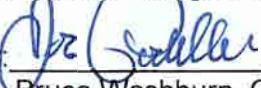
ATTEST:

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
By: Joe Padilla, Deputy City Attorney

**SETTLEMENT AGREEMENT
AND RELEASE OF CLAIMS**

This Settlement Agreement and Release of Claims (the "Agreement") is executed and delivered on this _____ day of ~~March~~ *April*, 2017, by and between:

- (A) City of Scottsdale (the "City"); and
- (B) Robert Ong Hing and Alice Y. Hing (the "Hings"); and
- (C) Scottsdale Athletic Club, Inc.

Collectively, the individuals and entities above may be referred to as the "Parties."

RECITALS

WHEREAS, on or about June 23, 2016, the City filed with the Maricopa County, Arizona, Superior Court (the "Court"), Case No. CV2016-008978, a Complaint in Condemnation and Application for Immediate Possession, seeking to acquire certain property owned by the Hings (the "subject property") through the exercise of eminent domain.

WHEREAS, on or about July 11, 2016, the Hings filed a Notice of Claim against 1) City of Scottsdale, 2) Mayor W. J. "Jim" Lane, 3) Council Members Suzanne Klapp, Virginia Korte, Kathy Littlefield, Linda Milhaven, Guy Phillips and David N. Smith, 4) Scottsdale City Attorney Bruce Washburn, and 5) other City officials, alleging claims related to or arising out of the acquisition or condemnation of the subject property by the City.

WHEREAS, on or about December 8, 2016, the Hings filed an Amended Notice of Claim, including additional claims related to or arising out of the acquisition or condemnation of the subject property by the City, and adding the Scottsdale Athletic Club, Inc. as a claimant.

WHEREAS, on or about September 9, 2016, the Court determined that the subject property being condemned is necessary for a public use and granted the City immediate possession of the property upon posting of a cash bond. The Hings challenged this Order of Immediate Possession by filing a Petition for Review, which is currently pending in the Arizona Supreme Court (the "Petition").

WHEREAS, the City has deposited a cash bond of \$2,225,000 (two million two hundred twenty five thousand dollars) with the Clerk of the Court, which was subsequently transferred to the State Treasurer.

WHEREAS, the City's Complaint and all claims or counterclaims, whether asserted, unasserted, known or unknown, mandatory or permissive, including but not

limited to all claims referenced in the Hings' Notice of Claim and Amended Notice of Claim, arising out of or relating to the City's acquisition or condemnation of the subject property, shall collectively be referred to as the "Lawsuit."

WHEREAS, the Parties desire to fully settle the Lawsuit and other issues as specified below, to buy their peace, and to avoid the attendant costs and expenses associated with further litigation directly or indirectly affecting one another or their respective interests; and

WHEREAS, the Parties have reached agreement upon the terms and conditions of such settlement as set forth herein.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree, respectively as the context may be, as set forth below:

1. **INCORPORATION OF RECITALS.** The Parties acknowledge the accuracy of the foregoing Recitals and hereby incorporate them by this reference.

2. **SETTLEMENT TERMS.**

a. **Execution of Agreement.** The Parties shall execute and deliver to each opposing or interested Party an executed copy of this Agreement;

b. **Condemnation of the subject property.** The Parties agree that the City shall have judgment against the Hings, condemning the subject property for the City's use, as prayed for in the Complaint.

c. **Award of just compensation.** The Parties agree that the Hings shall have judgment against the City in the sum of \$2,500,000 (two million five hundred thousand dollars) plus statutory interest from September 9, 2016, until paid to the Hings, as total just compensation and for damages of any kind occurring to the Hings as a result of the Lawsuit.

d. **Release of cash bond.** The Parties agree that the State Treasurer shall release the cash bond of \$2,225,000 to the Hings upon entry of judgment by the Court. The Parties agree that the State Treasurer shall release the sum of interest earned on the cash bond while on deposit to the City upon entry of judgment by the Court.

e. **Stipulation to entry of Judgment.** The Parties shall file a stipulation to entry of judgment and a proposed stipulated judgment for the Court's review, reflecting the terms set forth in 2(b)-(d) above.

ATTACHMENT 2

f. **Payment by the City to the Hings.** Upon execution of this Agreement and within thirty (30) days of the Court's entering judgment, the City shall pay directly to the Hings the sum of \$275,000 plus statutory interest on \$2,500,000 from September 9, 2016 until paid.

g. **Satisfaction of Judgment.** Upon payment of the sums set forth in 2(d) and 2(f), the Hings shall file a Satisfaction of Judgment with the Court.

h. **Final Order of Condemnation.** Upon payment of the sums set forth in 2(d) and 2(f), the City shall lodge a Final Order of Condemnation for the Court's signature.

i. **Release of Notice of Lis Pendens.** Upon entry of the Final Order of Condemnation, the City shall file and record a Release of Notice of Lis Pendens.

j. **Grant of easement.** After recordation of the Final Order of Condemnation, the City shall grant the Hings, as current owners of the Scottsdale Athletic Club property, an easement for continued use of the monument sign located on the northeast edge of the subject property. A copy of the easement is attached hereto as Exhibit A. The Hings shall be responsible for all repairs and maintenance to the monument sign, and cannot alter the location or configuration of the current sign or install a new sign in the easement area without receiving the requisite state, county, and/or city permissions. Any new sign placed in the easement area must comply with all relevant state, county, and city rules and requirements in place at the time the sign is installed. The Hings shall agree to release, indemnify, and hold harmless the City from any and all claims, demands, causes of action, or damages of any kind or nature against the City related to or arising out of the easement and/or monument sign.

3. **RELEASE OF CLAIMS.** In consideration of the terms, conditions and releases contained in this Agreement, the Parties agree that:

a. The Hings hereby fully, completely, and finally release and forever discharge: 1) City of Scottsdale, 2) Mayor W. J. "Jim" Lane, 3) Council Members Suzanne Klapp, Virginia Korte, Kathy Littlefield, Linda Milhaven, Guy Phillips and David N. Smith, 4) Scottsdale City Attorney Bruce Washburn, and 5) other City officials, from any and all claims, demands, actions, or causes of action of any nature whatsoever relating to, accruing or arising at any time from the beginning of the world through the date of the execution and delivery hereof, whether known or unknown, whether contingent or not contingent, whether or not in litigation, which the Hings had, may have had, now have, or may in the future have against them, related to or arising out of the subject matter of the Lawsuit.

ATTACHMENT 2

b. The Scottsdale Athletic Club, Inc. hereby fully, completely, and finally releases and forever discharges: 1) City of Scottsdale, 2) Mayor W. J. "Jim" Lane, 3) Council Members Suzanne Klapp, Virginia Korte, Kathy Littlefield, Linda Milhaven, Guy Phillips and David N. Smith, 4) Scottsdale City Attorney Bruce Washburn, and 5) other City officials, from any and all claims, demands, actions, or causes of action of any nature whatsoever relating to, accruing or arising at any time from the beginning of the world through the date of the execution and delivery hereof, whether known or unknown, whether contingent or not contingent, whether or not in litigation, which the Scottsdale Athletic Club, Inc. had, may have had, now has, or may in the future have against them, related to or arising out of the subject matter of the Lawsuit.

c. The claims, demands, actions, and causes of action released and discharged in subparagraphs (a)-(b) above include, without limitation, any claims for any damages sustained at any time, whether before or after the date of the execution and delivery hereof, and whether or not known, anticipated, suspected, or expected in any way related to or arising out of the claims that were or could have been brought in the Lawsuit or otherwise asserted.

d. To the extent that any applicable federal or state law, rule, or regulation might make the releases and discharges set forth in subparagraphs (a)-(c) above inapplicable as to matters as to which any of the Parties hereto have no knowledge, anticipation, suspicion, or expectation, each of the Parties hereto hereby waives and relinquishes any and all of the rights and benefits to which it may be entitled under any such law, rule, or regulation. Each of the Parties hereto hereby further acknowledges that such Party may hereafter discover facts in addition to, or different from, those which such Party now knows or believes to be true regarding the subject matter of the releases and discharges set forth in subparagraphs (a)-(c) above, but that, notwithstanding any such discovery, each of the Parties hereto intends that the releases and discharges set forth in subparagraphs (a)-(c) above shall be full, complete, and final releases and discharges as set forth herein.

4. FULL AND FINAL SETTLEMENT. Each Party declares that the terms of this Agreement have been completely read and are fully understood and voluntarily accepted for the purpose of making, respectively as the context may be, a full and final compromise, adjustment and settlement and release for all claims released herein, disputed or otherwise, between and among the Parties hereto. This Agreement constitutes the full, complete, final, and exclusive expression of all of the representations, warranties, covenants, promises, and agreements of the Parties hereto relative to the subject matter hereof.

5. WARRANTY OF CAPACITY TO EXECUTE AGREEMENT. Each Party represents and warrants to each other Party that such Party (i) has the entire right and

ATTACHMENT 2

exclusive authority to execute this Agreement, (ii) is not under any disability which could affect the capacity of such Party to execute this Agreement and (iii) has not sold, assigned, transferred, conveyed, encumbered, hypothecated or otherwise disposed of any of the claims, demands, obligations, or causes of action referred to in this Agreement.

6. NO ADMISSION OF LIABILITY. All of the claims and defenses asserted in or in connection with the Lawsuit and impacted by this Agreement are denied and contested by each of the Parties, and nothing contained herein shall in any way be construed as or constitute an admission of fault, liability, or responsibility on the part of any of the Parties. Each of the Parties denies liability and responsibility and is entering into this Agreement in order to buy such Party's peace and avoid further litigation with each other and the costs and expenses associated therewith, and in so doing, each of the Parties denies any and all liability and defenses and states that the settlement made herein is entirely a compromise.

7. REMEDIES UPON BREACH. If any Party to this Agreement materially breaches the terms of the Agreement, the non-breaching Party may exercise any and all remedies available to them under Arizona law, including, without limitation, if applicable, bringing a lawsuit for monetary damages or specific performance. If an action is brought against a Party to enforce any of the terms or provisions of this Agreement, the prevailing Party shall be entitled to recover from the non-prevailing Party all reasonable expenses, including but not limited to all costs, litigation related expenses, and reasonable attorneys' fees. The amount of costs and reasonable attorneys' fees shall be determined by the Court and not by a jury, and shall be included in any judgment obtained by the prevailing Party. The Parties agree that all disputes arising under this Agreement shall be filed in the Maricopa County Superior Court in Phoenix, Arizona.

8. WAIVER, MODIFICATION, AND AMENDMENT OF AGREEMENT. This Agreement shall not be waived, modified or amended, except by written agreement signed by the Parties.

9. NO WAIVER OF BREACH. No breach of any provision hereof can be waived except in writing by the Party against whom enforcement of the waiver is sought. Waiver of one breach of any provision hereof shall not be deemed a waiver of any other breach of the same or any other provision hereof. Failure on the part of any Party to complain of any act or failure to act of any other Party or to declare any other Party in default hereunder, irrespective of how long such failure continues, shall not constitute a waiver of the right of such Party hereunder.

10. SEVERABILITY. If any provision of this Agreement is held to be illegal, invalid, or unenforceable under present or future laws effective during the term of this Agreement, such provision will be fully severable and the remainder of the Agreement will remain enforceable and not affected thereby.

11. GOVERNING LAW. The validity, construction, interpretation, and administration of this Agreement will be governed by the laws of the state of Arizona.

ATTACHMENT 2

12. HEADINGS. The headings set forth herein are inserted for convenience of the Parties only, and shall not be used to interpret or construe or in any way affect the meanings of the terms and provisions of this Agreement.

13. COUNTERPARTS. This Agreement may be signed in any number of counterparts. All counterparts are deemed to constitute one and the same instrument, and each counterpart is deemed to be an original of that instrument. A facsimile signature on any counterpart shall be deemed an original signature by the Parties.

14. BINDING EFFECT. This Agreement is binding upon and shall inure to the benefit of the Parties, and their respective heirs, devisees, executors, administrators, beneficiaries, successors and assigns.

15. TIME. Time is of the essence with respect to the performance of all terms, covenants, conditions and provisions of this Agreement.

16. VOLUNTARINESS AND ASSISTANCE OF LEGAL COUNSEL. Each Party acknowledges that such Party is freely and voluntarily entering into this Agreement, uncoerced by any other person, and that such Party has been represented by competent legal counsel of such Party's own choice or has had the opportunity to do so regarding this Agreement and fully understands the same. This Agreement reflects a good faith resolution of claims reached after arm's-length negotiations and without coercion and not in reliance upon any representations or promises not contained herein.

17. ENTIRE AGREEMENT. This Agreement constitutes the entire agreement between the Parties as to the subject matter of this Agreement. There are no agreements, understandings, warranties or representations among the Parties as to the subject matter of this Agreement, except as set forth in this Agreement. No provision of this Agreement may be amended, modified, supplemented, changed, waived, discharged or terminated, except by an instrument in writing signed by the Party against whom enforcement of the amendment, modification, supplementation, change, waiver, discharge or termination is sought.

18. NO CONSTRUCTION AGAINST ANY PARTY. This Agreement has been negotiated by all of the Parties hereto and shall not be interpreted more strictly against any party hereto on the basis that such party's counsel drafted this Agreement or any specific part thereof.

19. REMEDIES CUMULATIVE. All rights and remedies of any Party under this Agreement are cumulative and non-exclusive, and may be exercised singularly or concurrently.

ATTACHMENT 2

20. SURVIVAL. All representations, warranties and covenants contained in this Agreement shall continue and survive execution of this Agreement, and shall be binding upon the Party making the representation, warranty or covenant.

21. COOPERATION AND OTHER DOCUMENTS. The Parties shall execute and deliver all other documents, mutually cooperate and take all other action as any Party may reasonably request from time to time, before or after the execution of this Agreement, in order to further the intent of, and effectuate the Parties' interest(s) and the transaction(s) provided for by this Agreement.

22. DISMISSAL OF THE PETITION. After this Agreement has been executed by the Parties, the Hings shall take any and all steps necessary to execute or have their attorneys execute documents dismissing Supreme Court CV-17-0023-PR, a petition for review pending in the Arizona Supreme Court, with each Party to bear its own attorneys' fees and costs. The request for dismissal shall be filed by the Parties within seven (7) business days of the execution of this Agreement.

23. SUBMISSION TO JURISDICTION; VENUE; WAIVER OF JURY TRIAL. THE PARTIES TO THE FULL EXTENT PERMITTED BY LAW, HEREBY KNOWINGLY, INTENTIONALLY AND VOLUNTARILY, DO THE FOLLOWING: (1) SUBMIT TO PERSONAL JURISDICTION IN THE STATE OF ARIZONA WITH RESPECT TO ANY ACTION ARISING FROM OR RELATING TO THIS AGREEMENT; (2) AGREE THAT THE SUPERIOR COURT OF ARIZONA, MARICOPA COUNTY (SITTING IN PHOENIX, ARIZONA) SHALL HAVE EXCLUSIVE JURISDICTION TO HEAR AND DETERMINE ALL CLAIMS OR DISPUTES BETWEEN THE PARTIES PERTAINING DIRECTLY OR INDIRECTLY TO THIS AGREEMENT; (3) WAIVE ANY CLAIM THAT THE COURT IN SUBPART (2) IS AN INCONVENIENT FORUM OR AN IMPROPER FORUM BASED ON LACK OF VENUE; (4) AGREE THAT THE EXCLUSIVE CHOICE OF FORUM SET FORTH IN THIS PARAGRAPH SHALL NOT PRECLUDE ANY PARTY FROM ENFORCING OR SEEKING TO ENFORCE ANY JUDGMENT IN ANY OTHER APPROPRIATE JURISDICTION; AND (5) ACKNOWLEDGE AND AGREE THAT (i) ANY CONTROVERSY WHICH MAY ARISE UNDER, AS A RESULT OF, OR IN CONNECTION WITH THIS AGREEMENT WOULD BE BASED UPON DIFFICULT OR COMPLEX ISSUES; AND (ii) AS A RESULT, ANY LAWSUIT ARISING OUT OF ANY SUCH CONTROVERSY SHALL BE TRIED IN A COURT OF COMPETENT JURISDICTION BY A JUDGE SITTING WITHOUT A JURY.

24. APPROVAL OF FORM OF AGREEMENT

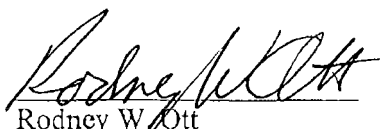
The form of this Agreement has been approved by counsel for the Parties:

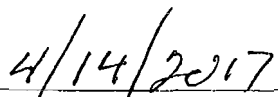
Christopher W. Kramer

Date

Gust Rosenfeld, P.L.C.
Attorneys for City of Scottsdale

ATTACHMENT 2


Rodney W. Ott
Quarles & Brady, LLP
Attorneys for the Hings.


Date

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ATTACHMENT 2

35. SIGNATURES

[Signature]
Robert Ong Hing

04/14/17
Date

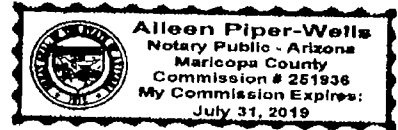
STATE OF ARIZONA)
) ss.
County of Maricopa)

On this 14th day of April, 2017, before me, the undersigned Notary Public, personally appeared Robert Ong Hing who executed the foregoing instrument the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

[Signature]
Notary Public

My commission expires: 07/31/2019



[Signature]
Alice Y. Hing

04/14/17
Date

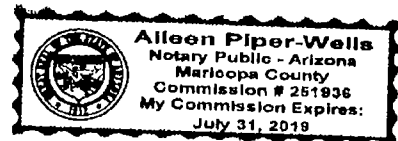
STATE OF ARIZONA)
) ss.
County of Maricopa)

On this 14th day of April, 2017, before me, the undersigned Notary Public, personally appeared Alice Y. Hing, who executed the foregoing instrument the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

[Signature]
Notary Public

My commission expires:



RTG 75
 Scottsdale Athletic Club
 President, Robert Ong Hing

04/14/17
 Date

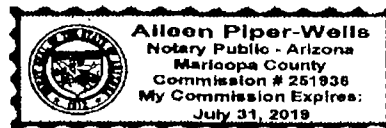
STATE OF ARIZONA)
) ss.
 County of Maricopa)

On this 14th day of April, 2017, before me, the undersigned Notary Public, personally appeared Robert Ong Hing who executed the foregoing instrument the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Aileen Piper-Wells
 Notary Public

My commission expires: 07/31/2019



 Jim Thompson
 City Manager, City of Scottsdale

 Date

STATE OF ARIZONA)
) ss.
 County of Maricopa)

On this ____ day of _____, 2017, before me, the undersigned Notary Public, personally appeared Jim Thompson who executed the foregoing instrument the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

 Notary Public

My commission expires:

WHEN RECORDED, RETURN TO:

ATTACHMENT 2

City of Scottsdale
7447 E. Indian School Road, Suite 205
Scottsdale, AZ 85251

Exempt from Affidavit of Value
under A.R.S. § 11-1134(A)(2)



**CITY OF SCOTTSDALE
SIGN EASEMENT**

Project No FS603
APN 174-11-003W

FOR ONE AND NO/100 DOLLAR (\$1.00) and other good and valuable consideration received **City of Scottsdale**, an Arizona municipal corporation ("Grantor") does hereby grant to **Robert Ong Hing and Alice Y. Hing** ("Grantees"), a perpetual, non-exclusive easement upon, over, under and across the parcel of land (the "Property") described on the legal description and the sketch attached hereto as **Exhibit "1"**. The purpose of this easement is for a monument sign and maintenance and repair of said sign and appurtenances related thereto.

Grantees shall maintain and repair the monument sign installed within the easement area in good condition. Grantees shall not alter the location or configuration of the current sign or install a new sign in the easement area without receiving the requisite State, County, and/or City permissions. Any new sign placed in the easement area must comply with all relevant State, County and City rules and requirements in place at the time the sign is installed.

Grantees shall release, indemnify and hold harmless the City from any and all claims, demands, causes of action or damages of any kind or nature against the City related to or arising out of the easement and/or monument sign.

Grantor shall have the right to use the Easement area in a manner so long as such use is not inconsistent with, and does not interfere with the uninterrupted enjoyment of the easement rights, and does not impair the visibility of the sign improvements.

Grantor hereby warrants and covenants to Grantees and its successors and assigns that Grantor is lawfully seized and possessed of the Property; that Grantor has a good and lawful right to make the conveyance described herein; and that Grantees shall have quiet possession against the claims of all persons.

The person executing this document on behalf of a corporation, trust or other organization warrants his or her authority to do so and that all persons necessary to bind Grantor have joined in this document. This document runs with the land in favor of Grantees successors and assigns.

Signature page follows

ATTACHMENT 2

DATED this____ day of_____, 2017.

Grantor: City of Scottsdale, an Arizona municipal
corporation

By:_____

Its:_____

State of Arizona)
) ss.
County of Maricopa)

This document was acknowledged before me this____ day of_____, 2017,
by_____ for and on behalf of City of Scottsdale.

My commission expires:

NOTARY PUBLIC

EXHIBIT 1

(Page 1 of 2)

A strip of land within Parcel 2 of the Record of Survey, 8225 E. Indian Bend Rd. recorded in Book 1287 of Maps, Page 43, Records of Maricopa County Arizona, described as follows:

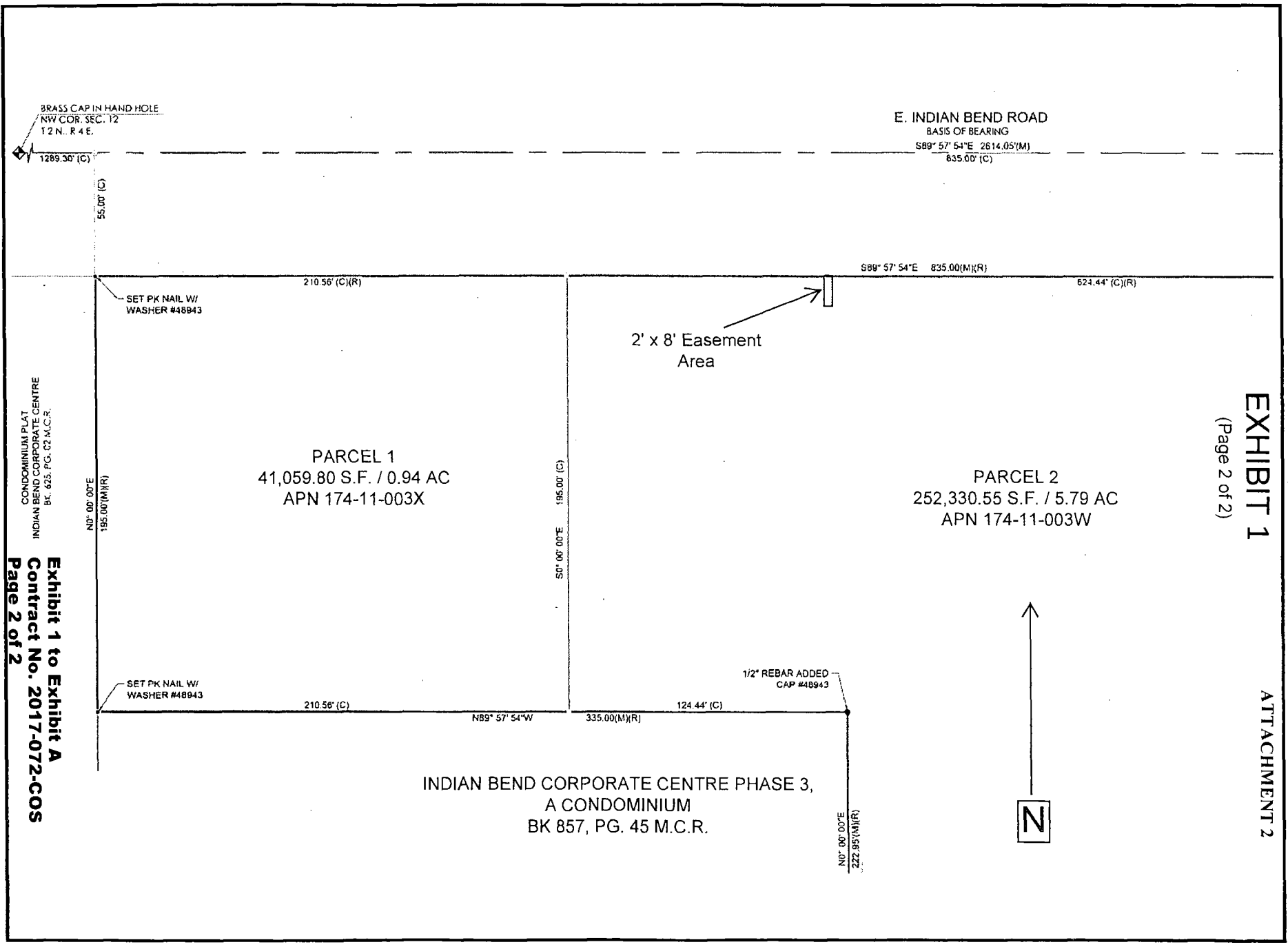
Commencing at the Northwest corner of Parcel 1 of said Record of Survey, thence South 89° 57' 54" East, along the North line of said Parcel 1, a distance of 330.00 feet to a point on the North line of Parcel 2 of said Survey and the POINT OF BEGINNING of this description;

Thence South 00° 00' 00" East a distance of 8.00 feet;

Thence South 89° 57' 54" East a distance of 2.00 feet;

Thence North 00° 00' 00" West a distance of 8.00 feet, to a point on the North line of said Parcel 2;

Thence North 89° 57' 54" West a distance of 2.00 feet to a terminus at the Point of Beginning.



CONDOMINIUM PLAT
INDIAN BEND CORPORATE CENTRE
BK. 857, PG. 45 M.C.R.
Exhibit 1 to Exhibit A
Contract No. 2017-072-COS
Page 2 of 2

EXHIBIT 1
(Page 2 of 2)
ATTACHMENT 2

Smith, Erica

From: Jagger, Carolyn
Sent: Tuesday, April 25, 2017 11:11 AM
To: Klapp, Suzanne; Korte, Virginia; Lane, Jim; Littlefield, Kathy; Milhaven, Linda; Phillips, Guy; Smith, David N
Cc: Washburn, Bruce; Nichols, Jeff; Thompson, Jim; Walker, Sharron
Subject: Item 23A, City of Scottsdale v. Hing Settlement Agreement and Release of Claims, on Tonight's Agenda

Your Honor and Members of the City Council,

Below is an email from Mark Stuart regarding Item 23A, *City of Scottsdale v. Hing Settlement Agreement and Release of Claims*, on tonight's agenda.

Best regards,

Carolyn

From: Mark Stuart [<mailto:mstuart1789@gmail.com>]
Sent: Monday, April 24, 2017 2:07 PM
To: Washburn, Bruce; Lane, Jim; Phillips, Guy; Littlefield, Kathy; Korte, Virginia; Klapp, Suzanne; Milhaven, Linda; Jagger, Carolyn
Subject: Please Remove Item 23 A from the Consent Agenda and Agendize it for Discussion at Tomorrow's Meeting.

Greetings Mayor Lane, et. al:

Please remove this item from the consent agenda. Condemnation is prohibited by our city charter, unless no reasonable alternatives exist. This situation was entirely avoidable. It appears to have resulted from an egocentric exercise of council power. Someone on the council should explain this situation to the public. This situation, unnecessary and expensive litigation, is a well established custom and practice

of our city attorney's office. Violating a citizen's constitutional and city charter rights, and daring that person to sue the city to defend those rights, is a well established custom of this council. **Why does the council allow this type of behavior to repeat itself?**

Please ask Mr. Washburn to address the following questions:

1. Why didn't our city attorney respond to Mr. Hing's Petition for Review in the Arizona Supreme Court?
2. Why was it necessary to hire outside legal counsel?
3. Why isn't the City attorney able to interpret and apply our charter provision prohibiting condemnation?
4. Why did the Council ignore the limitations placed upon their power by the City Charter?

5. How many hours of city staff time was spent , in total , on this issue?
 - Non-attorney staff time.
 - City Attorney staff time.
 6. Does the City have any factual basis to believe that our total cost of acquiring this small,1.5 acre, parcel is less than \$3.5 million, all inclusive?
 7. Why didn't we just build the new fire station on city property down the street , at a much lower cost of about \$150,000?
 8. What are the City's plans for the old fire station nearby?
 9. Should Mr. Washburn be fired for encouraging the council to engage in this obvious fool's errand?
 10. How many lawsuits has the city settled since 2006?
 11. How many of these lawsuits should have been avoided?
 12. How does our ratio of litigation costs to general fund revenues compare to city's of comparable size?
- This issue needs to be fully and thoroughly aired in public. These types of decisions clearly impact our budget and our city's financial ability to meet citizens' needs for truly public services. See you tomorrow.
- Mark Stuart (480) 922-6169