

SETTLEMENT AGREEMENT AND RELEASE

THIS SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS (Agreement) is entered into between Washington Policy Center and the City of Seattle, and all of its agents, employees, and representatives (jointly referred to as “the City”).

RECITALS

A. Through its director Jason Mercier, Washington Policy Center (“Plaintiff”) filed a public records request on or about August 25, 2017 (the “request”), which was processed by the City as C017217-082517; the City closed the request in or about March 2018 after providing responsive documents in multiple installments and exemption logs;

B. Plaintiff filed a Complaint against the City in or about September 2018, with allegations that the City violated the Public Records Act, RCW 42.56 *et seq.*, and that Complaint is now pending in the King County Superior Court, Cause No. 18-2-23119-1 SEA (“the Complaint”);

C. Regarding the City’s PRA response to the Request, Plaintiff claimed in part that the City could not redact a specific document, namely a November 2014 legal advice memorandum to a Council Member, by applying the attorney client privilege exemption and further claimed that the City cannot exempt communications between spouses if those spouses are discussing City business, and the City disputes these claims;

D. It is understood and agreed to by the Parties that this settlement is a compromise of a doubtful and disputed claim, and the payments are not to be construed as an admission of liability on the part of the City, by whom liability is expressly denied;

E. The Parties desire to enter into this Settlement Agreement in order to provide payment in full settlement and discharge of all claims which are, or might have been, the subject matter of the Complaint, upon the terms and conditions set forth below.

A G R E E M E N T

The Parties agree as follows:

1.0 Plaintiff’s Release and Discharge

1.1. In consideration of the payment and other terms set forth in Section 2, Plaintiff hereby completely releases and forever discharges any demands, obligations, actions, causes of action, rights, damages, costs (including payment of attorney fees), losses of services, expenses and compensation of any nature whatsoever, whether based on RCW 42.56 and/or a tort, contract, or statutory theory of recovery, which the Plaintiff now has against the City and/or which are the subject of the Complaint which are in any way related to the Request, the City’s response to the

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Request, any documents produced in response to the Request or as a result of this Settlement Agreement, Plaintiff's PRA claims, lawsuit, or any claim of Plaintiff's representatives, heirs, or marital community, which have resulted from the alleged acts or omissions of the Defendant through the date of execution of the agreement.

1.2 This release and discharge shall also apply to the City's past, present and future officers, attorneys, agents, servants, employees and assigns.

1.3 This release, on the part of Plaintiff, shall be a fully binding and complete settlement among the Plaintiff and the City. As a consequence of this Agreement, Plaintiff understands and agrees that the City will file with the Court a joint stipulation by the Parties seeking a dismissal, with prejudice, of his Complaint and that no payments shall be made or documents released until the Dismissal Order is entered.

1.4 Plaintiff acknowledges and agrees that the release and discharge set forth above is a general release. Plaintiff expressly waives and assumes the risk of any and all claims for damages which exist as of this date, but of which Plaintiff does not know or suspect to exist, and which, if known, would materially affect his decision to enter into this Agreement. Plaintiff further agrees that Plaintiff has accepted payment of the sums specified herein as a complete compromise of matters involving disputed issues of law and fact. Plaintiff assumes the risk that the facts or law may be other than he believes. It is understood and agreed to by the Parties that the payments are not to be construed as an admission of liability on the part of the City, by whom liability is expressly denied.

1.5 Plaintiff agrees that as consideration for acceptance of the payment of the \$9,242.00 discussed in Section 2, below, the City will file a joint, stipulated Order of Dismissal With Prejudice dismissing all legal claims Plaintiff may have against Defendant arising out of the Complaint, Case No. 18-2-06734-T SEA. 18-2-23119-1 SEA. BAA

1.6 Plaintiff further agrees and understands that Plaintiff will not resubmit, in whole or in part, a new PRA request seeking the same records sought in the Request, nor will any agent or assign do so on Plaintiff's behalf. Plaintiff agrees that any new request for similar records will be interpreted to exclude all records produced by the City in this case

2.0 Payments and Other Agreements by The City of Seattle.

In consideration of the release set forth above, the City agrees to pay to Plaintiff, as reimbursement for costs and damages, the sums outlined in Section 2.1, below:

2.1 The City of shall pay to Plaintiff the sum total of nine thousand dollars and no cents (\$9,242.00), characterized as nine thousand dollars and no cents (\$9000.00) in attorney's fees and two hundred forty-two dollars and no cents (\$242.00) in costs, as a settlement of all claims as set forth above, inclusive of any additional expenses, costs and/or attorney fees. This non-wage payment shall be reported to the Internal Revenue Service using a 1099 form. This amount shall be due and must be placed in U.S Mail within fifteen (15) business days upon receipt of an Order of Dismissal With Prejudice in Cause No. 18-2-23119-1 SEA, and shall be inclusive of any claims

or causes of action included or referenced in or related to the Complaint, except that no payments shall be made until a completed W-9 has been provided to the City for each individual or entity receiving payment and a reasonable amount of processing time has been given to the City subsequent to the provision of these forms.

2.2 The City of Seattle will provide, within five business days of the entry of the Order dismissing with prejudice Cause No. 18-2-23119-1 SEA, new copies of specific documents which were already provided in either the seventh or eighth installment response to the Request, with the following revisions to the initial redactions, additional material provided, and applicable restrictions on scope of revisions and waivers:

- (a) Regarding the eighth installment of records responsive to the Request, the City will provide a new version of the installment, which will include a completely unredacted copy of the four-page November 10, 2014 legal advice memorandum prepared by the City Attorney's Office (Kent Meyer) for Councilmember Nick Licata with the Subject heading of "Income Tax and Mansion Tax" which was attached to an email communication received by City employee Newell Aldrich on April 7, 2017 – this document will hereinafter be referred to as the "November 2014 Legal Memorandum;"
- (b) Additionally, while the City had no obligation to provide the following in response to the Request, because the copy of the November 2014 Legal Memorandum attached to the April 7, 2017 email communication was somewhat illegible, as a courtesy, the City will provide a "clean" copy of the November 2014 Legal Memorandum;
- (c) The City does not require that the Plaintiff keep the contents of the November 2014 Legal Memorandum confidential;
- (d) The City expressly limits any waiver of its attorney client privilege and/or attorney work product to the four corners of the November 2014 Legal Memorandum; this is not a subject matter waiver of privilege, a waiver that extends to any other drafts and/or versions of the November 2014 Legal Memorandum which may exist (with the sole exception of the version identified in 2.2(b) above), or any other extended waiver;
- (e) Whether in response to this Request, documents produced per this Settlement Agreement, or any other records request of any nature (litigation, administrative subpoena, etc.), with the sole exception of the November 2014 Legal Memorandum, the City will continue to redact:
 - i. Legal advice and/or analysis on tax issues or any other subject provided to the City by any attorney employed or retained by the City and/or any individual in a formal Joint Interest Agreement with the City; (Bradley Bagshaw is not included in either category for the purposes of this Settlement Agreement);
 - ii. Any requests for legal advice from a City employee to an attorney employed or retained by the City and/or any responses thereto, and
 - iii. Any description of, quotation of, or reference to the legal advice or analysis provided at any time by attorneys employed or retained by the City;
- (f) Regarding the seventh installment of records produced in response to the Request, the City will provide a new version of the installment, which will be subject to other stated exemptions from exemption logs and consistent with Section 2.2 above; the City will remove all but 10 lines of redactions from communications to or from Councilmember

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Sally Bagshaw where the spousal communications privilege is the only stated exemption.

3.0 Attorney's Fees

3.1 Except as provided for in Section 2.1 above, each party hereto shall bear its own attorney's fees and costs arising from this Complaint.

3.2 In the event a suit is brought to enforce any provision of this Agreement, the prevailing party shall be awarded all costs incurred in prosecuting or defending the action, including attorney and paralegal fees. In the event the City of Seattle is the prevailing party, the hourly rate to be paid to the City for the work of attorneys and paralegals in the City Attorney's Office shall be the hourly rate charged by persons in downtown Seattle law firms having similar experience.

4.0 Representation of Comprehension of Document

In entering into this Agreement, Plaintiff represents that Plaintiff was represented by an attorney, and either consulted with that attorney or voluntarily decided not to do so, the terms of this Agreement have been completely and carefully read by Plaintiff; and that the terms of this Agreement are fully understood and voluntarily accepted by Plaintiff.

5.0 Warranty of Capacity to Execute Agreement

Plaintiff represents and warrants that no other person or entity has, or has had, any interest in the claims, demands, obligations, or causes of action referred to in this Agreement, except as otherwise set forth herein; that Plaintiff has the sole right and exclusive authority to execute this Agreement and receive the sums specified in it; and that Plaintiff has not sold, assigned, transferred, conveyed or otherwise disposed of any of the claims, demands, obligations or causes of action referred to in this Agreement.

6.0 Governing Law

This Agreement shall be construed and interpreted in accordance with the laws of the State of Washington.

7.0 Additional Documents

All Parties agree to cooperate fully and execute any and all supplementary documents and to take all additional actions which may be necessary or appropriate to give full force and effect to the basic terms and intent of this Agreement.

8.0 Taxability of Settlement

The City of Seattle takes no position as to any taxes which may be due and has advised Plaintiff that he may be responsible for making estimated tax payments on this settlement. The

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City has advised Plaintiff that it will report the settlement in its entirety to the Internal Revenue Service by issuance of either a 1099 or W-2 form. Plaintiff must submit a W-9 form to receive any non-wage compensation as a part of this settlement. Plaintiff agrees that Plaintiff is solely responsible for any tax payments which may be owed as the result of the Agreement. Plaintiff shall be solely responsible for the tax consequences of the Agreement should it be characterized as wages, including, but not limited to, indemnifying the City of Seattle for any tax liabilities or penalties assessed or incurred.

9.0 Entire Agreement and Successors In Interest

This Agreement contains the entire agreement between the Parties with regard to the matters set forth in it and shall be binding upon and inure to the benefit of the executors, administrators, personal representatives, heirs, and successors and assigns of each.

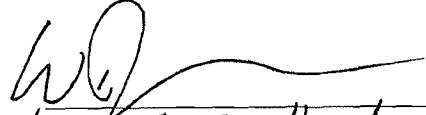
10.0. Severability

It is further understood and agreed that if any of the provisions of this Agreement are held to be invalid or unenforceable, the remaining provisions shall nevertheless continue to be valid and enforceable. Notwithstanding the foregoing, if the release contained in paragraph 1.0 above is declared unenforceable or invalid, the City shall have the option of rescinding this Agreement. If such a rescission occurs, Plaintiff shall re-pay to Defendant all sums paid to Plaintiff pursuant to this Agreement.

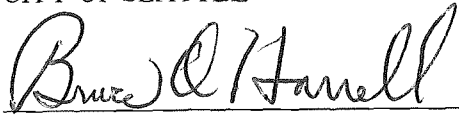
THIS AGREEMENT CONTAINS A RELEASE OF ALL KNOWN AND UNKNOWN CLAIMS AGAINST THE CITY OF SEATTLE THROUGH THE DATE OF EXECUTION OF THIS AGREEMENT. PLAINTIFF ACKNOWLEDGES THAT PLAINTIFF HAS CAREFULLY READ AND FULLY UNDERSTANDS ALL ASPECTS OF THIS SETTLEMENT AGREEMENT, AND THAT PLAINTIFF HAS NOT RELIED UPON ANY REPRESENTATIONS OR STATEMENT NOT SET FORTH HEREIN OR MADE BY THE CITY OF SEATTLE OR ITS REPRESENTATIVES.

DATED this 29th day of March, 2019.

WASHINGTON POLICY CENTER

By: 
William J. Crotenden
Date Signed: 3/29/19 #22033

CITY OF SEATTLE

By: 
Date Signed: 4-8-19