CITY OF WEST DES MOINES
CITY COUNCIL MEETING COMMUNICATION

DATE: October 3, 2016

ITEM: Resolution - Approval of Release and Settlement Agreement

FINANCIAL IMPACT: $30,000 total ($10,000.00 from City and $20,000.00 from Iowa Community Assurance Pool)

SYNOPSIS: In May, 2015 Carol Gass filed a lawsuit against the City of West Des Moines seeking damages in connection with her employment with the City (Gass, et al. vs. the City of West Des Moines, Iowa, et al.). Gass resigned in July of 2016 and added claims that her resignation was a constructive discharge. The City denied all of Ms. Gass' claims.

BACKGROUND: For the purpose of avoiding the cost of additional litigation, Carol Gass and the City of West Des Moines have negotiated a Release and Settlement Agreement regarding the lawsuit. The Agreement releases and discharges the City and ICAP (Iowa Community Assurance Pool) and all City related insurance entities from any and all claims alleged in the lawsuit or in relation to Ms. Gass' employment with the City. Police Chief Shaun LaDue, who was also named as a Defendant, will be dismissed from the lawsuit by Ms. Gass prior to the execution of the Settlement Agreement.

The Settlement Agreement anticipates payment of $19,738.84 to Ms. Gass for dismissing the lawsuit and $6,200.00 for claims of lost wages. A payment of $4,061.16 to the Fiedler & Timmer Law Firm, the attorneys representing Ms. Gass, will also be made. The Settlement Agreement further requires that Ms. Gass agree that she will not apply to the City or any related entity for any future position of employment.

The City maintains that it has no liability in regard to the claims alleged by Ms. Gass, and no liability is admitted or implied by approval of the Release and Settlement Agreement. Instead, approval of the Agreement is recommended to protect the City from the financial risk of a potentially long and costly lawsuit.

This Agreement is only in relation to Ms. Gass, with trial on the allegations of the remaining two Plaintiffs scheduled to begin October 31, 2016.

OUTSTANDING ISSUES (if any): None.

RECOMMENDATION: Approve the Release and Settlement Agreement between the City of West Des Moines and Carol Gass.

Lead Staff Member: Richard J. Scieszinski, City Attorney RJS

#2773271

RESOLUTION APPROVING RELEASE AND SETTLEMENT AGREEMENT BETWEEN CAROL GASS AND THE CITY OF WEST DES MOINES, IOWA

WHEREAS, in May, 2015 Carol Gass filed a lawsuit against the City of West Des Moines in the Iowa District Court for Polk County entitled *Carol Gass, Alice Wisner and Tanya Zaglauer Schmell, Plaintiffs, v. the City of West Des Moines, Iowa and Chief of Police Shaun LaDue, in his Individual Capacity and Official Capacity, Defendants*, No. LACL132694; and

WHEREAS, subsequent to filing the lawsuit, Carol Gass dismissed Chief of Police Shaun LaDue from the lawsuit; and

WHEREAS, Carol Gass and the City of West Des Moines have reached a proposed settlement of the lawsuit and seek to memorialize the terms of the settlement in a Release and Settlement Agreement; and

WHEREAS, approval of the Release and Settlement Agreement between the parties will protect the City from the financial risk of a potentially long and costly lawsuit, and is in the best interest of the City.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WEST DES MOINES, IOWA, THAT:

1. The attached negotiated Release and Settlement Agreement between Carol Gass and the City of West Des Moines regarding *Carol Gass, Alice Wisner and Tanya Zaglauer Schmell, Plaintiffs, v. the City of West Des Moines, Iowa and Chief of Police Shaun LaDue, in his Individual Capacity and Official Capacity, Defendants*, Case No. LACL132694, is approved.

2. The Mayor is authorized to sign the Release and Settlement Agreement on behalf of the City and the City Clerk is directed to attest to the Mayor's signature.

3. The City's Finance Department is authorized to make appropriate payment as provided by the terms of the Release and Settlement Agreement.

PASSED AND ADOPTED this 3rd day of October, 2016.

_____
Steven K. Gaer, Mayor

ATTEST:

_____
Ryan T. Jacobson,
City Clerk

RELEASE AND SETTLEMENT AGREEMENT

WHEREAS, Carol Gass ("Gass") has filed a lawsuit against the City of West Des Moines, Iowa ("the City") (Gass and the City are collectively sometimes referred to as "the Parties") seeking damages in connection with her employment and the termination of her employment, and the City has denied the claims in response thereto, which Lawsuit is pending in the Iowa District Court for Polk County, Gass et al. vs. the City of West Des Moines, Iowa, LACL132694 (the "Lawsuit"); and

WHEREAS, the City has denied any liability for the claims made and the damages sought by Gass in the Lawsuit; and

WHEREAS, Gass and the City have now agreed to settle this dispute and all matters between them relating to or arising out of Gass's claims of sex discrimination and retaliation and any other matters raised or which could have been raised relating to her employment at the City and the termination of employment, including but not limited to the claims in the Lawsuit; and

WHEREAS, Gass and the City now wish to confirm and memorialize their settlement of the Lawsuit and disputes between them relating to this matter,

NOW, THEREFORE, Gass and the City agree as follows:

1. RELEASE. In consideration of the covenants, promises, and conditions herein contained and the amounts to be paid hereunder, receipt of which is hereby acknowledged, Gass, for herself and her heirs, legal representatives, successors and assigns, hereby releases and discharges the City, Iowa Communities Assurance Pool (ICAP), American Risk Pooling Consultants, Inc., York Risk Pooling Services, Inc., and Public Entity Risk Services of Iowa (PERSI), and their successors, predecessors, affiliates, representatives, employees, agents, officers, directors, attorneys, the City Council, insurers and assigns from any and all claims, causes of action, damages, liabilities, expenses, fees, and costs, which Gass ever had, now has, or

may have in the future for any losses, injuries, or damages, which occurred prior to the execution of this Agreement, whether anticipated or unanticipated, arising from, arising out of, or directly or indirectly connected with Gass' employment, the termination of her employment, and her claims against the City. Gass releases the City from any claims that have been made or could be made involving her employment to and through the date of the execution of this Agreement, including claims for wrongful termination, breach of implied contract, breach of implied covenant of good faith and fair dealing, the Collective Bargaining Agreement she was subject to, or any other contract, implied contract, or quasi contract. It is further agreed that this Release includes, but is not limited to, any claims to and through the date of the execution of this Agreement for discrimination based on the Age Discrimination in Employment Act, Title VII of the Equal Employment Opportunities Act, the Iowa Civil Rights Act, the Fair Labor Standards Act, Iowa Code Chapter 91A, the Americans with Disabilities Act, the FMLA and any and all other claims, whether statutory or common law. The paragraph does not apply to any Worker's Compensation claim that Gass has pending against the City.

2. PAYMENT AND OTHER TERMS. In consideration of the promises contained in this Agreement, and in full and final settlement of the claims the Parties may have or could have against each other in the Lawsuit, the Parties agree:

(a) The City will pay $4,061.16 to the Fiedler & Timmer Law Firm, which will be reported on Form 1099; and

(b) The City will pay $19,738.84 to Gass reported on Form 1099 for general damage claims; and

(c) The City will pay $6,200.00 to Gass reported on Form W-2 for claims of lost wages.

3. NON-ADMISSION AND STATEMENT. The Parties to this Agreement recognize that any payments or agreements made pursuant hereto are not an admission of any liability by the City. This settlement is made for the purposes of avoiding the costs and risks of litigation.

4. DISMISSAL OF GASS' CLAIMS IN THE LAWSUIT. Once the payment is made in accordance with paragraph 2 above, Gass agrees to dismiss with prejudice all of her claims pending in the Lawsuit and further agrees that her claims for relief asserted in the Lawsuit are dropped for all purposes and all times. This dismissal will not impact the claims of the other Plaintiffs in the Lawsuit. The only payment to be made by the City for costs of suit and attorney fees for Gass is the payment set forth in paragraph 2.

5. OPEN RECORDS AND AGENCY APPROVAL. Gass recognizes that the City will comply with the Iowa Records Act. Gass also acknowledges that this settlement will be presented to the City, which may take action to approve or reject the settlement.

6. SEVERABILITY. If any portion or portions of this Agreement are held by a court of competent jurisdiction to conflict with any federal, state, or local law, and as a result such portion or portions are declared to be invalid and of no force or effect in such jurisdiction, all remaining portions of this Agreement shall otherwise remain in full force and effect and be construed as if such invalid portion or portions had not been included herein.

7. CONSIDERATION OF AGREEMENT. Gass represents that she has discussed the terms of the settlement with her counsel, Fiedler & Timmer, and her counsel has answered all of her questions relating to this Agreement. Gass understands that she has twenty-one (21) days from receipt of this Agreement to review and consider its terms. Gass further understands and

agrees that upon signing this Agreement, she has seven (7) days to revoke her acceptance of this Agreement.

8. TAX MATTERS. Gass acknowledges that the City does not warrant or represent any tax consequences of this Agreement, and she is relying on her own counsel and/or tax advisors and not on the City in that regard.

9. REINSTATEMENT/REEMPLOYMENT. Gass agrees that she will release any claim for reinstatement as an employee of the City and any related entity. Gass further agrees not to apply with the City or any related entity for any position of any type. The Parties specifically agree that this was a negotiated term of this settlement and not evidence of any retaliation by the City.

10. GOVERNING LAW. This Agreement shall be governed and construed in accordance with the laws of the state of Iowa.

11. ENTIRE AGREEMENT. Each Party acknowledges and agrees that no representations or promises have been made to or relied upon by any of them or by any person acting for or on their behalf in connection with the subject matter of this Agreement which are not specifically set forth herein. All prior representations and promises made by any Party to another, whether in writing or orally, are understood by the Parties to be merged in this Agreement.

11. ATTORNEYS' FEES. Gass agrees and acknowledges that any claim for attorneys' fees by her attorney is her sole responsibility and the payments set forth in paragraph 2 above constitute the total payments owed Gass hereunder.

12. MEDICARE REPRESENTATIONS. Gass represents that she is not currently receiving Medicare benefits and Medicare has not made any conditional payments on her behalf.

Gass has not and will not apply for Social Security Disability benefits related to this incident. Gass does not anticipate any future Medicare-eligible expenses relative to any injuries suffered while an employee of the City. Because none of the parties anticipate any future Medicare-eligible expense, no part of the settlement is being set aside for Medicare. Gass agrees to defend, indemnify, and hold the City harmless from any interest asserted by Medicare. Such indemnification shall include, without limitation, any and all attorney fees, court costs, and any and all other costs and expenses.

Carol Gass	Date
City of West Des Moines, Iowa	Date