

# CITY COUNCIL REPORT

Item 12



Meeting Date: May 6, 2023  
General Plan Element: *Provide for the orderly administration of the affairs of the City*  
General Plan Goal: *Fiscal management*

## ACTION

**Adopt Resolution No. 13116 authorizing Settlement Agreement No. 2024-072-COS with Nationwide General Insurance Company in the amount of \$190,187.67 for all claims arising from damage to Nationwide's insured's property caused by a water main break near Thomas Road and 75<sup>th</sup> Place.**

## BACKGROUND

Shortly after midnight on July 5, 2022, Scottsdale Police officers alerted the City Water Department of flooding near 75<sup>th</sup> Place and Thomas Road. Emergency workers responded to the area and located a city water main break within a condominium complex parking lot immediately adjacent to Thomas Road. At that time, water was already pooling about a foot deep and was flowing towards properties across 75<sup>th</sup> Place. The repairs required the water main to be isolated and shut off, a process which took several hours.

The next morning, it was discovered that water had flooded a residential home located at 2913 N. 75<sup>th</sup> Place, causing extensive damage. The homeowner chose to work with its own insurance company, Nationwide General Insurance Company ("Nationwide"), to remediate and repair the damage to the interior and exterior landscaping of the home. Nationwide paid over \$600,000 in damages and repairs to the homeowner as a result of the home's water damage.

In a lawsuit filed in Maricopa County Superior Court on June 29, 2023, Nationwide claimed negligence against the City and sought reimbursement for payments made to the insured to remediate and repair damage to the landscaping, structure, fixtures and furnishings caused by the flooding as well as loss of business income. In its notice of claim, Nationwide alleged \$630,574 in damages, which it had paid to the owner as its insurer, against the City. The Safety and Risk Management Department engaged an expert to help document and assess the damages and prepare estimates in this claim. The proposed settlement is the result of a negotiated compromise.

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 outweigh the amount of this negotiated settlement.

## **ANALYSIS & ASSESSMENT**

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### **Recent Staff Action**

The lawsuit has been handled in-house by the City Attorney's Office in collaboration with the Safety and Risk Management Department. On April 2, 2024, an Executive Session of City Council was held to discuss and consult with the City's attorneys for legal advice and to discuss and consult with the City's designated representatives to consider its position and to instruct its representatives regarding this litigation.

### **Policy Implications**

None.

### **Significant Issues to be Addressed**

None.

## **RESOURCE IMPACTS**

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### **Available funding**

The proposed settlement will require a total payment of \$190,187.67 from the City to the Plaintiff. Funds are available in the City's FY 2023/24 Safety and Risk Management Operating Budget to pay this settlement. If the settlement is denied, the City will likely spend tens of thousands of dollars in fees and expenses in the defense of this case through trial.

### **Staffing, Workload Impact**

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

### **Future Budget Implications**

The proposed settlement of \$190,187.67 may be included in the City's primary property tax rate for the next year, at the Council's discretion. The eligibility of settlement and judgment payments for possible inclusion in the City's primary property tax rate is based upon an Arizona Attorney General opinion.

## OPTIONS & STAFF RECOMMENDATION

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### Recommended Approach

The City Attorney's Office recommends that the Council adopt Resolution No. 13116 and authorize settlement of this lawsuit as proposed. City Management has been consulted and is supportive of the proposed settlement as well.

### Proposed Next Steps

If the settlement is approved, City representative(s) will execute settlement documents as proposed.

### RESPONSIBLE DEPARTMENT(S)

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City Attorney's Office – Civil Division  
Safety and Risk Management Department

### STAFF CONTACTS (S)

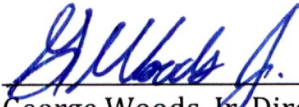
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Sherry R. Scott, City Attorney, [sscott@scottsdaleaz.gov](mailto:sscott@scottsdaleaz.gov)


George Woods, Safety and Risk Management Department Director, [gwoods@scottsdaleaz.gov](mailto:gwoods@scottsdaleaz.gov)

### APPROVED BY

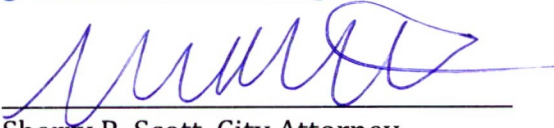
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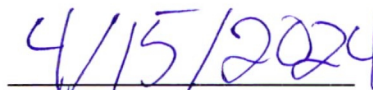
George Woods, Jr. Director  
Safety and Risk Management Department  
(480) 312-7040  
[gwoods@scottsdaleaz.gov](mailto:gwoods@scottsdaleaz.gov)



Date



Sherry R. Scott, City Attorney  
(480) 312-2405  
[sscott@scottsdaleaz.gov](mailto:sscott@scottsdaleaz.gov)



Date

### ATTACHMENTS

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1. Resolution No. 13116
2. Contract No. 2024-72-COS

## RESOLUTION NO. 13116

A RESOLUTION OF THE COUNCIL OF THE CITY OF SCOTTSDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING SETTLEMENT IN THE AMOUNT OF \$190,187.67 TO SETTLE *NATIONWIDE GENERAL INSURANCE COMPANY v. CITY OF SCOTTSDALE*, CASE NO. CV2023-052475 CURRENTLY PENDING IN MARICOPA COUNTY SUPERIOR COURT, AND AUTHORIZING THE MAYOR TO EXECUTE CONTRACT NO. 2024-072-COS.

WHEREAS, on or about July 5, 2022, a City water main break occurred near Thomas Road and 75th Place, causing flooding damage to a residential property insured by Nationwide General Insurance Company; and

WHEREAS, Nationwide General Insurance Company brought suit against the City of Scottsdale asserting negligence claims against the City and seeking reimbursement for actual damages it paid out to the insured homeowner caused by the flooding; and

WHEREAS, the City continues to dispute liability but it is in the best interest of the City to effectuate a settlement of all claims against the City arising from this event and which form the basis of the lawsuit, *Nationwide General Insurance Company v. City of Scottsdale*, Case No. CV2023-052475, currently pending in the Maricopa County Superior Court;

WHEREAS, the parties have agreed to resolve the disputed issues and compromise all claims by settling herein.

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

Section 1. That the City Council authorizes the Mayor to execute Contract No. 2024-072-COS on behalf of the City to settle this case in its entirety in the amount of One Hundred Ninety Thousand One hundred Eighty-Seven Dollars and Sixty-Seven Cents (\$190,187.67) from funds to be paid from the City's Risk Management Operating Budget for settlement of *Nationwide General Insurance Company v. City of Scottsdale*, Case No. CV2023-052475.

Section 2. That the City Council approves the settlement set forth above and authorizes and directs the City Manager, the City Treasurer, and City Attorney, and their respective staffs to execute such documents and take such other actions as are necessary to carry out the purpose of the Resolution.

PASSED AND ADOPTED by the Council of the City of Scottsdale, Maricopa County, Arizona this \_\_\_\_ day of \_\_\_\_\_, 2024.


CITY OF SCOTTSDALE, an Arizona  
municipal corporation

ATTEST:

\_\_\_\_\_  
David D. Ortega, Mayor

\_\_\_\_\_  
Ben Lane, City Clerk

APPROVED AS TO FORM:

A handwritten signature in black ink, appearing to read 'Sherry R. Scott', written over a horizontal line.

Sherry R. Scott, City Attorney  
By: Stephanie Heizer, Senior Assistant City Attorney

**SETTLEMENT AGREEMENT  
AND GENERAL RELEASE**

This Settlement Agreement and General Release of All Claims (“Agreement”) is entered into by and between NATIONWIDE GENERAL INSURANCE COMPANY (“Plaintiff”) and the CITY OF SCOTTSDALE, a municipal corporation, its employees, officers, and agents (“City”). Plaintiff and City may be referred to jointly as the “Parties.”

**RECITALS**

A. On or about July 5, 2022, a residential property insured by Plaintiff sustained flooding when a City water main broke (the “event”) on a nearby property.

B. As more specifically described in Plaintiff’s Complaint filed in the Maricopa County Superior Court, entitled *Nationwide General Insurance Company v. City of Scottsdale*, Cause No. CV2023-052475 (the “Lawsuit”), Plaintiff alleges that the flooding caused damage to its insured’s residential structure and yard which necessitated remediation, and further caused to damage to its insured’s personal property and business. Plaintiff paid its insured’s claims and seeks reimbursement from the City.

C. Despite the fact that liability has not been admitted regarding the claim asserted by Plaintiff and the fact that this remains a disputed claim, Plaintiff desires to finally and fully resolve all past, present, and potential disputes, claims, and issues as between the Parties relating to or arising out of the event and the facts and circumstances that gave rise to the Plaintiff’s alleged damages. The Plaintiff and the City desire to avoid further expense, inconvenience, and the distraction of burdensome and protracted litigation. This Agreement is intended to resolve any dispute which may exist between the Parties now and in the future. The Plaintiff intends to execute this Agreement in order to provide for

certain payment in full settlement and discharge of all claims which are, or might have been, brought against the City as a result of the event and claims, upon the terms and conditions set forth below.

**AGREEMENT**

In consideration of the promises and releases set forth herein, the Parties agree as follows:

1. *Settlement Payment.* The total payment by the City for the settlement of this claim shall be ONE HUNDRED NINETY THOUSAND ONE HUNDRED EIGHTY-SEVEN DOLLARS and 67/100 (\$190,187.67) which includes any and all claims for costs and attorneys' fees, with the payment to be made to "Nationwide General Insurance Company". Plaintiff acknowledges and agrees that this settlement payment is the full and entire amount that Plaintiff will ever receive from the City in connection with the claim described above. Plaintiff acknowledges that any fees due to its attorney(s) shall be Plaintiff's responsibility and the City will have no further obligation to pay such sums beyond the amount identified above.

2. *All Claims of Any Kind.* In consideration for the terms and promises herein, Plaintiff hereby fully and generally releases and forever discharges the City, its officers, employees and agents, from any and all claims or liabilities of any nature whatsoever to the extent allowed by law that Plaintiff has or claims to have, or may have, against any of them arising out of this event, including any expenses and attorneys' fees, regardless of whether or not such claims or liabilities are known to the Parties at the time of the execution of this Agreement. Plaintiff intends by the execution of this Agreement to release all claims against the City and its employees, officers, and agents including any unknown damages and/or injuries.

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 City which has always and is now expressly denying any liability. The Parties acknowledge and agree that the Settlement Payment is made in compromise and settlement of a disputed claim.

4. *Liens.* Plaintiff warrants that Plaintiff will satisfy any and all valid liens related to the event at issue. Plaintiff will indemnify and hold harmless the City, its employees, officers, agents and representatives, 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 which arise from an unpaid or unsatisfied liens of any kind which might apply to the proceeds paid herein.

5. *Indemnify and Hold Harmless.* Plaintiff does hereby covenant to indemnify and save harmless the City from and against all claims and demands whatsoever on account of or in any way growing out of said event, including any claims brought directly against the City by its insured arising from this event, specifically excluding any claims that may be brought by other residents, owners or those affected by the event of July 5, 2022 in the vicinity of 2913 N. 75<sup>th</sup> Place, Scottsdale, Arizona.

6. *General Release.* Plaintiff acknowledges and agrees that this is a General Release. The Plaintiff expressly waives and assumes the risk of any and all claims for damages which exist of this date, but of which the Plaintiff does not know or suspect to exist, whether through ignorance, oversight, error, negligence, or otherwise, and which, if known, would materially affect the Plaintiff's decision to execute this Release. The Plaintiff further agrees that Plaintiff has accepted payment of the sum specified herein as a complete settlement and compromise of matters involving disputed issues of law and fact.



The Plaintiff assumes the risk that the facts or law may be other than Plaintiff believes. The Plaintiff understands and agrees that this Agreement is a compromise of disputed claim, and the Settlement Payment is not to be construed as an admission of liability on the part of the City, by whom liability is expressly denied.

7. *Authority.* Selisia Schwarz, signing this Agreement on behalf of Nationwide General Insurance Company, represents and warrants that she is an authorized agent for Nationwide General Insurance Company and that she possesses full authority to enter into this Agreement on its behalf, such authority having been given to her through duly authorized corporate action consistent with its organizational documents.

8. *Review of Agreement.* The Plaintiff declares and represents that no promise, inducement or agreement not herein expressed has been made to the Plaintiff and the terms of this Agreement are contractual and not a mere recital. 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.

9. *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 party.

10. *Arizona Law.* In the event of any dispute arising from the terms of this Agreement, Arizona law shall apply and govern.

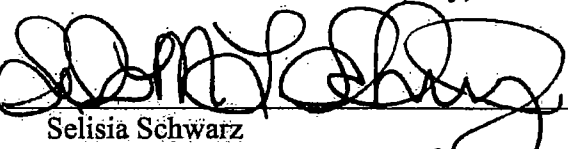
11. *Dismissal with Prejudice.* The Parties shall, as soon as practicable after the execution of this Agreement and receipt of the payment described above, execute a stipulation to dismiss with prejudice the Lawsuit, with each party to bear their own costs and attorneys' fees.

12. *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.

13. *Counterparts.* This Agreement may be executed in counterparts, each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement.

IN WITNESS WHEREOF, I have hereunder set my hand this 15 day of April, 2024.

Nationwide General Insurance Company,

By:   
Selisia Schwarz  
Its: Claims Specialist III

APPROVED AS TO FORM:

Nationwide Mutual Insurance Company

Trial Division – Dept. S5-1N-TRDV

By: /s/ Elizabeth G. Smith

Elizabeth G. Smith  
18700 N. Hayden Road  
Scottsdale, AZ 85255  
Attorneys for Plaintiff

Dated: 4/15/2024

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IN WITNESS WHEREOF, I have hereunder set my hand this \_\_\_\_ day of \_\_\_\_\_, 2024.

Nationwide General Insurance Company,

By: \_\_\_\_\_  
Selisia Schwarz

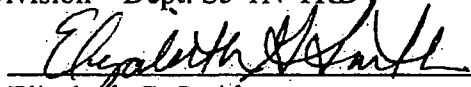
Its: \_\_\_\_\_

APPROVED AS TO FORM:

Nationwide Mutual Insurance Company

Trial Division – Dept. S5-1N-TRDY

By:

  
Elizabeth G. Smith  
18700 N. Hayden Road  
Scottsdale, AZ 85255  
Attorneys for Plaintiff

Dated: 4/15/2024

CITY OF SCOTTSDALE, an Arizona Municipal Corporation

By: \_\_\_\_\_  
David D. Ortega  
Mayor, City of Scottsdale

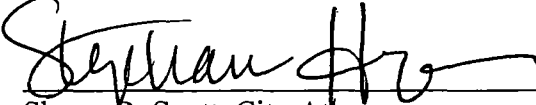
Dated: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Ben Lane, City Clerk

Dated: \_\_\_\_\_

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Sherry R. Scott, City Attorney  
By: Stephanie Heizer, Senior Assistant City Attorney

Dated: 4-17-24