

# CITY COUNCIL REPORT



Meeting Date: April 4, 2023  
General Plan Element: *Provide for the orderly administration of the affairs of the City*  
General Plan Goal: *Fiscal management*

## **ACTION**

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**Adopt Resolution No. 12794 authorizing Agreement No. 2023-051-COS with Yessenia Garcia in the amount of \$200,000.00 to settle Yessenia Garcia's lawsuit against the City and its employees.**

### **Background**

This lawsuit stems from the arrest of the Plaintiff on or about May 25, 2020. Plaintiff alleges that she was damaged when she was wrongfully arrested for driving under the influence and causing a hit and run accident with injuries in Scottsdale, Arizona. Plaintiff filed a lawsuit against the City and its employees in the United States District Court, District of Arizona, entitled *Yessenia Garcia v. City of Scottsdale, et al*, Case No. 2:21-cv-00914-SPL alleging federal constitutional violations and various state law claims. The matter is currently set for trial to commence on May 9, 2023. The parties have engaged in extensive negotiations and have reached a proposed settlement of \$200,000, contingent upon approval of the City Council. The proposed settlement would resolve the entirety of the lawsuit, including all related attorneys' fees and costs.

City staff is recommending that the City Council approval this settlement because the cost, uncertainty and risk of going to trial in this case outweighs the amount of the negotiated settlement.

## **ANALYSIS & ASSESSMENT**

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### **Recent Staff Action**

The matter is being handled in-house by the City Attorney's Office in collaboration with the Safety & Risk Management Department. Staff believes that settlement is in the best interests of the City.

### **Policy Implications**

None.

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

None.

### **Community Involvement**

No community involvement is necessary on this item.

## **RESOURCE IMPACTS**

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### **Available funding**

The proposed settlement will require a total payment of \$200,000.00 from the City to Yessenia Garcia and her attorneys. Funds are available in the City's Safety and Risk Management Operating Budget to pay the settlement. If the settlement is denied, the City will likely spend tens of thousands of dollars in additional 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 Department, and the Police Department to be spent on this case.

### **Future Budget Implications**

The proposed settlement of \$200,000.00 may be included in the City's primary property tax rate for the next year. 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. The City of Scottsdale has a long-standing practice of including paid tort settlements equal to or greater than \$20,000.00 in the City's primary tax rate to reimburse the Self-Insured Fund for payment of the claim.

## **OPTIONS & STAFF RECOMMENDATION**

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### **Recommended Approach**

Adopt Resolution No. 12794 and authorize settlement of this claim as proposed.

### **Proposed Next Steps**

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

**RESPONSIBLE DEPARTMENT(S)**

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

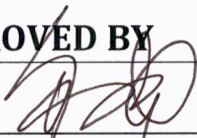
**STAFF CONTACTS (S)**

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Sherry R. Scott, City Attorney, [sscott@scottsdaleaz.gov](mailto:sscott@scottsdaleaz.gov)  
Lori S. Davis, Deputy City Attorney, [lodavis@scottsdaleaz.gov](mailto:lodavis@scottsdaleaz.gov)  
George Woods, Safety and Risk Management Director, [gwoods@scottsdaleaz.gov](mailto:gwoods@scottsdaleaz.gov)

**APPROVED BY**

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\_\_\_\_\_  
Sonia Andrews, City Treasurer  
(480) 312-2364  
[sandrews@scottsdaleaz.gov](mailto:sandrews@scottsdaleaz.gov)

3/27/2023  
Date

  
\_\_\_\_\_  
Sherry R. Scott, City Attorney  
Lori S. Davis, Deputy City Attorney  
(480) 312-2405  
[sscott@scottsdaleaz.gov](mailto:sscott@scottsdaleaz.gov)  
[lodavis@scottsdaleaz.gov](mailto:lodavis@scottsdaleaz.gov)

March 27, 2023  
Date

**ATTACHMENTS**

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1. Resolution No. 12794
2. Contract No. 2023-051-COS

**RESOLUTION NO. 12794**

A RESOLUTION OF THE COUNCIL OF THE CITY OF SCOTTSDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING SETTLEMENT IN THE AMOUNT OF \$200,000.00 TO SETTLE *YESSENIA GARICA V. CITY OF SCOTTSDALE, ET AL.*, CASE NO. 2:21-CV-00914-SPL, CURRENTLY PENDING IN UNITED STATES DISTRICT COURT, DISTRICT OF ARIZONA, AND AUTHORIZING THE MAYOR TO EXECUTE CONTRACT NO. 2023-051-COS.

WHEREAS, Yessenia Garcia brought a lawsuit against the City of Scottsdale, Brian Steel and Nicolas Fay alleging that she was wrongfully arrested in Scottsdale, Arizona, and claims damages as a result.

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 and its employees arising from the subject incident and which form the basis of the lawsuit, *Yessenia Garcia v. City of Scottsdale, et al*, Case No. 2:21-cv-00914-SPL, currently pending in the United States District Court, District of Arizona;

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. 2023-051-COS on behalf of the City to settle this case in its entirety in the amount of Two Hundred Thousand Dollars and 00/100 (\$200,000.00) from funds to be paid from the City's Safety and Risk Management Operating Budget for settlement of *Yessenia Garcia v. City of Scottsdale, et al*, Case No. 2:21-cv-00914-SPL, currently pending in the United States District Court, District of Arizona.

Section 2. That the City Council approves the settlement set forth above and authorizes and directs the City Manager, the City Treasurer, 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 April, 2023.

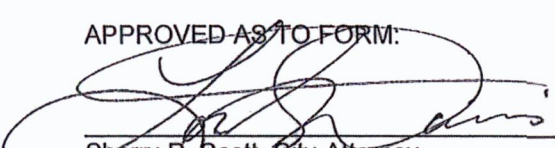
CITY OF SCOTTSDALE, an Arizona  
municipal corporation

ATTEST:

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

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

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Sherry R. Scott, City Attorney  
By: Lori S. Davis, Deputy City Attorney

**SETTLEMENT AGREEMENT  
AND GENERAL RELEASE**

This Settlement Agreement and General Release of All Claims ("Agreement") is entered into by and between YESSENIA GARCIA ("Plaintiff") and the CITY OF SCOTTSDALE, a municipal corporation, its employees, officers, and agents, including, but not limited to, BRIAN STEEL AND NICOLAS FAY (the City and its employees, named and unnamed, collectively known as "City" herein). Plaintiff and City may be referred to jointly herein as the "Parties".

**RECITALS**

A. On or about May 25, 2020, Plaintiff alleges that she was wrongfully arrested for driving under the influence and causing a hit and run accident with injuries in Scottsdale, Arizona (hereinafter referred to as "the incident"). Plaintiff further alleges she was harmed and damaged as a result of the incident.

B. Plaintiff filed a lawsuit against the City in the United States District Court, District of Arizona, entitled *Yessenia Garcia v. City of Scottsdale, et al*, Case No. 21-cv-00914-SPL alleging federal constitutional violations and state claims including false arrest, false imprisonment, negligence, and intentional infliction of emotional distress (hereinafter collectively referred to as the "claim").

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 incident, claim, and the facts and circumstances that gave rise to the Plaintiff's alleged injuries or 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. 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 Plaintiff's incident 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 TWO HUNDRED THOUSAND DOLLARS and 00/100 (\$200,000.00) which includes any and all claims for costs and attorneys' fees, with the payment to be made to "Law Offices of Dale K Galipo Client Trust Account". 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 and costs due to attorneys representing her 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 Plaintiff's incident 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. *Confidentiality.* The Parties agree to keep the terms and conditions of this settlement, including the amount, confidential except as required by law to be disclosed. Even if the amount of the settlement becomes public record, the Parties and their attorneys will not comment on the settlement except to say words to the effect of, "the case has settled." Plaintiff, however, may discuss the settlement amount with her attorneys and financial advisors, after first informing them of this confidentiality agreement. No monetary consideration is paid for this confidentiality provision, but rather each party's agreement to confidentiality is consideration for the other party's agreement to confidentiality.

5. *Liens.* Plaintiff warrants that Plaintiff will satisfy any and all valid liens, including, but not limited to, ERISA liens, Medicare or Medicaid liens, 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. Jonovich*, 205, Ariz. 383, 71 P.3d 910 (Ariz. 2003); *Maricopa County v. Barfield*, 75 P.3d 714 (App. 2003). 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 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.

6. *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 occurrence or its results both to person and property.

7. *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.

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 entitled *Yessenia Garcia v. City of Scottsdale, et al.*, Case No. 21-cv-00914-SPL 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.

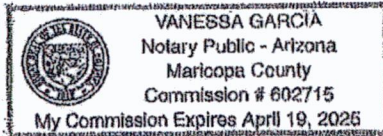
IN WITNESS WHEREOF, I have hereunder set my hand this 25 day of March, 2023.

By: *Yessenia Garcia*  
Yessenia Garcia, Plaintiff

SUBSCRIBED AND SWORN before me this 25 day of March, 2023 by Yessenia Garcia.

By: *Vanessa Garcia*  
Notary Public

My Commission Expires  
04/19/2025



APPROVED AS TO FORM:

LAW OFFICES OF DALE K. GALIPO

By: *Eric Valenzuela*  
Eric Valenzuela  
21800 Burbank Boulevard, Suite 310  
Woodland Hills, California 91367  
Attorney for Plaintiff

CITY OF SCOTTSDALE, an Arizona Municipal Corporation

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

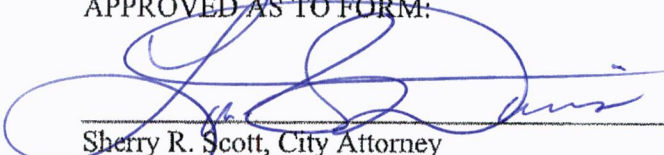
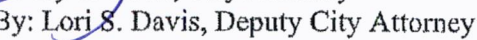
Dated: \_\_\_\_\_

ATTEST:

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

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

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Sherry R. Scott, City Attorney  
By:   
Lori S. Davis, Deputy City Attorney

Dated: March 27, 2023