

CITY COUNCIL REPORT



Meeting Date: **November 20, 2023**
 General Plan Element: ***Provide for the orderly administration of the affairs of the City***
 General Plan Goal: ***Fiscal management***

ACTION

Adopt Resolution No. 12993 authorizing settlement with Jacob Kent, D. D. S. and Kent Dentistry, Inc. for \$571,211.96 for all claims stemming from a sewage overflow incident at 14201 N. Hayden Drive, Suite D-3, Scottsdale, Arizona 85260.

Background

On or about December 2, 2022, a sewer line back-up occurred on the property of Kent Dentistry, Inc. located at 14201 N. Hayden Drive, Suite D-3, Scottsdale, Arizona 85260. Jacob Kent, D. D. S. dba Kent Dentistry, Inc. (collectively referred to as "Claimant") filed a Notice of Claim with the City on or about March 27, 2023 alleging the event caused him and his dental practice significant losses and required remediation of property, purchase of new furnishings, equipment, and supplies, and closing of his dental practice for over three months. Claimant also claims damages from business interruption, loss/decline of patient population, stigma, remediation (including future remediation), interest on credit loans for purchase of replacement equipment, tort claims, emotional and financial distress, and other personal injury and property damages, as a result of the event. The total amount claimed was \$913,754.03. 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 with any trial in these cases far outweighs the amount of the negotiated settlement.

ANALYSIS & ASSESSMENT

Recent Staff Action

The claim has been handled in-house by the Safety and Risk Management Department in collaboration with the City Attorney's Office. The Safety & Risk Management Department engaged an independent adjusting company to help document and assess the damages and prepare repair estimates in this unusual claim. The claims and amounts were later adjusted by the Safety & Risk Management Department and further analyzed by the City Attorney's Office. An expert in forensic accounting and business valuation was also retained to critically analyze the dental business loss claimed for the time the business was closed for repairs and equipment replacement.

This claim was highly scrutinized and the negotiated settlement represents a good result from all the work that went into analyzing and adjusting this claim .

Policy Implications

None.

Significant Issues to be Addressed.

None.

RESOURCE IMPACTS

Available funding

The proposed settlement will require a total payment of \$571,211.96 from the City to the Claimant. 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 thousands of dollars in fees and expenses in the defense of this case through trial.

Staffing, Workload Impact

Approval of the proposed settlements 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, Water Resources Department, and other departments to be spent on this case.

Future Budget Implications

The proposed settlement of \$571,211.96 *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

Recommended Approach

The City Attorney's Office recommends that the Council adopt Resolution No. 12993 and authorize settlement of this claim 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)

City Attorney's Office – Civil Division

Safety and Risk Management

STAFF CONTACTS (S)

Sherry R. Scott, City Attorney, sscott@scottsdaleaz.gov

Lori S. Davis, Deputy City Attorney, lodavis@scottsdaleaz.gov

George Woods, Risk Management Director, gwoods@scottsdaleaz.gov

APPROVED BY

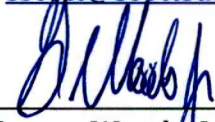


Sherry R. Scott, City Attorney

Lori S. Davis, Deputy City Attorney

(480) 312-2405

sscott@scottsdaleaz.gov

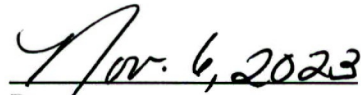


George Woods, Jr., Director

Safety and Risk Management Department

480-312-7040

GWoods@scottsdaleaz.gov


Date



Date

ATTACHMENTS

1. Resolution No. 12993
2. Contract No. 2023-197-COS

RESOLUTION NO. 12993

A RESOLUTION OF THE COUNCIL OF THE CITY OF SCOTTSDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING SETTLEMENT IN THE AMOUNT OF \$571,211.96 TO SETTLE THE CLAIMS OF JACOB KENT, D.D.S. AND KENT DENTISTRY, INC., AND AUTHORIZING THE MAYOR TO EXECUTE CONTRACT NO. 2023-197-COS.

WHEREAS, on or about December 2, 2022, a sewer line back-up occurred on the property of Kent Dentistry, Inc. located at 14201 N. Hayden Drive, Suite D-3, Scottsdale, Arizona 85260 ("the event"); and

WHEREAS, Jacob Kent, D. D. S. and Kent Dentistry, Inc. filed a claim against the City of Scottsdale asserting liability against the City and seeking to recover for personal and property damages allegedly suffered as a result of the event; 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 the event and which form the basis of the claims by Jacob Kent, D. D. S. and Kent Dentistry, Inc.; and

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. 2023-197-COS on behalf of the City to settle the claims by Jacob Kent, D. D. S. and Kent Dentistry, Inc. in their entirety in the amount of Five Hundred Seventy-One Thousand Two Hundred Eleven Dollars and Ninety-Six Cents (\$571,211.96) from funds to be paid from the City's Safety and Risk Management Department Operating Budget.

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

ATTEST:

CITY OF SCOTTSDALE, an Arizona
municipal corporation

Ben Lane, City Clerk

David D. Ortega, Mayor

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY


Sherry R. Scott, City Attorney

By: Lori S. Davis, Deputy City Attorney

ATTACHMENT 1

**SETTLEMENT AGREEMENT
AND GENERAL RELEASE**

This Settlement Agreement and General Release of All Claims (“Agreement”) is entered into by and between JACOB KENT, D.D.S., an individual, and KENT DENTISTRY, INC., an Arizona Corporation (individually and collectively referred to as “Claimant”) and the CITY OF SCOTTSDALE, a municipal corporation, its employees, officers, and agents (“City”). Claimant and City may be referred to jointly as the “Parties.”

RECITALS

A. On or about December 2, 2022, a sewer line back-up (the “event”) occurred on Claimant’s property.

B. Claimant filed a Notice of Claim with the City on or about March 27, 2023 alleging the event caused damages to Claimant allegedly requiring remediation of property, purchase of new furnishings, equipment, and supplies, and closing of his dental practice for over three months. Plaintiff claims losses from business interruption, loss/decline of patient population, stigma, remediation (including future remediation), interest on credit loans for purchase of equipment, tort claims, emotional and financial distress, and other personal injury and property damages, as a result of the event.

C. Despite the fact that liability has not been admitted regarding the claim asserted by Claimant and the fact that this remains a disputed claim, Claimant desires to finally and fully resolve all past, present, and potential disputes, claims, and issues between the Parties relating to or arising out of the event and the facts and circumstances that gave rise to the Claimant’s alleged damages. The Claimant 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 Claimant 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 FIVE HUNDRED SEVENTY-ONE THOUSAND TWO HUNDRED ELEVEN DOLLARS and NINETY-SIX CENTS (\$571,211.96) which includes any and all claims for costs and attorneys' fees, with the payment to be made to "Kent Dentistry, Inc." Claimant acknowledges and agrees that this settlement payment is the full and entire amount that Claimant will ever receive from the City in connection with the event described above. Claimant acknowledges that any fees and costs due to his attorney(s) shall be Claimant'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, Claimant 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 Claimant has or claims to have, or may have, against any of them arising out of the 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. Claimant 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.* Claimant warrants that Claimant will satisfy any and all valid liens. Claimant 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 bills and/or liens of any kind which might apply to the proceeds paid herein.

5. *Indemnify and Hold Harmless.* Claimant 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.

6. *General Release.* Claimant acknowledges and agrees that this is a General Release. The Claimant expressly waives and assumes the risk of any and all claims for damages which exist of this date, but of which the Claimant does not know or suspect to exist, whether through ignorance, oversight, error, negligence, or otherwise, and which, if known, would materially affect the Claimant's decision to execute this Release. The Claimant further agrees that Claimant has accepted payment of the sum specified herein as a complete settlement and compromise of matters involving disputed issues of law and fact. The Claimant assumes the risk that the facts or law may be other than Claimant believes. The Claimant 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.* Claimant Jacob Kent, D.D.S. represents and warrants that he is the President and authorized agent for Kent Dentistry, Inc., and he possesses full authority to enter

into this Agreement on behalf of Kent Dentistry, Inc. Claimant Jacob Kent, D.D.S. as the President and authorized agent for Kent Dentistry, Inc., represents and warrants that the execution, delivery, and performance of this Agreement by Kent Dentistry, Inc. has been duly authorized by all requisite corporate action and does not require any shareholder action or approval. Claimant Jacob Kent, D.D.S. as the President and authorized agent for Kent Dentistry, Inc., represents and warrants that the person signing this Settlement Agreement in a representative capacity on Kent Dentistry Inc.'s behalf has Kent Dentistry Inc.'s authority to so sign and that Kent Dentistry, Inc. will be bound by the signatory's execution of this Settlement Agreement.

8. *Review of Agreement.* The Claimant declares and represents that no promise, inducement or agreement not herein expressed has been made to the Claimant 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, present or former officers, directors, agents, employees, successors and assigns. No party may assign, delegate or transfer any of its rights or obligations under this Agreement without prior written consent of the other party.

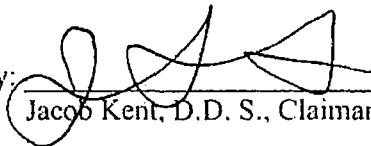
10. *Arizona Law.* If any dispute arises from the terms of this Agreement, Arizona law shall apply and govern.

11. *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.

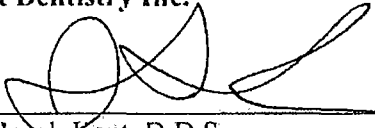
12. *Counterparts.* This Agreement may be executed in counterparts, each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement.

IN WITNESS WHEREOF, I have hereunder set my hand this 1st day of November, 2023.

Jacob Kent, D.D.S., an individual

By: 
Jacob Kent, D.D. S., Claimant

Kent Dentistry Inc.

By: 
Jacob Kent, D.D.S.
President of Kent Dentistry, Inc.

APPROVED AS TO FORM:

CAMPBELL, YOST, CLARE & NORELL, P.C.
3101 N. Central Avenue, Suite 1200
Phoenix, A 85012

By: _____
Mark Fredenberg, Attorney for Claimant

Dated: _____

CITY OF SCOTTSDALE, an Arizona Municipal Corporation

By: _____
David D. Ortega
Mayor, City of Scottsdale

Dated: _____

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IN WITNESS WHEREOF, I have hereunder set my hand this ____ day of November, 2023.

Jacob Kent, D.D.S., an individual

By: _____
Jacob Kent, D.D. S., Claimant

Kent Dentistry Inc.

By: _____
Jacob Kent, D.D.S.
President of Kent Dentistry, Inc.

APPROVED AS TO FORM:

CAMPBELL, YOST, CLARE & NORELL, P.C.
3101 N. Central Avenue, Suite 1200
Phoenix, A 85012

By: Mark Fredenberg
Mark Fredenberg, Attorney for Claimant

Dated: 11-6-23

CITY OF SCOTTSDALE, an Arizona Municipal Corporation

By: _____
David D. Ortega
Mayor, City of Scottsdale

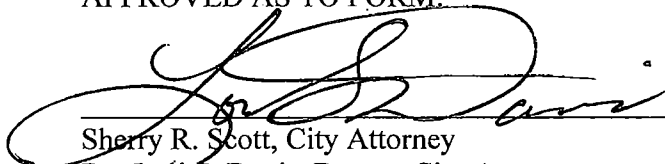
Dated: _____

ATTEST:

Ben Lane, City Clerk

Dated: _____

APPROVED AS TO FORM:



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

Dated: Nov. 6, 2023