

CITY COUNCIL REPORT



Meeting Date: April 16, 2024
 General Plan Element: *Provide for the orderly administration of the affairs of the City*
 General Plan Goal: *Fiscal management*

ACTION

Adopt Resolution No. 13103 authorizing Agreement No. 2024-066-COS with Plaintiff Gary Ronald Weiss in the amount of \$24,500 to settle all claims in *Weiss v. City of Scottsdale, et. al.* Case No. CV2024-050574, currently pending in the Superior Court of the State of Arizona, County of Maricopa.

BACKGROUND

This lawsuit stems from a two-vehicle accident that occurred on June 7, 2023 on 136th Street near Desert Cove Avenue in Scottsdale, Arizona. As a City of Scottsdale employee made a left turn onto Desert Cove Avenue, Plaintiff Gary Weiss' vehicle, traveling 25 mph prior to the accident, struck the employee's truck, causing Plaintiff's airbags to deploy. Plaintiff claims the City of Scottsdale employee failed to yield the right-of-way in making the left turn. Plaintiff's claimed injuries include a right-hand sprain, thumb injury, low back pain and pain in right wrist. Plaintiff incurred approximately \$16,000 in medical bills.

Plaintiff's Notice of Claim demanded \$100,000 to settle the claim. If the case were to proceed to arbitration, the Plaintiff would likely ask the court to award money damages for at least that amount.

Subject to City Council approval, the parties have agreed to resolve this litigation for \$24,500.00. This will resolve the entirety of the claim by Mr. Weiss, including his claimed pain and suffering, permanent injuries, any lost wages, future medical bills and any and all related fees and costs.

City staff is recommending that the City Council approve this settlement because the cost, uncertainty, and risk of going forward to arbitration in this case far outweigh the amount of this negotiated settlement.

ANALYSIS & ASSESSMENT

Recent Staff Action

The matter is being handled in-house by the City Attorney's Office in collaboration with the Safety and Risk Management Department.

Policy Implications

None.

Significant Issues to be Addressed

None.

Community Involvement

No community involvement is necessary on this item.

RESOURCE IMPACTS

Available funding

The proposed settlement will require a total payment of \$24,500.00 from the City to the Plaintiff as set forth in the Settlement Agreement. Funds are available in the City's FY 2023/24 Safety and Risk Management Operating Budget to pay the settlement to Plaintiff Gary Weiss. If the settlement is not authorized, the City will likely spend thousands of dollars in fees and expenses in the defense of this case through arbitration.

Staffing, Workload Impact

Approval of the proposed settlement brings this lawsuit 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 \$24,500 *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. 13103 and authorize settlement of this lawsuit 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

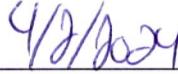
STAFF CONTACTS (S)

Sherry R. Scott, City Attorney, sscott@scottsdaleaz.gov
George Woods, Safety and Risk Management Director, gwoods@scottsdaleaz.gov

APPROVED BY



George Woods, Safety and Risk Management Director
(480) 312-7040
gwoods@scottsdaleaz.gov



Date



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



Date

ATTACHMENTS

1. Resolution No. 13103
2. Contract No. 2024-066-COS

RESOLUTION NO. 13103

A RESOLUTION OF THE COUNCIL OF THE CITY OF SCOTTSDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING SETTLEMENT IN THE AMOUNT OF \$24,500 TO SETTLE *GARY RONALD WEISS V. CITY OF SCOTTSDALE, ET. AL.*, CASE NO. CV2024-050574, CURRENTLY PENDING IN MARICOPA COUNTY SUPERIOR COURT, AND AUTHORIZING THE MAYOR TO EXECUTE CONTRACT NO. 2024-066-COS

WHEREAS, Gary Ronald Weiss brought suit against the City of Scottsdale and employee Cory Matt alleging damages for injuries allegedly arising from a two-vehicle accident which occurred on or about June 7, 2023.

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 accident and which form the basis of the lawsuit, *Gary Ronald Weiss v. City of Scottsdale, et. al.*, Case No. CV2024-050574, 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. 2024-066-COS on behalf of the City to settle this case in its entirety in the amount of Twenty-Four Thousand Five Hundred Dollars and No Cents (\$24,500.00) from funds to be paid from the City's Risk Management Operating Budget for settlement of *Gary Ronald Weiss v. City of Scottsdale, et al.*, Case No. CV2024-050574.

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:



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 GARY RONALD WEISS (“Plaintiff”) and the CITY OF SCOTTSDALE, a municipal corporation, its employees, officers, and agents, including, but not limited to, CORY D’ANDREA MATT and JANE DOE MATT (the City and its employees, named and unnamed, are collectively known as “City”). Plaintiff and City may be referred to jointly as the “Parties”.

RECITALS

A. On or about June 7, 2023, Plaintiff alleges he sustained injuries in a motor vehicle accident in Scottsdale, Arizona, which he alleges was caused by Cory Matt (hereafter referred to as the “incident”).

B. Plaintiff filed a lawsuit against the City in the Superior Court of Maricopa County, Arizona, entitled *Gary Ronald Weiss v. City of Scottsdale, et al.*, Case No. CV2024-050574 alleging damages for injuries he allegedly sustained in the accident.

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 Plaintiff’s accident and the facts and circumstances that gave rise to the Plaintiff’s alleged injuries. 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 accident 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 TWENTY-FOUR THOUSAND FIVE HUNDRED DOLLARS and 00/100 (\$24,500.00) which includes any and all claims for costs and attorneys' fees, with the payment to be made to "SWEET JAMES, LLP IN TRUST FOR GARY WEISS". 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. If Plaintiff is or was represented by counsel, Plaintiff acknowledges that any fees due to such counsel 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 accident 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.* It shall be the sole responsibility of Plaintiff and Plaintiff's counsel to satisfy any existing or future medical liens or rights to reimbursement that may be asserted against the settlement payment described in Paragraph 1 above. Plaintiff warrants that he will satisfy from these settlement proceeds any and all valid liens, including, but not limited to, ERISA liens, Medicare or Medicaid liens or those asserted by any related program, agency, subsidiary or division, 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 acknowledges that any such lien interests have been considered in this settlement agreement and that the settlement funds are sufficient to satisfy any and all such liens. Within 60 days of the City making the settlement payment as provided in Paragraph 1 above, Plaintiff shall furnish to the City proof of satisfaction of any and all liens or claims Plaintiff has, or may have, asserted against the settlement payment. Such proof may include, but is not limited to, official releases or satisfaction of lien documents executed by any authorized lien holders. 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.

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 occurrence or its results both to person and property.

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. *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.

8. *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.

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

10. *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 *Gary Ronald Weiss v. City of Scottsdale, et al.*, Case No. CV2024-050574 now pending in the Superior Court of Maricopa County, Arizona, with each party to bear their own costs and attorneys' fees.

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.

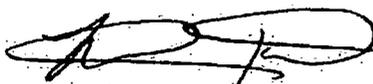
12. *Counterparts.* This Agreement may be executed in counterparts, each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement.

IN WITNESS WHEREOF, I have hereunder set my hand this 28 day of March, 2024.

By: Gary Weiss
Gary Ronald Weiss, Plaintiff

Approved as to form and agreeing to satisfy all legally valid liens from the proceeds of this settlement before the settlement funds are disbursed:

SWEET JAMES, LLP

By: 

Mohamad H. Tokko
7810 N. 16th Street, Suite 250
Phoenix, Arizona 85020
Attorney for Plaintiff

CITY OF SCOTTSDALE, an Arizona Municipal Corporation

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

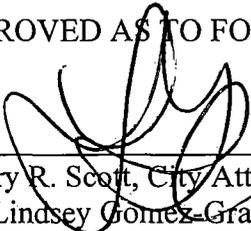
Dated: _____

ATTEST:

Ben Lane, City Clerk

Dated: _____

APPROVED AS TO FORM:



Sherry R. Scott, City Attorney
By: Lindsey Gomez-Gray, Assistant City Attorney

Dated: 4/1/24