

# CITY COUNCIL REPORT



Meeting Date: May 17, 2022  
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. 12491 authorizing Agreement No. 2022-072-COS with Plaintiff Robert Kirkwood in the amount of \$75,000 to settle Kirkwood v. City of Scottsdale, et. al., currently pending in Maricopa County Superior Court.**

### **Background**

This lawsuit stems from a multi-vehicle accident which occurred on September 5, 2019, on East McDowell Road and North 74th Street, in Scottsdale. Plaintiff alleges that a Scottsdale Police Officer caused the accident by rear-ending the vehicle in front of him. Plaintiff alleged that he was injured and incurred medical bills totaling \$114,000 because of the collision. Plaintiff is also claiming damages for future medical care and a separate property damage claim for damage to his vehicle. Plaintiff filed a Notice of Claim demanding \$500,000 to settle the claim. Thereafter, Plaintiff filed a lawsuit against the City and Officer Stephenson in the Superior Court of Maricopa County, Arizona, *Robert Kirkwood v. City of Scottsdale, et al.*, Case No. CV2020-010383.

The parties engaged in a formal mediation with an independent mediator on April 26, 2022. The parties were able to reach a proposed settlement of \$75,000 during the lengthy mediation. This proposed settlement would resolve the entirety of the lawsuit, including 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 trial in this case far outweighs the amount of the negotiated settlement.

## **ANALYSIS & ASSESSMENT**

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### **Recent Staff Action**

The matter is being defended in-house by the City Attorney's Office in collaboration with the Risk Management Department. The City Attorney's Office has worked to defend this case and has reviewed the evidence surrounding the Plaintiffs' claims. Staff believes that settlement is in the best interests of the City.

### **Policy Implications**

None.

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

Given the risk of litigation and the additional costs of moving forward to a trial, the City Attorney's Office and Risk Management Department believe a settlement amount of \$75,000 is in the best interests of the City. Settlement of this action will resolve the uncertainty of litigation. If the settlement is not approved, the matter will be set for trial and a substantial commitment of additional City resources will be necessary to continue defense of the case. In addition, the City will incur significant additional expenditures for taking and defending multiple expert witnesses' depositions.

### **Community Involvement**

No community involvement is necessary on this item.

## **RESOURCE IMPACTS**

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### **Available funding**

Funding is available in the Risk Management operating budget. If the settlement is denied, the City will likely spend an additional \$50,000 or more in costs and attorneys' fees 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 Legal Department, Risk Management and other Departments to be spent on this case.

### **Future Budget Implications**

The proposed settlement of \$75,000 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. 12491 and authorize settlement and release of this litigation in the amount of \$75,000 as proposed.

### Proposed Next Steps

If the settlement is approved, City representative(s) will execute settlement documents as proposed and the City will pay the settlement amount within a reasonable time thereafter.

### RESPONSIBLE DEPARTMENT(S)

General Government, City Attorney's Office – Civil Division  
Risk Management

### STAFF CONTACTS (S)

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Sherry R. Scott, City Attorney, [sscott@scottsdaleaz.gov](mailto:sscott@scottsdaleaz.gov)  
George Woods, Risk Management Director, [gwoods@scottsdaleaz.gov](mailto:gwoods@scottsdaleaz.gov)

### APPROVED BY

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

5/3/2022  
\_\_\_\_\_  
Date

### ATTACHMENTS

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1. Resolution No. 12491
2. Contract No. 2022-072-COS

**RESOLUTION NO. 12491**

A RESOLUTION OF THE COUNCIL OF THE CITY OF SCOTTSDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING SETTLEMENT IN THE AMOUNT OF \$75,000 TO SETTLE *KIRKWOOD V. CITY OF SCOTTSDALE, ET AL.*, CASE NO. CV2020-010383, CURRENTLY PENDING IN MARICOPA COUNTY SUPERIOR COURT, AND AUTHORIZING THE MAYOR TO EXECUTE CONTRACT NO. 2022-072-COS

WHEREAS, Robert Kirkwood brought suit against the City of Scottsdale and employee Scottsdale Police Officer Nathan Stephenson and Jane Doe Stephenson alleging damages for injuries allegedly arising from an automobile accident which occurred on or about September 5, 2019;

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, *KIRKWOOD V. CITY OF SCOTTSDALE, ET AL.*, CASE NO. CV2020-010383, 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. 2022-072-COS on behalf of the City to settle this case in its entirety in the amount of Seventy-Five Thousand Dollars and No Cents (\$75,000.00) from funds to be paid from the City's Risk Management Operating Budget for settlement of *KIRKWOOD V. CITY OF SCOTTSDALE, ET AL.*, CASE NO. CV2020-010383, currently pending in the Maricopa County Superior Court.

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 \_\_\_\_, 2022.

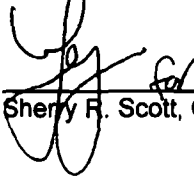
CITY OF SCOTTSDALE, an Arizona  
municipal corporation

ATTEST:

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

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

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Sherry R. Scott, City Attorney

Attachment I

Resolution No. 12491

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**SETTLEMENT AGREEMENT  
AND GENERAL RELEASE**

This Settlement Agreement and General Release of All Claims (“Agreement”) is entered into by and between ROBERT KIRKWOOD (“Plaintiff”) and the CITY OF SCOTTSDALE, a municipal corporation, its employees, officers, and agents, including, but not limited to, OFFICER NATHAN STEPHENSON and JANE DOE STEPHENSON, the City and its employees, named and unnamed, are collectively known as “City”. Plaintiff and the City may be referred to jointly as the “Parties”.

**RECITALS**

A. On or about September 5, 2019 Plaintiff alleges that he sustained injuries when he was involved in a chain reaction motor vehicle accident on East McDowell Road and North 74th Street, in Scottsdale, Arizona which he alleges was caused by Officer Stephenson’s negligence.

B. Plaintiff filed a lawsuit against the City in the Superior Court of Maricopa County, Arizona, entitled Robert Kirkwood v. City of Scottsdale, et al., Case No. CV2020-010383 alleging negligence and 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 Seventy-Five Thousand Dollars and 00/100 (\$75,000.00) which includes any and all claims for costs and attorneys' fees, with the payment to be made to "Plattner Verderame IOLTA Trust Account c/o Robert Kirkwood". 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.* 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.

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 *Robert Kirkwood v. City of Scottsdale, et al.*, Case No. CV2020-010383 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.

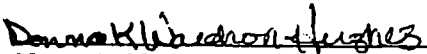
12. *Counterparts.* This Agreement may be executed in counterparts, each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement.

IN WITNESS WHEREOF, I have hereunder set my hand this 29 day of April, 2022.

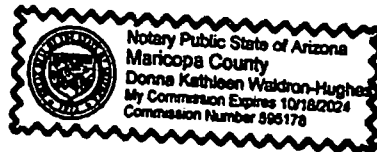
By: 

Robert Kirkwood, Plaintiff

SUBSCRIBED AND SWORN before me this 29 day of April, 2022 by Robert Kirkwood.

By:   
Notary Public

My Commission Expires 10/18/2024



CITY OF SCOTTSDALE, an Arizona Municipal Corporation

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

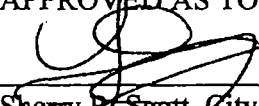
Dated: \_\_\_\_\_

ATTEST:

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

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

APPROVED AS TO FORM:

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

Dated: 5/3/2022