

CITY COUNCIL REPORT



Meeting Date: September 13, 2022
General Plan Element: *Provide for the orderly administration of the affairs of the City*
General Plan Goal: *Fiscal management*

ACTION

Adopt Resolution No. 12601 authorizing Agreement No. 2022-154-COS with Plaintiffs Leslie A. Buntin and Janinne Carpenter in the amount of \$225,000.00 to settle all claims in *Buntin, et al. v. City of Scottsdale, et al.*, Maricopa County Superior Court Case No. CV2021-006633.

Background

This litigation stems from a motor vehicle accident that occurred on May 26, 2020, near the intersection of East McDonald Road and State Route 101 in Scottsdale. Plaintiffs allege that a City of Scottsdale employee caused the accident by rear-ending their vehicle with a City owned garbage truck. Plaintiffs alleged they were injured and incurred medical bills totaling \$170,000. Plaintiff Buntin also claimed \$89,000 was needed for his future medical care. Both Plaintiffs claimed joint lost wages and household services totaling \$756,000, which they allege were caused by their inability to work following the accident. Pre-suit, Plaintiffs demanded \$4 million to settle their claims. Plaintiffs then filed a lawsuit in Maricopa County Superior Court.

The parties engaged in a formal mediation with an independent mediator on August 16, 2022. The parties were able to agree on a proposed settlement of \$225,000, subject to Council approval, during the lengthy mediation. This proposed settlement would resolve the entirety of the lawsuit, including past and future medical specials, lost earnings 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 trial in this case outweighs 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 Risk Management Department. The City Attorney's Office has worked to defend this case and has reviewed the evidence surrounding Plaintiff's claims. Staff believes that settlement of this case 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 \$225,000 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, including significant additional expenditures for taking and defending multiple expert witnesses' depositions.

Community Involvement

No community involvement is necessary on this item.

RESOURCE IMPACTS

Available funding

Funding is available in the Risk Management operating budget. If the settlement is denied, the City will likely spend an additional \$75,000 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 \$225,000 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

Recommended Approach

Adopt Resolution No. 12601 and authorize settlement and release of this litigation in the amount of \$225,000 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.

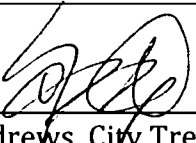
RESPONSIBLE DEPARTMENT(S)

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

STAFF CONTACTS (S)

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

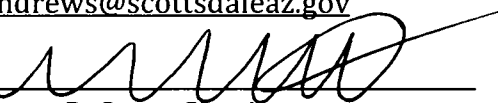
APPROVED BY



Sonia Andrews, City Treasurer
(480) 312-2364
sandrews@scottsdaleaz.gov

8/30/2022

Date



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

8/30/2022

Date

ATTACHMENTS

1. Resolution No. 12601
2. Contract No. 2022-154-COS

RESOLUTION NO. 12601

A RESOLUTION OF THE COUNCIL OF THE CITY OF SCOTTSDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING SETTLEMENT IN THE AMOUNT OF \$225,000.00 TO SETTLE BUNTIN, ET AL. V. CITY OF SCOTTSDALE, ET AL., CASE NO. CV2021-006633, CURRENTLY PENDING IN MARICOPA COUNTY SUPERIOR COURT, AND AUTHORIZING THE MAYOR TO EXECUTE CONTRACT NO. 2022-154-COS

WHEREAS, Leslie Buntin and Janinne Carpenter brought suit against the City of Scottsdale and employee Ramon Moreno and Jane Doe Moreno alleging damages for injuries allegedly arising from an automobile accident which occurred on or about May 26, 2020;

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, *Buntin, et al. v. City of Scottsdale, et al.*, Case No. CV2021-006633, 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. 2022-154-COS on behalf of the City to settle this case in its entirety in the amount of Two Hundred Twenty-Five Thousand Dollars and 00/100 Cents (\$225,000.00) from funds to be paid from the City's Risk Management Operating Budget for settlement of *Buntin, et al. v. City of Scottsdale, et al.*, Case No. CV2021-006633, 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:

David D. Ortega, Mayor

Ben Lane, City Clerk

APPROVED AS TO FORM:

Sherry R. Scott, City Attorney

By: Lindsey Gomez-Gray, Assistant 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 LESLIE ALLEN BUNTIN and JANINNE CARPENTER (“Plaintiffs”) and the CITY OF SCOTTSDALE, a municipal corporation, its employees, officers, and agents, named and unnamed, including, but not limited to, RAMON MORENO and JANE DOE MORENO, collectively known as “City” (“City”). Plaintiffs and the City may be referred to jointly as the “Parties”.

RECITALS

A. On May 26, 2020, Plaintiffs allege that they sustained injuries when they were involved in a car accident on eastbound McDonald Drive and State Route 101, in Scottsdale, Arizona, which they allege was caused by City employee Ramon Moreno (“Incident”).

B. Plaintiffs filed a lawsuit against the City in the Superior Court of Maricopa County, Arizona, entitled *Buntin, et. al., v. City of Scottsdale, et al.*, Case No. CV2021-006633 alleging damages for injuries they allegedly sustained in the accident.

C. Despite the fact that liability has not been admitted regarding the claim asserted by Plaintiffs and the fact that this remains a disputed claim, Plaintiffs desire 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 and the facts and circumstances that gave rise to the Plaintiffs’ alleged injuries. The Plaintiffs 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 Plaintiffs intend 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 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 TWENTY-FIVE THOUSAND DOLLARS and 00/100 (\$225,000.00) which includes any and all claims for costs and attorneys' fees, with the payments to be made in two separate checks as follows: (1) ONE HUNDRED AND FIFTY-SEVEN THOUSAND FIVE HUNDRED DOLLARS and 00/100 (\$157,500.00) to "Rack Law Group f/b/o Leslie Allen Buntin"; and (2) SIXTY SEVEN THOUSAND FIVE HUNDRED DOLLARS and 00/100 (\$67,500.00) to "Rack Law Group f/b/o Janinne Carpenter". Plaintiffs acknowledge and agree that this settlement payment is the full and entire amount that Plaintiffs will ever receive from the City in connection with the claim described above. If Plaintiffs are or were represented by counsel, Plaintiffs acknowledge that any fees due to such counsel shall be Plaintiffs' 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, Plaintiffs 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 Plaintiffs have or claims to have, or may have, against any of them arising out of the 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. Plaintiffs intend 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.* Plaintiffs warrant that Plaintiffs 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). Plaintiffs 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.* Plaintiffs do 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 the Incident or its results both to person and property.

6. *General Release.* Plaintiffs acknowledge and agree that this is a General Release. The Plaintiffs expressly waive and assume the risk of any and all claims for damages which exist of this date, but of which the Plaintiffs do not know or suspect to exist, whether through ignorance, oversight, error, negligence, or otherwise, and which, if known, would materially affect the Plaintiffs' decision to execute this Release. The Plaintiffs further agree that Plaintiffs have accepted payment of the sum specified herein as a complete settlement and compromise of matters involving disputed issues of law and fact. The Plaintiffs assume the risk that the facts or law may

be other than what Plaintiffs believe. The Plaintiffs understand and agree that this Agreement is a compromise of a 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 Plaintiffs declare and represent that no promise, inducement or agreement not herein expressed has been made to the Plaintiffs 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 *Buntin, et al. v. City of Scottsdale, et al.*, Case No. CV2021-006633 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 30 day of August, 2022.

Leslie Allen Buntin
By: _____
Leslie Allen Buntin, Plaintiff

SUBSCRIBED AND SWORN before me this 30 day of August, 2022 by Leslie Allen Buntin.



By: *[Signature]*

Notary Public

My Commission Expires

IN WITNESS WHEREOF, I have hereunder set my hand this 30 day of August, 2022.

Janinne Carpenter
By: _____
Janinne L. Carpenter, Plaintiff

SUBSCRIBED AND SWORN before me this 30 day of August, 2022 by Janinne L. Carpenter.

By: *[Signature]*

Notary Public

My Commission Expires



CITY OF SCOTTSDALE, an Arizona Municipal Corporation

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

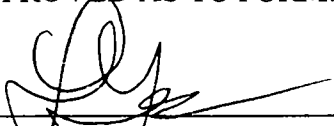
Dated: _____

ATTEST:

Ben Lane, City Clerk

Dated: _____

APPROVED AS TO FORM:



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

Dated: 8/30/22