

CITY COUNCIL REPORT

Item 12



Meeting Date: April 2, 2024
General Plan Element: *Provide for the orderly administration of the affairs of the City*
General Plan Goal: *Fiscal management*

ACTION

Adopt Resolution No. 13085 authorizing Agreement No. 2024-058-COS with Plaintiffs Benjiman Moulinet and Jayme Hileman, husband and wife, individually and on behalf of minor children Vera Moulinet-Ruokangas, Rowan Hileman and Shane Daley in the amount of \$200,000 to settle all claims in *Moulinet, et al. v. City of Scottsdale, et al.*, Case No. 2021-016034, currently pending in the Superior Court of the State of Arizona, County of Maricopa.

BACKGROUND

This lawsuit arises from a high-speed single vehicle rollover accident that occurred on October 20, 2020, near Scottsdale Road and Princess Drive. Plaintiff Benjiman Moulinet was driving an SUV with his pregnant wife, Jayme Hileman, in the front passenger seat and their three (3) young children in the rear seat (ages 7, 4 and 11 mos.). As the vehicle approached Princess Drive, Mr. Moulinet saw an object in his lane of travel that was later confirmed to be a manhole cover partially out of its frame and titled up in the roadway. Mr. Moulinet was unable to avoid hitting the partially open manhole and displaced manhole cover with the front wheel of his vehicle. Plaintiffs' vehicle was launched in the air by the impact before rolling onto its roof and sliding approximately 105 feet to a stop. The five (5) vehicle occupants were transported to three (3) different hospital emergency rooms for treatment and/or evaluation. Plaintiffs allege that the driver sustained a serious neurological injury in the accident and continues to suffer with ongoing complications and symptomology.

Plaintiffs' Notice of Claim to the City sought a total of \$800,000 in damages to settle their claims. If the case were to proceed to trial, the Plaintiffs would likely ask a jury to award money damages for at least that amount.

The parties participated in formal mediation with an independent mediator on March 7, 2024, and agreed, subject to City Council approval, to resolve the litigation for \$200,000. This amount will resolve all claims and the entirety of Plaintiffs' lawsuit, including claimed damages for pain and suffering, 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 trial in this case far outweigh the amount of the 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. Following the City's investigation and a period of discovery including exchanging expert reports and conducting depositions, the parties agreed to participate in a mediation that, if successful, would allow the parties to avoid the additional expense of a two-week jury trial that was scheduled to occur in June of 2024. Staff believes that settlement of this lawsuit 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

Available funding

The proposed settlement will require a total payment of \$200,000 from the City to the Plaintiffs 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 Plaintiffs, Benjiman Moulinet, Jayme Hileman, Vera Moulinet-Ruokangas, Rowan Hileman and Shane Daley. If the settlement is not authorized, the City will spend tens of thousands of dollars in fees and expenses in defending this case through trial.

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 expended on this case.

Future Budget Implications

The proposed settlement of \$200,000 *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. 13085 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.

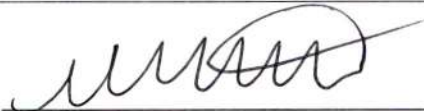
RESPONSIBLE DEPARTMENT(S)

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



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

3/19/2024

Date

ATTACHMENTS

1. Resolution No. 13085
2. Contract No. 2024-058-COS

RESOLUTION NO. 13085

A RESOLUTION OF THE COUNCIL OF THE CITY OF SCOTTSDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING SETTLEMENT IN THE AMOUNT OF \$200,000.00 TO SETTLE *MOULINET, ET AL., V. CITY OF SCOTTSDALE*, CASE NO. CV2021-016034 CURRENTLY PENDING IN MARICOPA COUNTY SUPERIOR COURT, AND AUTHORIZING THE MAYOR TO EXECUTE CONTRACT NO. 2024-058-COS.

WHEREAS, Benjiman Moulinet, Jayme Hileman, husband and wife, individually and on behalf of minor children Vera Moulinet-Ruokangas, Rowan Hileman and Shane Daley brought suit against the City of Scottsdale claiming damages for injuries allegedly arising from a single vehicle accident which occurred on or about October 20, 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, *Moulinet, et al., v. City of Scottsdale*, Case No. CV2021-016034 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. 2024-058-COS on behalf of the City to settle this case in its entirety in the amount of Two Hundred Thousand Dollars and No Cents (\$200,000.00) from funds to be paid from the City's Risk Management Operating Budget for settlement of *Moulinet, et al., v. City of Scottsdale*, Case No. CV2021-016034.

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: Abram Bowman Assistant City Attorney

**SETTLEMENT AGREEMENT
AND GENERAL RELEASE**

This Settlement Agreement and General Release of All Claims (“Agreement”) is entered into by and between BENJIMAN MOULINET, JAYME HILEMAN, husband and wife, individually and on behalf of minor children VERA MOULINET-RUOKANGAS, ROWAN HILEMAN and SHANE DALEY (“Plaintiffs”) and the CITY OF SCOTTSDALE, a municipal corporation, its employees, officers, and agents (“City”). Plaintiffs and City may be referred to jointly as the “Parties”.

RECITALS

A. On or about October 20, 2020, Plaintiff Benjiman Moulinet alleges he was driving southbound on Scottsdale Road approaching Princess Drive when he swerved to avoid, but hit, an object in the road later determined to be a manhole cover that was tilted out of its frame, causing the vehicle to yaw clockwise and roll onto its roof and allegedly causing injuries to him, his wife, and their three children.

B. Plaintiffs filed a lawsuit in the Superior Court of Maricopa County, Arizona, entitled *Moulinet, et al., v. City of Scottsdale*, Case No. CV2021-016034, 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 Plaintiffs’ accident 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 to provide for payment, subject to

the terms set forth below, in full settlement and discharge of all claims which are, or might have been, brought against the City as a result of the Plaintiffs' accident.

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 and 00/100 DOLLARS (\$200,000.00) which includes any and all claims for costs and attorneys' fees, with the payment to be made to "Zapata Law PLLC Trust Account." 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. Plaintiffs acknowledge that any fees due to their attorney(s) 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 release and forever discharge 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 Plaintiffs' 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. 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.* It shall be the sole responsibility of Plaintiffs and Plaintiffs' 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. Plaintiffs warrant that they 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). Plaintiffs acknowledge 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 4 above, Plaintiffs shall furnish to the City proof of satisfaction of any and all liens or claims Plaintiffs have, 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. 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 said occurrence 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 does 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 Plaintiffs' believe. The Plaintiffs understand and agree 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 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 *Moulinet, et al., v. City of Scottsdale* Case No. CV2021-016034 now pending in the Superior Court of Maricopa County, Arizona, with each party to bear their own costs and

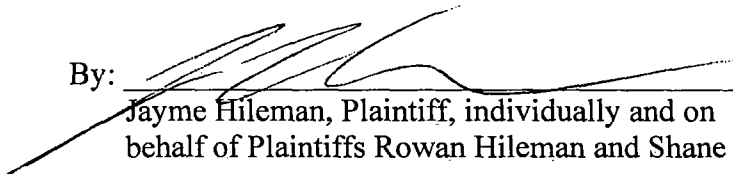
attorneys' fees.

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 _____ day of _____, 2024.

By: 
Benjiman Moulinet, Plaintiff, individually and on behalf of Plaintiff Vera Moulinet-Ruokangas

By: 
Jayme Hileman, Plaintiff, individually and on behalf of Plaintiffs Rowan Hileman and Shane Daley

APPROVED AS TO FORM and agreeing to satisfy all legally valid liens from the proceeds of this settlement before the settlement funds are disbursed:

By: _____
Julio M. Zapata
ZAPATA LAW PLLC
2820 S. Alma School Road., 18-141
Chandler, Arizona 85286
Attorney for Plaintiffs

CITY OF SCOTTSDALE, an Arizona Municipal Corporation

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

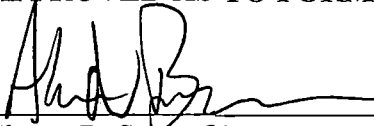
Dated: _____

ATTEST:

Ben Lane, City Clerk

Dated: _____

APPROVED AS TO FORM:



Sherry R. Scott, City Attorney
By: Abram Bowman, Senior Assistant City Attorney

Dated: March 18, 2024