



**CITY OF BOULDER
CITY COUNCIL AGENDA ITEM**

MEETING DATE: May 16, 2024

AGENDA TITLE

Consideration of a motion to authorize the city manager to enter into a settlement agreement to resolve a lawsuit filed by Sina Goharjou for payment in the amount of \$125,000.

PRESENTERS

Nuria Rivera-Vandermyde, City Manager
Teresa Taylor Tate, City Attorney
Luis Toro, Senior Counsel

EXECUTIVE SUMMARY

This matter arises out of an incident on the Pearl Street Mall. Mr. Goharjou was walking on the mall when he allegedly stepped on a corroded water meter cover, partially fell into the water meter pit, and suffered personal injuries.

Because the amount of the settlement exceeds \$50,000, City Council approval of the proposed settlement is necessary pursuant to Section 2-2-14(c) B.R.C., 1981, to make the settlement legally binding.

The city manager and city attorney recommend approval of the settlement.

STAFF RECOMMENDATION

Suggested Motion Language:

Staff requests council consideration of this matter and action in the form of the following motion:

Motion to authorize the city manager to enter into a settlement to resolve a lawsuit filed by Sina Goharjou for payment in the amount of \$125,000.

COMMUNITY SUSTAINABILITY ASSESSMENTS AND IMPACTS

- **Economic** - The settlement will save the city expert witness fees and staff time and eliminate the possibility of a judgment in excess of the settlement amount.
- **Environmental** – None.
- **Social** - The resolution of disputes is generally of social benefit and the resolution of this dispute will free up staff time to work on other projects.

OTHER IMPACTS

- **Fiscal** - Payment for the proposed settlement will be made from the city's Property and Casualty Fund which was established and funded for the purpose of paying claims and settling cases. This settlement is within the city's anticipated loss planning parameters.
- **Staff time** – The settlement is expected to save some city attorney staff time.

RESPONSES TO QUESTIONS FROM COUNCIL AGENDA COMMITTEE

None.

BOARD AND COMMISSION FEEDBACK

None.

PUBLIC FEEDBACK

None.

BACKGROUND

In his amended complaint, Sina Goharjou alleged that he suffered serious injuries after stepping on a corroded water meter cover on the Pearl Street Mall, and that his injuries were caused by the City's allegedly negligent inspection and maintenance of water meter covers on the Mall. He claimed that the dollar value of his injuries exceeded \$700,000. The proposed settlement is in the amount of \$125,000.

ANALYSIS

It is not possible to predict the outcome of a trial. Given the projected costs of litigation, the city attorney believes that it is unlikely that the city will be in a significantly better economic position by litigating the case as compared to approving the proposed settlement agreement.

The city manager also supports the proposed settlement.

Council has the option of approving or rejecting the proposed settlement. If council rejects the settlement, litigation will continue.

ATTACHMENT

Attachment A – Proposed Goharjou Settlement Agreement

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Mutual Release (“Agreement”) is made and entered into between the City of Boulder (“City”) and Sina Goharjou (“Mr. Goharjou”). The City and Mr. Goharjou are referred to collectively herein as the “Parties.”

This Agreement is made in consideration of the following:

RECITALS

1. On August 30, 2023, Mr. Goharjou filed his complaint in *Goharjou v. City of Boulder*, Boulder County District Court Case No. 2023CV30615, hereinafter referred to as the “Action.”
2. The complaint alleged that Mr. Goharjou suffered injuries as the result of an incident occurring on or about February 7, 2023 on the 1200 block of the Pearl Street Mall in Boulder (the “Incident”).
3. The Parties now wish to resolve all claims, disputes, and differences between them in connection with the Incident and the Action.
4. The Parties understand, acknowledge, and agree that this Agreement constitutes the compromise of all disputed claims and that it is the desire and intention of the Parties to reach a final and complete resolution of all claims and causes of action between them relating to the Incident and the Action.

AGREEMENT

1. Payment. Within thirty days of approval of this Agreement by Boulder City Council, the City agrees to deliver to Mr. Goharjou’s counsel the sum of \$125,000 (the “Settlement Sum”), by a check made payable to Strickler, Brennan, Catlin, LLC, Client Trust Account. The City makes no representation or warranty with respect to the taxation of the Settlement Sum. Mr. Goharjou shall indemnify the City from any claims asserted by any governmental entity for taxes, penalties and interest resulting from payment of the Settlement Sum.
2. Release of Claims by Mr. Goharjou. Mr. Goharjou, for himself and his agents, attorneys, affiliates, corporations, entities, successors, administrators, employees, servants, and insurers hereby knowingly and voluntarily releases and discharges the City from any and all actions or causes of action, suits, debts, claims, demands for damages, costs, expenses, attorney’s fees, or any other damages or relief whatsoever at law or in equity, whether known or unknown, held by Mr. Goharjou and arising out of or related to the Incident or the Action.
3. Release of Claims by the City. The City, for itself and its agents, attorneys, affiliates, corporations, entities, successors, administrators, employees, servants, and insurers hereby knowingly and voluntarily releases and discharges Mr. Goharjou from any and all actions or causes of action, suits, debts, claims, demands for damages, costs, expenses, attorney’s fees, or

any other damages or relief whatsoever at law or in equity, whether known or unknown, held by the City and arising out of or related to the Incident or the Action.

4. Dismissal of Action. As soon as practicable after receipt of the Settlement Sum, Mr. Goharjou shall cause his counsel to file a stipulated motion to dismiss the Action with prejudice.

5. Attorney's Fees and Costs. Each Party shall bear their own costs, attorney's fees, and other expenses incurred in connection with this matter. The Parties expressly release and disclaim any entitlement they may have to the payment of costs, attorney's fees, or other expenses by the other Party related to the Incident or the Action.

6. Indemnification. Each Party agrees to indemnify the other against claims by any person, firm, or corporation made pursuant to a theory of assignment, lien interest, co-ownership, subrogation right, or other right of substitution to claims related to the Incident or the Action. This provision shall apply to, among other things, claims by governmental entities or agencies or claims by other persons or third-party insurance carriers claiming a subrogation or other interest in the Settlement Sum.

7. Representations and Warranties. The Parties make the following representations and warranties:

- a. None of Mr. Goharjou's claims or the City's claims released in the Agreement has been assigned or transferred to another person or entity, and each Party has authority to execute this Agreement.
- b. Each Party has carefully read, knows, and understands the full contents of this Agreement and is voluntarily entering into this Agreement after having had the opportunity to receive independent legal advice from an attorney of their choice.
- c. Each Party has not relied, and does not rely, on any statement, representation, omission, inducement, or promise of any other Party (or any officer, agent, employee, representative, or attorney for any other Party) in executing this Agreement, or in making the settlement provided for herein, except as expressly stated in this Agreement.
- d. Each Party has investigated the facts pertaining to this settlement and this Agreement, and all matters pertaining thereto, to the full extent necessary; and each assumes the risk that there may exist facts that each does not know exist and that, if known, would materially affect the decision to execute this Agreement.
- e. Each Party is competent to enter this Agreement.

8. Cooperation and Further Acts. The Parties agree, for themselves, their heirs, executors, attorneys, agents, and assigns, that they will abide by this Agreement and that they will do all such acts, and prepare, execute, and deliver all such documents, as may reasonably be required to implement and effectuate this Agreement.
9. Interpretation and Construction. Each of the Parties has had an adequate opportunity to read and review, and to consider with her or its own attorney(s), the effect of the language of this Agreement; has agreed to its terms; and has participated in the drafting of all provisions of this Agreement. Further, the language of this Agreement shall be construed as a whole, according to its intent, and not strictly for or against any party hereto, regardless of who drafted or was primarily responsible for drafting any of the language in this Agreement.
10. Binding on Successors and Assigns. This Agreement is binding upon, and shall inure to the benefit of, the Parties and their respective agents, employees, representatives, officers, directors, subsidiaries, assigns, administrators, insurers, and successors-in-interest.
11. Jurisdiction, Governing Law, and Forum. This Agreement shall be construed in accordance with and governed by the laws of the State of Colorado, without regard to any laws relating to choice of laws or conflict of laws between or among jurisdictions. Exclusive venue for any dispute arising out of or related to this Agreement shall lie in the District Court for Boulder County, Colorado.
12. Entire Agreement. The Agreement contains the entire understanding of the Parties relating to the subject matter of the Agreement. No promise, inducement, or agreement which is not specifically provided in this Agreement has been made by any Party to this Agreement, and no warranties, representations, or undertakings are made by the Parties except as are expressly provided herein.
13. Complete Compromise. The Parties execute and agree to this Agreement, acknowledging the receipt and sufficiency of consideration for this Agreement; agreeing that this Agreement is a complete compromise of matters involving disputed issues of fact and law; and fully assuming the risk of any mistake of fact or law.
14. Assumption of Risk of Error. The Parties expressly waive and assume the risk of any and all claims, obligations, demands, rights, costs, expenses, compensation, or causes of action for damages or other relief arising out of any matter described in this Agreement or in the claims, and which exist as of this date but which they do not know or suspect to exist in their favor, whether through ignorance, oversight, error, negligence, or otherwise, and which, if known, would materially affect their decision to enter into this Agreement.
15. Counterparts. This Agreement may be executed contemporaneously in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Facsimile or email copies of signatures shall be deemed original signatures.

16. Savings Clause. If any part of this Agreement is found or determined by a court of law to be unenforceable or void, the rest of the Agreement shall survive, and be given full force and effect.

17. Modification. This Agreement may not be altered, amended, modified, or otherwise changed in any respect whatsoever except by a writing duly executed by the Parties or by authorized representatives of the Parties. The Parties agree that they will make no claim at any time or place that this Agreement has been orally altered or modified or otherwise changed by oral communication of any character.

IN WITNESS WHEREOF, the Parties have executed the Agreement as of the latest date indicated below.

Date

SINA GOHARJOU

Date

NURIA RIVERA-VANDERMYDE
City Manager, City of Boulder

ATTEST:

Date

ELESHA M. JOHNSON
City Clerk, City of Boulder

APPROVED AS TO FORM:

Date

LUIS A. TORO
Counsel for the City

Date

MARK E. BIDDISON
Counsel for Mr. Goharjou