



Council Work Session Summary

Meeting: Work Session - Nov 23 2020

TITLE: TERMS OF THE SETTLEMENT BETWEEN THE CITY AND THE ESTATE OF ANTONIO VALENZUELA

PURPOSE(S) OF DISCUSSION: ☒ Inform/Update ☐ Direction/Guidance ☒ Legislative Development/Policy

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

On July 17, 2020, the City entered into a settlement agreement with the Estate of Antonio Valenzuela. As part of the agreement, the City agreed to present to City Council various policies for the Las Cruces Police Department in regard to the use of force.

SUPPORT INFORMATION:

[Attachment A Valenzeula Settlement](#)

PLAN(S):

None

COMMITTEE/BOARD REVIEW:

None

SETTLEMENT AGREEMENT AND RELEASE OF ALL CLAIMS

This Release of All Claims is entered into between Rosalie Valenzuela, as Personal Representative of the Estate of Antonio Valenzuela ("Estate"), and the City of Las Cruces ("City"), all of whom may also be referred to collectively as "the Parties."

RECITALS

WHEREAS, Rosalie Valenzuela is the duly appointed as the Personal Representative for the Estate of Antonio Valenzuela; and

WHEREAS, the Estate has claims against The City of Las Cruces, its former employee Christopher Smelser, Officer Andrew Tuton, and Las Cruces City Police Chief Patrick Gallagher

WHEREAS, the underlying dispute arises from events that transpired on February 29, 2020 which resulted in the death of Antonio Valenzuela; and

WHEREAS, the Parties have agreed to settle any possible claims whether brought under federal or state law without admitting or conceding liability as to any matter at issue.

NOW THEREFORE, IN CONSIDERATION OF THE FOREGOING AND IN CONSIDERATION OF THE COVENANTS CONTAINED HEREIN, THE PARTIES AGREE TO THE FOLLOWING:

UNDERLYING SETTLEMENT TERMS

1. In consideration for payment described herein in paragraph 5, the Estate, and its beneficiaries, waive, release and discharge the City of Las Cruces, their current and former elected officials, managers, supervisors, councilors, directors, departments, attorneys, representatives, predecessors, successors, assigns, employees, and agents including Andrew Tuton, Patrick Gallagher, former employee Christopher Smelser, and the City's insurers, and the insurance carriers' third party administrators, from all manners of liabilities, claims, demands, and causes of action, known or unknown, fixed or contingent, arising in the past, present, or future which the Estate, or anyone claiming through the Estate may personally have or claim to have against the City or any former or current employee as a result of the incident which occurred on or about February 29, 2020. This Agreement includes all demands, obligations, actions, claims, damages, costs, or rights the Estate, or its heirs, beneficiaries, agents, successors, and assigns now have or may have that could be related to the incident occurring on or about the aforementioned date. This shall be a fully binding and complete settlement between the Parties, and each Party's agents, successors and assigns.

2. The Estate understand that this is a general release encompassing any and all claims arising under federal, state, or local law, including but not limited to claims arising under state and federal statutes, as well as any claims arising under any theory of common law. Claims released are those of which the Estate and Mrs. Stewart are presently aware, and those of which it may be unaware, for violations of state and federal civil rights, violations of the New Mexico Tort Claims Act, personal injury, bodily injury, loss of consortium, property damage or otherwise. This general release is binding upon the beneficiaries, successors, heirs, executors, and administrators of the Estate of Antonio Valenzuela.

*The Estate of Antonio Valenzuela
Settlement Agreement and Release of all Claims*

3. In consideration for the payments described in paragraph 5, the Estate and only the Estate are responsible for any reimbursement or subrogation to any insurance company/companies, related to the underlying incident. The amounts being paid to the Estate are made pursuant to Section 104(a)(2) of the Internal Revenue Code. In making this Agreement, the parties intend the settlement to constitute a settlement of compensatory damages on account of personal injuries suffered or sustained by decedent Antonio Valenzuela, and attributable to an occurrence within the meaning of Section 104(a)(2) of the Internal Revenue Code (1986). It is understood, agreed and stipulated that all of the consideration is being paid for personal injury damages and that none of the consideration paid hereunder is attributable to punitive damages or to the confidentiality provision contained herein. If, however, any government agency determines that taxes are owed as a result of the settlement, the Estate shall be exclusively liable for the payments of all federal, state and local taxes, if any, which may be due as a result of the consideration paid as set forth in this agreement. The Estate agrees to indemnify the City of Las Cruces from the payment of taxes, including interest and penalties thereon, which may be required of the Estate by any government agency at the time as a result of the payment and consideration provided for herein.

4. It is expressly understood and agreed that the payment of the sum described in the below paragraphs, and the additional consideration designated below, is not and shall not be construed as an admission of liability by the City. The Estate is settling and compromising disputed claims as to which the City expressly denies any liability.

PAYMENT

5. Pursuant to this Agreement, the City agrees to pay the Estate in settlement of the above claims and potential lawsuit, the sum of SIX MILLION FIVE-HUNDRED THOUSAND

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DOLLARS (\$6,500,000.00) payable within thirty (30) days. The Estate agrees that the settlement funds shall be made payable to the Order The Bregman Law Firm P.C. Trust Account.

ADDITIONAL TERMS

6. All Parties agree to cooperate fully, execute any and all supplementary documents, and take all additional actions that may be necessary to give full force and effect to this Agreement.

7. The Parties agree that the terms and conditions of this Settlement Agreement and Release of Claims is confidential to the extent allowable by law. The Parties and their representatives or agents shall not cause to be made public or release to any news media or disclose to any person or entity for 60-days the terms and conditions of this Settlement Agreement other than to allowed representatives, to include attorneys, financial advisors, accountants, and auditors. If a request for records is made to the City, it will have sole discretion to determine what may be released pursuant to law. The City agrees that it will notify the Estate, through its attorneys, of any decision to release the settlement amount or the settlement agreement contemporaneously with the release. The decision to release the settlement amount or agreement, shall release the Estate and its attorneys from any duty to refrain from commenting on the disclosure or settlement amount. The Parties agree, however, that the Estate may discuss those items listed in paragraph 8 of this agreement.

8. The City further agrees that it will present for approval by the City Counsel the following items for consideration and formal adoption into the policies of the Las Cruces Police Department:

- a. Adoption of a policy banning all forms or choke holds. This policy will also allow for immediate termination of an officer who violates the policy.

- b. Adoption of a policy requiring that officers intervene which they are aware of or witness an unconstitutional use of force by a fellow officer. This policy will also allow for the immediate termination of an officer who violates the policy.
- c. Adoption of a policy requiring annual or at a minimum bi-annual de-escalation training for every law enforcement officer of the City.
- d. Adoption of an annual or at a minimum bi-annual training in empathy and racial bias for every law enforcement officer of the City.
- e. Adoption of a policy requiring all uses of force by all officers whether uniformed or plain clothed to be reported, investigated, and stored for a period of time not less than required under the New Mexico Retention of Records Act.
- f. Adoption by the Las Cruces Police Department of a red flag warning system to track use of force by officers the purpose of which is to identify officers who use unreasonable force.
- g. Adopt a policy where the Las Cruces Police Department will report every six months to the Las Cruces City Council all use of force incidents by its officers, and any discipline received by officers related to any policy during the six-month period.
- h. Adopt a policy requiring Officers to submit to mental health exam on an annual basis which will be administered by a licensed psychiatrist which will certify fitness for duty.

The Estate recognizes and agrees that the aforementioned recommendations may or may not be adopted in whole or in part and are subject to existing law, City personnel policies, and collective bargaining agreements that may be in place. Additionally, the Estate agrees and understands that

if any or all of the recommendations are not adopted in whole or in part this settlement cannot be undone. The Estate further agrees, that should the City Council choose not to adopt any of the requested recommendation or the recommendations are adopted in part, the remaining terms of this agreement will be in full force and the Estate will not have grounds to bring an additional cause of action under any contract theory nor can the Estate bring suit to enforce paragraph 8 of this agreement. The estate further agrees that the amount listed in paragraph 5 of this agreement shall be the entire amount it will receive even if the recommendations listed in this paragraph are not adopted.

FEES

9. Each Party shall bear its own costs and fees, including attorneys' fees associated with the underlying matter.

ADVICE OF COUNSEL

10. The Estate acknowledges it is represented by counsel and have read and understand the effects of this Agreement.

11. Rosalie Valenzuela as the personal representative Estate of Antonio Valenzuela state that this Agreement is executed of her own free will and accord, for the purpose and consideration set forth in this Agreement.

INTEGRATION

12. This Agreement contains the entire understanding between the Parties hereto concerning the subject matter contained herein.

13. All Parties agree that each paragraph and component of this Agreement is a material term and that failure to comply with any of the provisions contained herein constitutes a material breach of this Agreement.

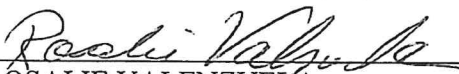
14. The Estate represents and warrants that there have been no representations or promises made by the City on which they relied on in connection with the Agreement, other than what is set forth herein in writing.

15. The Estate through its personal representative Rosalie Valenzuela further represents and warrants that it is not being induced to enter into this Agreement by anything other than the written words contained in this Agreement.

16. This Agreement constitutes the entire Agreement and understanding between the Parties and shall not be modified or altered, except in writing, and signed by all Parties.

17. Interpretation of this Agreement will be according to the laws of the State of New Mexico.

18. This Settlement and Release of All Claims shall be effective following execution by the Estate. Facsimile signatures shall be acceptable as original for all purposes.


ROSALIE VALENZUELA
AS PERSONAL REPRESENTATIVE
OF THE ESTATE OF ANTONIO VALENZUELA

7-17-20
DATE

STATE OF NEW MEXICO

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) SS.
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COUNTY OF DONA ANA

SUBSCRIBED AND SWORN TO before me on this 17th day of July, 2020
by ROSALIE VALENZUELA, as Personal Representative of the Estate of Antonio Valenzuela.

Carrie J. Jirayoff
Notary Public

My Commission Expires:

1-24-21