

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY**

Meeting Date: March 12, 2013 **Consent** **Regular**
 Public Hearing

Department

Submitted By: COUNTY ATTORNEY

Submitted For:

I. EXECUTIVE BRIEF

Motion and Title: **Staff recommends motion to:** approve a Settlement Agreement, inclusive of attorney's fees and costs, in the total amount of \$90,000 in the personal injury action styled Timothy J. Pike vs. Palm Tran, Case No. 502011CA016985XXXXMB AE.

Summary: On August 29, 2008, Plaintiff, a 28 year-old West Palm Beach police officer, was struck by a Palm Tran bus that was turning left onto Electronics Way as Plaintiff was traveling west on 25th Avenue in West Palm Beach. Plaintiff's patrol car flipped over and landed upside down. Plaintiff was transported by ambulance to St. Mary's Hospital for emergency treatment. Plaintiff followed up with a neurosurgeon and a chiropractor. He sustained herniated discs in his neck at two levels and in his back at two levels for which he underwent surgery. He was left with a 12% permanent impairment and his doctor opined that he is a candidate for future neck surgery and a lumbar fusion. Medical bills to date total \$97,708, and there is an outstanding lien for \$4,686. Staff, including the Risk Management Roundtable Committee, concurs that this settlement is in the best interest of Palm Beach County. **Countywide** (SCL)

Background and Justification: Plaintiff, Timothy Pike, 28 years old, was responding to an "officer needs help" call while westbound on 25th Street when he was struck by a Palm Tran bus that was turning left to go northbound on Electronics Way in West Palm Beach. As a result, he followed up with several health care providers and ultimately underwent low back surgery. He is a surgical candidate for both his neck and back. He was assigned a 12% permanent impairment rating by his attending neurosurgeon. The Palm Tran driver was charged with careless driving and failure to yield the right of way. He was ultimately terminated for subsequent DUI. Therefore, it is recommended that the County approve the Settlement Agreement in the amount of \$90,000.

Attachments:

1. Settlement Agreement and Release of All Claims
2. Budget Availability Statement

Recommended by:  _____ **County Attorney** 2-14-13 _____ **Date**

Approved by: _____ **N/A** _____ **Date**

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2013	2014	2015	2016	2017
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	<u>\$90,000</u>	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	<u>90,000</u>	_____	_____	_____	_____
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included in Current Budget? Yes X No _____

Budget Account No.: Fund 5010 Department 700 Unit 7130 Object 4511

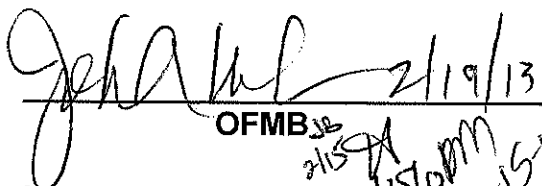

Reporting Category _____

B. Recommended Sources of Funds/Summary of Fiscal Impact:

C. Departmental Fiscal Review: _____

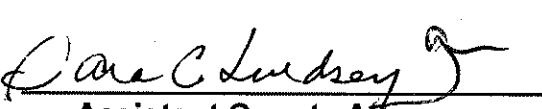
III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development and Control Comments:

OFMB _{2/15/13} Contract Development and Control ₂₋₂₁₋₁₃

B. Legal Sufficiency:



Assistant County Attorney

C. Other Department Review:



Department Director

THIS SUMMARY IS NOT TO BE USED AS A BASIS FOR PAYMENT.

SETTLEMENT AGREEMENT

THIS AGREEMENT made and entered into this _____ day of _____, 2013, by and between PALM TRAN (the "COUNTY"), a political subdivision of the State of Florida, and Timothy J. Pike.

WHEREAS, Timothy J. Pike sued Palm Tran in a lawsuit presently styled Timothy J. Pike v. Palm Tran, Case No. 502011CA016985XXXMB AE, in the Circuit Court of Palm Beach County, Florida (the "Pending Lawsuit"), for damages arising from an incident that occurred on August 29, 2008, at or near intersection of 25th Street and Electronics Way, West Palm Beach, in Palm Beach County, Florida;

WHEREAS, the COUNTY has denied liability and raised several affirmative defenses in the Pending Lawsuit; and

WHEREAS, the parties hereto wish to amicably resolve that portion of the Pending Lawsuit that involves PALM TRAN without further litigation of the claims made and defenses raised therein.

NOW, THEREFORE, in consideration of the mutual covenants hereinafter set forth, the sufficiency of which are hereby acknowledged, the parties agree as follows:

1. The foregoing recitals are true and correct and incorporated herein by reference.
2. Within a reasonable time, Scott S. Warburton, Esq., shall execute and deliver to the Palm Beach County Attorney's Office the 1) Settlement Agreement, 2) Release of All Claims, and 3) the Stipulation and Final Order of Dismissal with Prejudice.
3. Within a reasonable time of full execution and receipt hereof, and subject to final administrative approval, Palm Tran shall pay to Timothy J. Pike the amount of Ninety Thousand Dollars (\$90,000), by a check made payable to Timothy J. Pike and Adams Coogler, P.A.
4. Scott S. Warburton, Esq. shall not disburse, and Timothy J. Pike shall not accept, any proceeds from the settlement check described in paragraph 3 unless and until the Release of All Claims has been delivered to the COUNTY and the Final Order of Dismissal with Prejudice has been filed and served in accordance with paragraph 2 above.
5. Timothy J. Pike acknowledges and agrees that he is responsible for the payment of any liens against this settlement and that Palm Tran shall not be responsible for any portion of said liens. Timothy J. Pike, on behalf of himself and his officers,

agents, employees, heirs, executors, administrators and assigns, further agree to indemnify, defend, and hold Palm Tran, its officers, agents, elected officials, employees, their heirs, executors, administrators and assigns, harmless from and against all suits, actions, proceedings, claims, demands, and damages, including attorneys fees, arising out of or related to such liens or claims of lien.

6. FURTHERMORE, the undersigned Plaintiff, Timothy J. Pike, being of lawful age, agrees to hold harmless and indemnify the Defendant, Palm Tran, for any pre-settlement Medicare conditional payments and/or reimbursements demanded or required by the Medicare Secondary Payer Recovery Contractor (MSPRC), CMS, collection agencies, or any other governmental entity, currently known, discovered, or demanded in the future.

7. FURTHERMORE, the undersigned Plaintiff, Timothy J. Pike, being of lawful age, agrees to be responsible for any claims or liens by Medicare and agrees that he will defend and hold harmless the Defendant, Palm Tran, from any liens, suits, or actions arising under the Medicare Secondary Payer Statute (MSPRC), CMS, collection agencies, or any other governmental entity, currently known, discovered, or demanded in the future.

8. Each party shall bear its respective attorneys fees and costs.

9. This Settlement Agreement does not constitute an admission of liability by any party.


10. In any litigation brought to enforce the terms or remedy a violation of this Settlement Agreement, the prevailing party shall be entitled to an award of reasonable attorney's fees in addition to any other recovery.

11. Timothy J. Pike declares and acknowledges that the terms of this Settlement Agreement have been completely read, fully understood, discussed with counsel, and voluntarily accepted as a full and final compromise of any and all claims they may have against Palm Tran.

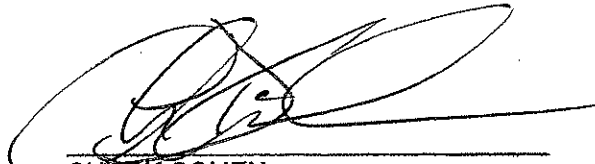
12. This Settlement Agreement shall be binding on the parties hereto, his assigns, transferees, heirs, and other successors in interest.

13. The parties represent that no claim that has been, or could have been, raised in the Pending Lawsuit, and no claim to which this Settlement Agreement applies, has been assigned or otherwise transferred to any other person or entity not a party hereto.

IN WITNESS WHEREOF, the parties have caused this Settlement Agreement to be executed as of the date first set forth above.



Plaintiff, Timothy J. Pike



CHUCK COHEN
Director of Palm Tran

ATTEST:
Sharon R. Bock, Clerk & Comptroller

PALM BEACH COUNTY, a Political
Subdivision of the State of Florida

By: _____

By: _____

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

By: 

Assistant County Attorney

RELEASE OF ALL CLAIMS

KNOW ALL MEN BY THESE PRESENTS:

That the Undersigned, TIMOTHY J. PIKE, being of lawful age, for the sole consideration of NINETY THOUSAND DOLLARS (\$90,000), to the Undersigned in hand paid, the receipt and sufficiency whereof is hereby acknowledged, does hereby and for his executors, administrators, successors and assigns, release, acquit and forever discharge PALM TRAN, (hereinafter referred to as "the Releasees"), and their officers, agents, employees, heirs, executors, administrators, successors and assigns, none of whom admit any liability to the Undersigned, but all of whom expressly deny any such liability, from any and all claims, demands, rights, damages, costs, loss of service, expenses, compensation, actions, causes of action or suits of any kind or nature whatsoever, which the Undersigned may now have or which may hereafter accrue or develop, particularly on account of or in any way growing out of any and all known and unknown, foreseen and unforeseen, bodily and personal injuries, and property damages, and any and all consequences thereof, resulting or to result from an alleged event or incident that occurred on or about August 29, 2008, at or near the intersection of 25th Street and Electronics Way, West Palm Beach, Palm Beach County, Florida.

FURTHERMORE, the Undersigned agrees that each party shall bear its own costs and attorney's fees, and the Undersigned shall bear sole responsibility for any and all hospital, physician, diagnostic, rehabilitation, training, maintenance, medical or pharmaceutical expenses, bills, statements, liens or subrogable interests, of any nature whatsoever, which are or may be outstanding and payable on the date of execution of this agreement, or which may be incurred and payable in the future. The Undersigned further agree(s) to indemnify and save harmless the Releasees from any requests for payment or attempts for collection therefrom. Should legal action be instituted against the Releasees for payment or collection of the aforementioned expenses, the Undersigned agrees to indemnify and save harmless the Releasees for any attorney's fees, costs and/or judgments, which may be entered against the Releasees.

FURTHERMORE, the Undersigned understands and agrees that this settlement is the compromise of a doubtful and disputed claim, and that the payment made shall not be construed as an admission of liability on the part of the Releasees, and that the Releasees deny any liability and merely intend to avoid further litigation and buy their peace.

FURTHERMORE, the Undersigned hereby declares and represents that any injuries sustained are or may be permanent and progressive and that recovery therefrom is uncertain and indefinite and in making this Release the Undersigned understands and agrees that the Undersigned relies wholly upon the Undersigned's own judgment, belief, and knowledge of the nature, extent, effect, and duration of any injuries and liability therefore, without reliance upon any statement or representation by the Releasees, or by his representatives or by any physician or surgeon employed by him. The Undersigned further declares and represents that no promise, inducement, or agreement not herein expressed has been made to the Undersigned, and that this Release contains the entire agreement between the parties hereto, and that the terms of this Agreement are contractual and not merely a recital.

FURTHERMORE, the Undersigned states that while he hereby releases any and all claims against the Releasees and their officers, agents, employees, heirs, executors, administrators, successors and assigns, for both past and future losses, including medical expenses, health care expenses, and related expenses, the necessity for future medical treatment and expenses incurred is speculative and unknown at this time and therefore, as a result, the Undersigned reserves the right to pursue and recover all future medical expenses, health care expenses, and related expenses, from any person, firm, or organization who may be responsible for payment of such expenses, including any first-party health or automobile insurance coverage, but such reservation specifically does not

include the Releasees.

FURTHERMORE, notwithstanding the language contained in this Release, this release shall not be construed as releasing any medical providers for potential claims which may arise based upon treatment and care rendered as a result of the accident which is the subject of this Release. Moreover, this Release shall not be construed as releasing any health insurance carrier or other insurer from medical and lost wage benefits to which the Releasor is entitled.

FURTHERMORE, the undersigned Plaintiff, Timothy J. Pike, being of lawful age, agrees to hold harmless and indemnify the Defendant, Palm Tran, for any pre-settlement Medicare conditional payments and/or reimbursements demanded or required by the Medicare Secondary Payer Recovery Contractor (MSPRC), CMS, collection agencies, or any other governmental entity, currently known, discovered, or demanded in the future.

THE UNDERSIGNED hereby declares that the Undersigned has completely read, fully understood, and voluntarily accepted the foregoing Release of All Claims for the purpose of making a full and final compromise settlement and adjustment of any and all claims disputed or otherwise on account of the injuries and damages set forth above, and for the express purpose of precluding forever any further or additional claims against the Releasees arising out of the aforementioned incident.

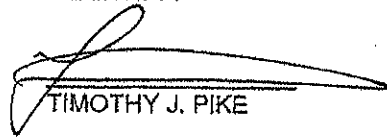
THE UNDERSIGNED hereby accepts the tendered settlement draft as final payment of the consideration set forth above.

IN WITNESS HEREOF, I, Timothy J. Pike, have hereunto set my hand and seal this 12th day of February, 2013.

IN THE PRESENCE OF:

PLAINTIFF:

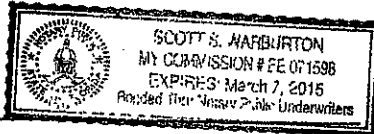
WITNESS


TIMOTHY J. PIKE

STATE OF FLORIDA)
COUNTY OF PALM BEACH)

The foregoing Release of All Claims was acknowledged before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, this ___ day of February, 2013, by _____, who [] is personally known to me; OR [] has produced _____ as identification; and who freely and voluntarily executed the within Release of All Claims for the purposes therein recited.

[seal]



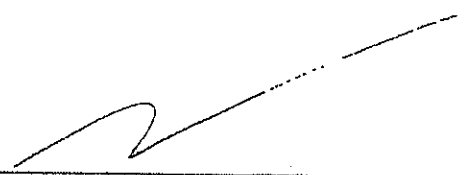
Notary Public
My Commission Expires:

STATEMENT OF ATTORNEY FOR RELEASOR

I, Scott S. Warburton, Esq., of the Law Office of Adams Coogler, P.A., state that I am the attorney for Timothy J. Pike, the above-signed Releasor, that I have explained to Timothy J. Pike all the terms of this Release and the Settlement Agreement upon which it is based and that Timothy J. Pike has represented to me that he understands all those terms and their significance. Timothy J. Pike has signed this Release knowingly, voluntarily, and on my advice.

Further, as Plaintiff's counsel, I agree on behalf of myself and as representative of the law firm of Adams Coogler, P.A., to hold harmless and indemnify the Defendant, Palm Tran, for any pre-settlement Medicare conditional payments and/or reimbursements demanded or required by the Medicare Secondary Payer Recovery Contractor (MSPRC), CMS, collection agencies, or any other governmental entity, currently known, discovered, or demanded in the future.

Dated _____



Scott S. Warburton, Esq.
Attorney for Timothy J. Pike
Florida Bar No. 861268

BUDGET AVAILABILITY STATEMENT
RISK MANAGEMENT

REQUEST DATE: 2/13/13 REQUESTED BY: County Attorney's Office

REQUESTED FOR: Timothy J. Pike

REQUESTED AMOUNT: \$90,000 AGENDA DATE: 3/12/13

BUDGET ACCOUNT NUMBER:

FUND: 5011 DEPT: 700 UNIT: 7241 OBJ: 4511

BAS APPROVED BY:  DATE: 2/13/13
Jessica Kolb