

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY

Meeting Date: September 9, 2014

Consent Regular
 Public Hearing

Department

Submitted By: COUNTY ATTORNEY

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to: approve a Settlement Agreement in the amount of \$117,000, inclusive of attorney's fees and costs, in the personal injury action styled Karen McCray v. Palm Beach County, Case No. 502013CA018719XXXXMB AD.

Summary: This is a personal injury case which arose out of an incident that occurred on December 19, 2012. The plaintiff, 50 years old and a Palm Tran passenger, sustained injuries when the Palm Tran bus driver, who was allegedly speeding, slammed on his brakes to avoid rear-ending a truck which had stopped for a yellow light. There was no collision, but Ms. McCray was thrown from her seat into the seat in front of her. The Plaintiff treated with a chiropractor, a surgeon and podiatrist for neck, back and ankle injuries. She sustained multiple herniations in her neck and back and a torn Achilles tendon. She ultimately underwent fusion surgery on her low back. Her doctor assigned an 18% impairment rating. Her past medical bills total \$117,000, including a \$39,733.00 Medicaid lien. Plaintiff is only seeking payment of her past medical bills.

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: On December 19, 2012, Plaintiff, Karen McCray, 50 years old, was involved in an incident while a passenger on a Palm Tran bus. She was seated in the first forward facing seat on the bus when the driver, who was allegedly following too closely, speeding and weaving in and out of traffic, slammed on his brakes to avoid striking a truck which stopped for a yellow light. Plaintiff was thrown from her seat and struck the handicapped seat in front of her, all of which was captured on video. As a result of the incident, she sustained multiple herniated discs in her neck and back, a torn Achilles tendon, and underwent therapy, injections and a lumbar fusion at L5 – S1. She was assigned an 18% permanent impairment rating. Her bills totaled \$117,000 including a Medicaid lien of \$39,733. Plaintiff declined to pursue her other damages including past and future pain and suffering, lost wages, loss of future earning capacity, and future medical bills.

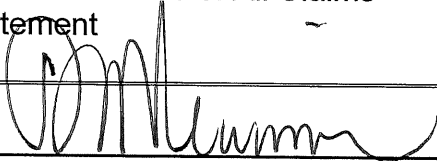
Therefore, it is recommended that the County approve the Settlement Agreement in the amount of \$117,000.

Attachments:

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

Recommended by: _____

County Attorney



Date

8/6/14

Approved by: _____

N/A

Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2014	2015	2016	2017	2018
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	<u>\$117,000</u>	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	<u>\$117,000</u>	_____	_____	_____	_____
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included in Current Budget? Yes 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:

Susan Neary

 OFMB
 8/27/14

Dr. J. Jacobson

 Contract Development and Control
 8/18/14
 3-3-14 B. Chidley

B. Legal Sufficiency:
Jan Chandy

 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 31 day of July, 2014, by and between PALM BEACH COUNTY (the "COUNTY"), a political subdivision of the State of Florida, and KAREN MCCRAY.

WHEREAS, Karen McCray sued the COUNTY in a lawsuit presently styled Karen McCray v. Palm Beach County, Case No. 502013CA018719XXXMB AD, in the Circuit Court of Palm Beach County, Florida (the "Pending Lawsuit"), for damages arising from an incident that occurred on December 19, 2012;

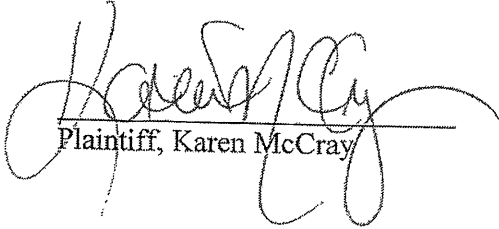
WHEREAS, the COUNTY has denied liability and raised several affirmative defenses in the Pending Lawsuit; and

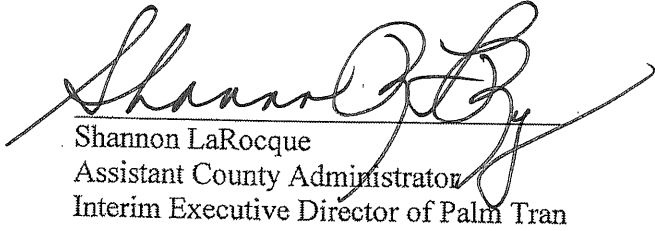
WHEREAS, the parties hereto wish to amicably resolve that portion of the Pending Lawsuit that involves PALM BEACH COUNTY without further litigation of the claims made and defenses raised therein.

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

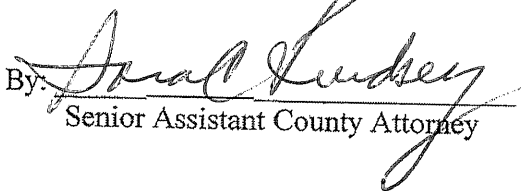
1. The foregoing recitals are true and correct and incorporated herein by reference.
2. Within a reasonable time, Daniel A. Norton, Esq., shall execute and deliver to the Palm Beach County Attorney's Office the 1) Settlement Agreement, 2) Release of All Claims, and 3) the Stipulation and Final Order of Dismissal with Prejudice.
3. Within a reasonable time of full execution and receipt hereof, and subject to final administrative approval, the COUNTY shall pay to Karen McCray the amount of One Hundred Seventeen Thousand Dollars (**\$117,000.00**), by a check made payable to Karen McCray and Berman & Berman, P.A. Trust Account.
4. Daniel A. Norton, Esq. shall not disburse, and Karen McCray 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. Karen McCray acknowledges and agrees that she is responsible for the payment of any liens against this settlement and that the COUNTY shall not be responsible for any portion of said liens. Karen McCray, on behalf of herself and her officers, agents, employees, heirs, executors, administrators and assigns, further agrees to indemnify, defend, and hold the COUNTY, its officers, agents, elected officials, employees, their heirs, executors, administrators and assigns, harmless from and against all suits, actions, proceedings, claims, demands, and

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


Plaintiff, Karen McCray


Shannon LaRocque
Assistant County Administrator
Interim Executive Director of Palm Tran

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

By: 
Senior Assistant County Attorney

RELEASE OF ALL CLAIMS

KNOW ALL MEN BY THESE PRESENTS:

That the Undersigned, **KAREN MCCRAY**, being of lawful age, for the sole consideration of **One Hundred Seventeen Thousand (\$117,000.00)**, to the Undersigned in hand paid, the receipt and sufficiency whereof is hereby acknowledged, does hereby and for her executors, administrators, successors and assigns, release, acquit and forever discharge **PALM BEACH COUNTY BOARD OF COUNTY COMMISSIONERS**, (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 **December 19, 2012 on a Palm Tran bus at or near the intersection of Military Trail and Boynton Beach Boulevard.**

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, including any/all Medicaid 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 her representatives or by any physician or surgeon employed by her. 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 she 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, KAREN MCCRAY, being of lawful age, agrees to hold harmless and indemnify the Defendant, Palm Beach County, 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 WHEREOF, I, KAREN MCCRAY, have hereunto set my hand and seal this 31 day of July, 2014.

IN THE PRESENCE OF:

Marina B.
WITNESS

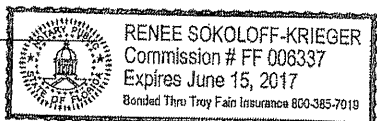
PLAINTIFF:

Karen McCray
KAREN MCCRAY

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 31 day of July, 2014, by 0260501636250, who [] is personally known to me; OR [x] has produced Driver's License identification; and who freely and voluntarily executed the within Release of All Claims for the purposes therein recited.

[seal]
[Signature]
Notary Public
My Commission Expires:



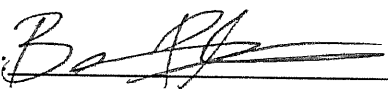
BUDGET AVAILABILITY STATEMENT
RISK MANAGEMENT

REQUEST DATE: 08/07/14 REQUESTED BY: County Attorney
REQUESTED FOR: Karen McCray v. Palm Beach County, Case No. 502013CA018719XXXXMB AD

REQUESTED AMOUNT: \$117,000 AGENDA DATE: September 9, 2014

BUDGET ACCOUNT NUMBER:

FUND: 5010 DEPT: 700 UNIT: 7130 OBJ: 4511

BAS APPROVED BY:  DATE: 08/07/14