

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY

Meeting Date: 10/3/17 [X] Consent [] Regular
[] Public Hearing
Department
Submitted By: COUNTY ATTORNEY

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 \$80,000 in the personal injury action styled Expedito Torres vs. Palm Beach County Board of County Commissioners and Palm Tran, Inc., Case No. 502016CA012730XXXXMB

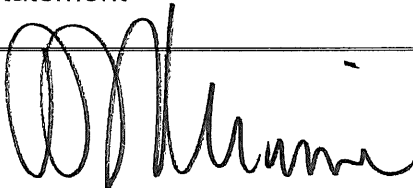
Summary: On October 22, 2015, a Palm Tran bus rear-ended a van which was stopped in front of a stop sign at the intersection of Blue Heron Blvd. and Industrial Central Drive in Riviera Beach. The van pulled out from the intersection to go westbound on Blue Heron and then stopped. The bus continued forward, striking the van driven by Plaintiff, Expedito Torres. As a result of the accident, plaintiff allegedly sustained neck and back injuries. He underwent surgery and physical therapy. Countywide (SCL)

Background and Justification: On October 22, 2015, a Palm Tran bus rear-ended a van driven by plaintiff, Expedito Torres, stopped in front of a stop sign at the intersection of Blue Heron Blvd. and Industrial Central Drive in Riviera Beach. As a result of the accident, plaintiff allegedly sustained neck and back injuries. He underwent an anterior cervical discectomy and arthroplasty for a disc herniation at C6-7. His surgeon assigned a 20% impairment rating. After surgery, he underwent a course of physical therapy but continues to complain of neck and back pain. He missed two months of work and claims \$5,000 in lost wages. Plaintiff's outstanding medical bills total more than \$91,000.

Therefore, it is recommended that the County approve the Settlement Agreement in the amount of \$80,000.

Attachments:

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

Recommended by:  Date: 9-19-17

Approved by: N/A Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2017	2018	2019	2020	2021
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	80,000	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	80,000	_____	_____	_____	_____
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included in Current Budget? Yes XX No _____

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

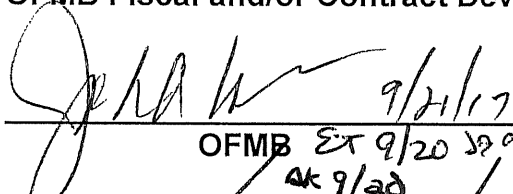
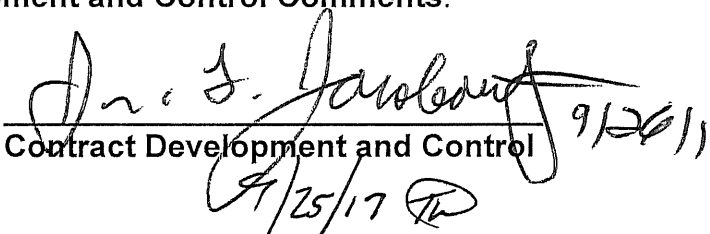
Reporting Category _____

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

C. Departmental Fiscal Review: _____

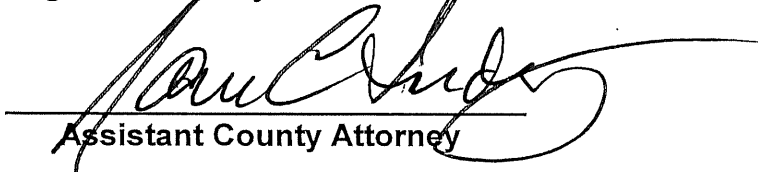
III. REVIEW COMMENTS

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

OFMB EX 9/20 12910 Contract Development and Control 9/26/17
 ak 9/20

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 23rd day of August, 2017, by and between PALM BEACH COUNTY BOARD OF COUNTY COMMISSIONERS and PALM TRAN, INC., (the "COUNTY"), and EXPEDITO TORRES.

WHEREAS, Expedito Torres sued the COUNTY in a lawsuit presently styled Expedito Torres v. Palm Beach County Board of County Commissioners and Palm Tran, Inc., Case No. 502016CA012730XXXXMB AE, in the Circuit Court of Palm Beach County, Florida (the "Pending Lawsuit"), for damages arising from a motor vehicle accident that occurred on October 22, 2015, at or near Central Industrial Boulevard, Riviera Beach, 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 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 of full execution and receipt hereof of this settlement agreement, and subject to final administrative approval, the COUNTY shall pay to Expedito Torres the amount of EIGHTY THOUSAND DOLLARS (\$80,000), by a check made payable to Expedito Torres and Carlos J. Jimenez, P.L. Trust Account, whose Tax I.D. No. is 11-3723192.
3. Within ten (10) days of receipt of the COUNTY'S payment, Scott Goldstein, Esq., shall execute and deliver to the Palm Beach County Attorney's Office (i) a Release of All Claims in the form of the attached hereto as Exhibit A, and (ii) the Stipulation and Final Order of Dismissal with Prejudice, in the form of the attached hereto as Exhibit B, which, in turn, the Palm Beach County Attorney's Office will file with the court.
4. Scott Goldstein, Esq. shall not disburse, and Expedito Torres shall not accept, any proceeds from the settlement check described in paragraph 2 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 in accordance with paragraph 3 above.
5. Expedito Torres acknowledges and agrees that he is responsible for the payment of any liens, including any/all outstanding medical bills, against this settlement and that the COUNTY shall not be responsible for any portion of said liens or medical bills. Expedito Torres on behalf of himself and his officers, agents, employees, heirs, executors, administrators and assigns, further agrees to indemnify, defend, and hold the COUNTY, its officers, agents, elected

officials, employees, 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. Each party shall bear its respective attorney's fees and costs.

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

8. 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.

9. Expedito Torres 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 the COUNTY arising out of or relating to the aforementioned accident.

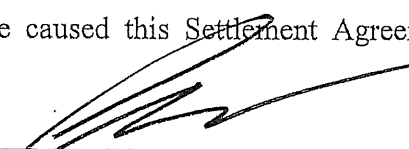
10. This Settlement Agreement shall be binding on the parties hereto, their assigns, transferees, heirs, and other successors in interest.

11. 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, Expedito Torres



Clinton Forbes
Executive Director of Palm Tran

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

By: _____
Senior Assistant County Attorney

ATTEST:
Sharon R. Bock, Clerk & Comptroller

PALM BEACH COUNTY BOARD
OF COUNTY COMMISSIONERS

By: _____

By: _____

RELEASE OF ALL CLAIMS

KNOW ALL MEN BY THESE PRESENTS:

That the undersigned, EXPEDITO TORRES, being of lawful age, for the sole consideration of **EIGHTY DOLLARS AND ZERO CENTS (\$80,000)**, to the undersigned in hand paid, the receipt and sufficiency whereof is hereby acknowledged, does hereby and for their executors, administrators, successors and assigns, release, acquit and forever discharge **PALM BEACH COUNTY**, (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 incident that occurred on or about **October 22, 2015**, on Central Industrial Boulevard in Riviera Beach, Palm Beach County, Florida.

FURTHERMORE, the undersigned agrees that each party shall bear their 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 agrees 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 agree 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 understand 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 therefor 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 relied 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 their representatives or by any physician or surgeon employed by them. The undersigned further declare and represent 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 state that while they hereby release 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 reserve 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.

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, EXPEDITO TORRES, have hereunto set my hand and seal this 23rd day of August, 2017.

IN THE PRESENCE OF:

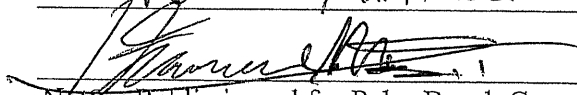
ALVARO AGUDELO
WITNESS


EXPEDITO TORRES

STATE OF FLORIDA)
) ss.
COUNTY OF PALM BEACH)

The foregoing document was acknowledged before me, an officer duly authorized in the State and County aforesaid this 23rd day of August, 2017, by Expedito Torres who is personally known to me or has produced FL Driver's License as identification and who executed the within Release of All Claims, and who acknowledged the within Release of All Claims to be freely and voluntarily executed for the purposes therein recited.

[seal]

Federico Martinez

Notary Public in and for Palm Beach County, Florida
My commission expires: May 15, 2021.



Federico Martinez
Commission # GG104701
Expires: May 15, 2021
Bonded thru Aaron Notary

STATEMENT OF ATTORNEY FOR RELEASOR

I, Scott Goldstein, Esquire, state that I am the attorney for Expedito Torres, the above-signed Releasor; that I have explained to Expedito Torres, all the terms of this Release and the Settlement Agreement upon which it is based; and that he has represented to me that he understands all the terms and their significance. Expedito Torres has signed this Release knowingly, voluntarily and on my advice.

DATED this 23rd day of August, 2017.

Scott Goldstein, Esq.
Florida Bar No. 0540951

BUDGET AVAILABILITY STATEMENT
RISK MANAGEMENT

REQUEST DATE: 8/29/17

REQUESTED BY: County Attorney

REQUESTED FOR: Expedito Torres v. Palm Beach County and Palm Tran, Inc


REQUESTED AMOUNT: \$80,000

AGENDA DATE: October 3, 2017

BUDGET ACCOUNT NUMBER:

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

BAS APPROVED BY:


Brian Palacios, Fiscal Manager

DATE: 8/29/2017