

PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS  
AGENDA ITEM SUMMARY

Meeting Date: May 15, 2018

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 One Hundred Thirty Thousand Dollars and Zero Cents (\$130,000.00) in the personal injury case of Cynthia Morgan and Thomas Morgan, her husband, vs. Palm Beach County, Florida, Case No. 502017CA006239XXXXMBAH.

**SUMMARY:** On February 26, 2016, Cynthia Morgan was struck by a Palm Tran bus as she attempted to enter her parked vehicle. Mrs. Morgan was transported by ambulance to an Emergency Room, admitted and released after approximately one week. Mrs. Morgan underwent multiple hip surgeries and a total shoulder replacement. Mrs. Morgan suffered an impairment to her left shoulder. Mrs. Morgan incurred \$346,957.25 in medical bills. Plaintiff’s husband, Thomas Morgan, also claimed a loss of consortium. Countywide (DBS)

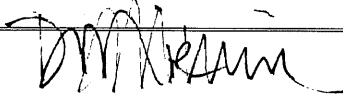

**BACKGROUND AND JUSTIFICATION:** On February 26, 2016, Cynthia Morgan, 61 years old, was struck by a Palm Tran bus as she attempted to enter her parked vehicle near the intersection of Dixie Highway and Vallette Way, in West Palm Beach. The investigating police officer found that the Palm Tran Driver was at fault for the accident. Mrs. Morgan sustained a fractured nose, fractured left shoulder, dislocated left humerus, right hip hematoma, multiple lacerations and abrasions, permanent facial scar and permanent disfigurement of the right hip. She underwent multiple hip surgeries and a total shoulder replacement. Mrs. Morgan incurred \$346,957.25 in medical bills thus far and Dr. Gaetano Scuderi, who performed the compulsory medical examination (“CME”), opined that Mrs. Morgan has suffered an impairment to the left shoulder, which will require yearly follow up visits and a 15 pound lifting restriction.

The Plaintiff alleged that the bus operator was negligent by failing to drive with the highest degree of care, and in addition, her husband Thomas Morgan alleged a loss of consortium claim, which is included in the settlement and accompanying release.

This full and final settlement is warranted based on the County’s exposure for liability and damages, and the settlement eliminates the possibility of costly litigation.

**Attachments:**

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

Recommended by:       Date:  4/27/18  
County Attorney      Date

Approved by: N/A      Date \_\_\_\_\_

**II. FISCAL IMPACT ANALYSIS**

**A. Five Year Summary of Fiscal Impact:**

| Fiscal Years                                   | 2018        | 2019      | 2020      | 2021      | 2022      |
|--|-------------|-----------|-----------|-----------|-----------|
| Capital Expenditures                           | _____       | _____     | _____     | _____     | _____     |
| Operating Costs                                | 130,000     | _____     | _____     | _____     | _____     |
| External Revenues                              | _____       | _____     | _____     | _____     | _____     |
| Program Income (County)                        | _____       | _____     | _____     | _____     | _____     |
| In-Kind Match (County)                         | _____       | _____     | _____     | _____     | _____     |
| <br>NET FISCAL IMPACT                          | <br>130,000 | <br>_____ | <br>_____ | <br>_____ | <br>_____ |
| <br># ADDITIONAL FTE<br>POSITIONS (Cumulative) | <br>_____   | <br>_____ | <br>_____ | <br>_____ | <br>_____ |

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:**

|   |  |
|---|--|
| <p><u>Lisa Pontz</u> 4/25/18<br/>OFMB 4/25/18</p> | <p><u>A. J. Jacobson</u> 4/27/18<br/>Contract Development and Control<br/>4/27/18 (TW)</p> |
|---|--|

**B. Legal Sufficiency:**

[Signature]  
Assistant County Attorney

**C. Other Department Review:**

[Signature]  
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 April, 2018, by and between PALM BEACH COUNTY BOARD OF COUNTY COMMISSIONERS (hereinafter referred to as the "COUNTY"), a political subdivision of the State of Florida, and CNYTHIA MORGAN and THOMAS MORGAN, her husband (hereinafter referred to as "MORGAN").

WHEREAS, MORGAN sued the COUNTY in a lawsuit presently styled CYNTHIA MORGAN and THOMAS MORGAN, her husband v. PALM BEACH COUNTY, FLORIDA, Case No. 50 2017 CA 006239 MB AH in the Circuit Court of Palm Beach County, Florida (hereinafter referred to as the "Pending Lawsuit"), for damages arising from an accident that occurred on or about February 26, 2016 while CYNTHIA MORGAN was a pedestrian in Palm Beach County, Florida (hereinafter referred to as "the Accident");

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

WHEREAS, the parties hereto wish to amicably resolve the Pending Lawsuit 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 after the COUNTY receives a fully executed original of this Settlement Agreement, and subject to final administrative approval, the COUNTY shall pay to MORGAN the amount of ONE HUNDRED THIRTY THOUSAND DOLLARS AND ZERO CENTS (\$130,000.00), by a check made payable to the Trust Account of Lesser, Lesser, Landy and Smith, PLLC, Tax I.D. No., 54-2143480, and CYNTHIA MORGAN and THOMAS MORGAN.
3. Within ten (10) days of receipt of the COUNTY'S payment, Michael S. Smith, 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. Michael S. Smith, Esq. shall not disburse, and MORGAN shall not accept, any proceeds from the settlement check described in paragraph two (2) above unless and until the Release of All Claims has been delivered to the COUNTY and the Final Order of Dismissal with Prejudice has been signed by the Circuit Court Judge assigned to the Pending Lawsuit.
5. MORGAN acknowledges and agrees that they are responsible for the payment of any and all medical bills, and liens including but not limited to Medicare and/or Medicaid liens concerning, pertaining, or relating to the accident and pending lawsuit that the COUNTY shall not be responsible for any portion of said liens. MORGAN, on behalf of themselves and their officers, agents, employees, heirs, executors, administrators and assigns, further agrees to indemnify, defend, and hold the COUNTY and its officers, commissioners, agents, elected officials, employees, heirs, executors, administrators and assigns,

harmless from and against all suits, actions, proceedings, claims, demands, and damages, including attorney's 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. Rather, the COUNTY expressly denies liability, and has entered into this Settlement Agreement in order to buy its peace.

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. MORGAN 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 that he may have against the COUNTY arising out of or relating to the Accident and Pending Lawsuit.

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.

X Cynthia Morgan  
Plaintiff, CYNTHIA MORGAN

Clinton Forbes  
Clinton Forbes, Executive Director  
Palm Tran

X Thomas Morgan  
Plaintiff, THOMAS MORGAN

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY

By: Destinie Baker Sutton  
Destinie Baker Sutton, Esq.  
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, PLAINTIFFS CYNTHIA MORGAN and THOMAS MORGAN, her husband (hereinafter referred to as "MORGAN"), being of lawful age, for the sole consideration of **ONE HUNDRED THIRTY THOUSAND DOLLARS AND ZERO CENTS (\$130,000.00)**, 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 BEACH COUNTY BOARD OF COUNTY COMMISSIONERS**, and their officers, agents, commissioners, employees, heirs, executors, administrators, successors and assigns (hereinafter referred to cumulatively as the "COUNTY"), 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 **February 26, 2016** while CYNTHIA MORGAN was a pedestrian in Palm Beach County, Florida (hereinafter referred to as "The Accident"), and which resulted in MORGAN filing a lawsuit against the COUNTY styled CYNTHIA MORGA and THOMAS MORGAN, her husband, vs. Palm Beach County, Florida, Case Number 50 2017 CA 006239 XXXX MB AH in the Circuit Court of Palm Beach County, Florida (hereinafter referred to as the "Pending Lawsuit").

**FURTHERMORE**, the undersigned agrees that each party shall bear their own costs and attorney's fees, and that the undersigned shall bear sole responsibility to pay for any and all hospital, physician, diagnostic, rehabilitation, training, maintenance, medical or pharmaceutical expenses, bills, statements, liens (including but not limited to Medicare and/or 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 agrees to indemnify and save harmless the COUNTY from any requests for payment or attempts for collection therefrom. Should legal action be instituted against the COUNTY for payment or collection of the aforementioned expenses, the undersigned agrees to

indemnify and save harmless the COUNTY for any attorney's fees, costs and/or judgments which may be entered against the COUNTY.

**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 COUNTY, and that the COUNTY denies any liability therefor and merely intends to avoid further litigation and buy its 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 made by the COUNTY, or by its representatives or by any physician or surgeon employed by the COUNTY. 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 they hereby releases any and all claims concerning, pertaining, or relating to the Accident and Pending Lawsuit against the COUNTY, 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 COUNTY.

**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 and Pending Lawsuit 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 MORGAN is entitled.

**THE UNDERSIGNED** hereby declares that he 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 sustained in the Accident and alleged, or which could have been alleged, in the Pending Lawsuit, and for the express purpose of precluding forever any further or additional claims against the COUNTY arising out of or related to the Accident and Pending Lawsuit.

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

IN WITNESS HEREOF, I, CYNTHIA MORGAN and THOMAS MORGAN have hereunto set my hand and seal this 19<sup>th</sup> day of April, 2018.

X Cynthia Morgan  
CYNTHIA MORGAN (signature)

X Thomas Morgan  
THOMAS MORGAN (signature)

IN THE PRESENCE OF:

MICHAEL S SMITH  
WITNESS NAME PRINTED

[Signature]  
WITNESS NAME SIGNED

STATE OF FLORIDA                    )  
  ) ss.  
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 19<sup>th</sup> day of APRIL, 2018, by CYNTHIA & THOMAS MORGAN who:

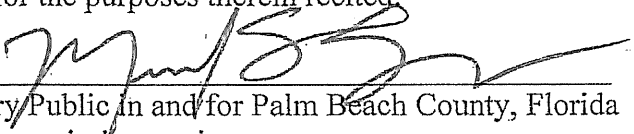
is personally known to me; OR  
(BOTH)

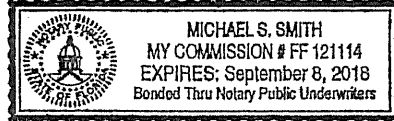
has produced \_\_\_\_\_,  
as identification; and who

did take an oath; OR  
 did not take an oath.

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]

  
\_\_\_\_\_  
Notary Public in and for Palm Beach County, Florida  
My commission expires: \_\_\_\_\_






**STATEMENT OF ATTORNEY FOR CYNTHIA MORGAN AND THOMAS MORGAN**

I, Michael S. Smith, Esquire, state that I am the attorney for CYNTHIA MORGAN and THOMAS MORGAN, the above-signed Releasors; that I have explained to CNYTHIA MORGAN and THOMAS MORGAN, all the terms of this Release and the Settlement Agreement upon which it is based; and that CYNTHIA MORGAN and THOMAS MORGAN has represented to me that they understands all the terms and their significance. CYNTHIA MORGAN and THOMAS MORGAN have signed this Release knowingly, voluntarily and on my advice.

DATED this 19<sup>th</sup> day of April, 2018.

  
\_\_\_\_\_  
Michael S. Smith, Esq.  
Florida Bar No.: 508926

BUDGET AVAILABILITY STATEMENT  
RISK MANAGEMENT

REQUEST DATE: 04/19/2018

REQUESTED BY: County Attorney

REQUESTED FOR: Cynthia Morgan v. Palm Beach

REQUESTED AMOUNT: \$130,000

AGENDA DATE: May 15, 2018

BUDGET ACCOUNT NUMBER:

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

BAS APPROVED BY:



Brian Palacios, Fiscal Manager

DATE: 04/19/2018