

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS**

AGENDA ITEM SUMMARY

Meeting Date:	11/19/19	<input checked="" type="checkbox"/> Consent	<input type="checkbox"/> Regular
Department:		<input type="checkbox"/> Ordinance	<input type="checkbox"/> Public Hearing
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 \$85,000 in the personal injury action styled Shawn Kernochan v. Palm Beach County, Case No. 502018CA000244XXXXMB AN.

Summary: On July 28, 2016, Plaintiff allegedly stepped in a broken storm drain owned and maintained by Palm Beach County. As a result of the accident, Plaintiff sustained injuries to the left knee and a broken left shoulder. He underwent surgery and physical therapy for the broken left shoulder.

Background and Justification: Plaintiff, 50 years old, was on his way to work, when he parked his car on the side of the road near 7200 Westport Place. Upon leaving his car, he allegedly stepped into a broken storm drain and was pulled out by witnesses. The storm drain is owned and maintained by Palm Beach County. Records indicate that Palm Beach County had notice of the broken drain. As a result of the accident, Plaintiff injured his left knee and broke his left shoulder. He underwent a left humerous open reduction internal fixation surgery for the broken left shoulder. Subsequently, he underwent physical therapy. Today, he alleges pain, weakness, and loss of range of motion of the left shoulder. He sustained a permanent impairment from this injury. Therefore, it is recommended that the County approve the Settlement Agreement in the amount of \$85,000.00.

This full and final settlement is warranted based on the County's liability exposure and the magnitude of the injuries claimed. Therefore, it is recommended that the County approve the Settlement Agreement in the amount of \$85,000. Countywide (KP)

Attachments:

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

Recommended By:  _____
Department Director Date

Approved By: _____
N/A Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2020	2021	2022	2023	2024
Capital Expenditures					
Operating Costs	85,000				
External Revenues					
Program Income (County)					
In-Kind Match (County)					
NET FISCAL IMPACT	85,000				
# ADDITIONAL FTE POSITIONS (CUMULATIVE)					

Is Item included in current budget? Yes No

Does this Item include the use of federal funds? Yes No

Budget Account No.:

Fund 5010 Department 700 Unit 7130 Object 4511

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

C. Departmental Fiscal Review:

III. REVIEW COMMENTS

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

[Signature] 11/5/19
 OFMB 11/5 MD 11/5

[Signature] 11/7/19
 Contract Dev. & Control
 11/19/19

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 _____, 20____, by and between **PALM BEACH COUNTY BOARD OF COUNTY COMMISSIONERS**, (the "COUNTY"), a political subdivision of the State of Florida, and **SHAWN KERNOCHAN**.

WHEREAS, **SHAWN KERNOCHAN** sued the COUNTY in a lawsuit presently styled Shawn Kernochan v. Palm Beach County, Case No. 502018CA000244XXXXMBAN, in the Circuit Court of Palm Beach County, Florida (the "Pending Lawsuit"), for damages arising from an incident that occurred on July 28, 2016, when Shawn Kernochan allegedly stepped on a broken storm drain at or near 7200 Westport Place in West Palm Beach, 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 the 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, and subject to final BOARD OF COUNTY COMMISSIONERS approval, the COUNTY shall pay to the amount of EIGHTY FIVE THOUSAND DOLLARS AND ZERO CENTS (\$85,000.00), by a check made payable to **SHAWN KERNOCHAN** and Morgan & Morgan Trust Account and whose Tax I.D. No. is 80-0047276.
3. Within ten (10) days of receipt of the COUNTY'S payment, **CHAD T. BRAZZEAL, 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. **CHAD T. BRAZZEAL, ESQ.** shall not disburse, and **SHAWN KERNOCHAN** 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. **SHAWN KERNOCHAN** acknowledges and agrees that he/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, subrogation claims or rights of reimbursement. **SHAWN**

KERNOCHAN, as well as any subrogation claims or rights of reimbursement, on behalf of him/herself and his/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 damages, including attorneys fees, arising out of or related to such liens or claims of liens, subrogation claims or rights of reimbursement.

6. Each party shall bear its respective attorneys 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. SHAWN KERNOCHAN 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.

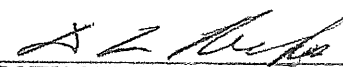

Plaintiff, SHAWN KERNOCHAN

ATTEST:
Sharon R. Bock, Clerk and Comptroller

By: _____
Deputy Clerk

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

By: 
Assistant County Attorney


~~SCOTT MARSHING, Director~~ David Ricks, County
PBE-RISK MANAGEMENT Engineering = ENGINEER
PALM BEACH COUNTY, a Political PUBLIC
Subdivision of the State of Florida WORKS
11/4/19

By: _____, MAYOR
Board of County Commissioners

RELEASE OF ALL CLAIMS

KNOW ALL MEN BY THESE PRESENTS:

SHAWN KERNOCHAN sued **PALM BEACH COUNTY** in a lawsuit presently styled **Shawn Kernochan v. Palm Beach County**, Case No. 502018CA000244XXXXMBAN, in the Circuit Court of Palm Beach County, Florida for an incident which occurred on July 28, 2016, when Shawn Kernochan allegedly stepped on a broken storm drain at or near 7200 Westport Place in West Palm Beach, Palm Beach County, Florida;

SHAWN KERNOCHAN, being of lawful age, for the sole consideration of **EIGHTY FIVE THOUSAND DOLLARS AND ZERO CENTS (\$85,000.00)**, to the undersigned in hand paid, the receipt and sufficiency whereof is hereby acknowledged, does hereby and for their executors, administrators, heirs, successors and assigns, release, acquit and forever discharge **PALM BEACH COUNTY**, (hereinafter referred to as the Releasees), and their officers, elected officials, agents, employees, heirs, executors, administrators, legal representatives, insurers, successors and assigns, jointly and severally, 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 July 28, 2016 when Shawn Kernochan allegedly stepped on a broken storm drain at or near 7200 Westport Place in West Palm Beach, Palm Beach County, Florida.

FURTHERMORE, the undersigned agree 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, right of reimbursement, 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 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 agree 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 declare and represent 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 states that while they hereby release any and all claims against the Releasees, and their officers, elected officials, agents, employees, heirs, executors, administrators, legal representatives, insurers, 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 declare that the undersigned have 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 accept the tendered settlement draft as final payment of the consideration set forth above.

IN WITNESS HEREOF, I, SHAWN KERNOCHAN, have hereunto set my hand and seal this 30 day of October, 2019.

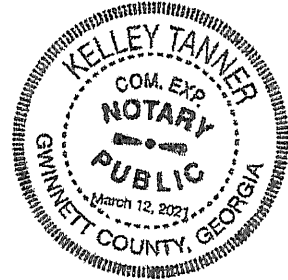
IN/THE PRESENCE OF:

Kelley Tanner
WITNESS

Shawn Kernochan
PLAINTIFF'S NAME

Shawn Kernochan

C.T.B.
11/4/2019 2



STATE OF FLORIDA)
) ss.
COUNTY OF DUVAL)

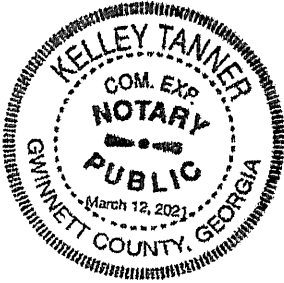
The foregoing Release of All Claims was acknowledged before me, an officer duly authorized in the State and County aforesaid, to take acknowledgments, this 30 day of October, 2019, by Shawn Kemerton who:

- is personally known to me; OR
- has produced Driver License 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]

Kelley Tanner



Notary Public in and for Gwinnett County, Georgia
~~Duval, Florida~~

My commission expires: March 12, 2021

BUDGET AVAILABILITY STATEMENT
RISK MANAGEMENT

REQUEST DATE: 10/28/2019

REQUESTED BY: County Attorney

REQUESTED FOR: Shawn Kernochan v. Palm Beach County

REQUESTED AMOUNT: \$85,000.00 AGENDA DATE: November 19, 2019

BUDGET ACCOUNT NUMBER:

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

BAS APPROVED BY:


Brian Palacios, Fiscal Manager

DATE: 10/28/2019