

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: 2/4/2020 Consent Regular
 Ordinance 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 \$90,000 in the personal injury action styled Mavelyn McCray v. Palm Beach County, Case No. 502018CA015921XXXXMB AA.

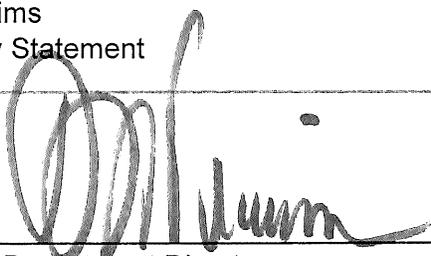
Summary: This is a personal injury lawsuit arising from a rear end collision between a truck operated by a Water Utilities Department ("WUD") employee and a car driven by Plaintiff, Mavelyn McCray. Plaintiff suffered head and back injuries, spinal pain, and a mild neurocognitive disorder. Countywide (AC)

Background and Justification: Plaintiff, 57 years old at the time of the accident, was driving westbound on Forest Hill Boulevard when a 2010 Ford pickup truck driven by a WUD employee rear ended Ms. McCray's car just east of the Pinehurst intersection. Ms. McCray's vehicle's rear end was pushed almost all the way into the back seat. As a result of the accident, Ms. McCray suffered a head laceration and lost consciousness. Consequently, she was Trauma Hawked to Delray Medical Center where she was admitted and treated for her head laceration. She subsequently treated with a neurologist and a neurosurgeon and had a neuropsychological evaluation, which revealed that she suffers from a mild neurocognitive disorder and has developed spinal pain conditions and headaches. Plaintiff has approximately \$183,000 in medical bills.

This full and final settlement is warranted based on the County's liability exposure, magnitude of the injuries claimed, substantial expert witness fees and litigation costs. Plaintiff initially demanded \$200,000 to settle this lawsuit. The parties have conditionally settled this lawsuit for \$90,000.00, inclusive of pain and suffering, past and future medical bills, attorney's fees and costs. Based upon the facts and circumstances of this lawsuit, it is recommended that the County approve the Settlement Agreement in the amount of \$90,000.

Attachments:

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

Recommended By:  1/9/20
Department Director Date

Approved By: N/A Date

SETTLEMENT AGREEMENT

THIS AGREEMENT made and entered into this 29 day of NOVEMBER, 2019, by and between PALM BEACH COUNTY (the "COUNTY"), a political subdivision of the State of Florida, and MAVELYN MCCRAY.

WHEREAS, Mavelyn McCray sued the COUNTY in a lawsuit presently styled Mavelyn McCray v. Palm Beach County, Case No. 502018CA015921XXXXMB AA, in the Circuit Court of Palm Beach County, Florida (the "Pending Lawsuit"), for damages arising from an incident that occurred on December 2, 2016, on the 7500 Block of Forest Hill Boulevard 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 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, Mavelyn McCray and Neil Semple, 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 for 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 Mavelyn McCray the amount of Ninety Thousand Dollars and zero cents (**\$90,000.00**), by a check made payable to Neil Semple Esq., client trust account FBO Mavelyn McCray.

4. Neil Semple, Esq. shall not disburse, and Mavelyn 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. Mavelyn 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. Mavelyn 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 damages, including attorney's fees, arising out of or related to such liens or claims of lien.

6. **FURTHERMORE, the undersigned Plaintiff, Mavelyn 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.**

7. **FURTHERMORE, the undersigned Plaintiff, Mavelyn McCray, being of lawful age, agrees to be responsible for any claims or liens by Medicare and agrees that she will defend and hold harmless the Defendant, Palm Beach County, 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 attorney's fees and costs.

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

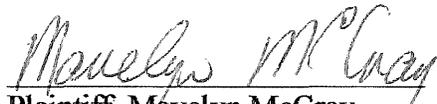
10. In any litigation brought to enforce the terms or remedy a violation of this Settlement Agreement, the prevailing party shall be entitled to an award of reasonable attorney's fees in addition to any other recovery.

11. Mavelyn McCray 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.

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

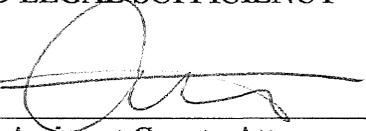
13. The parties represent that no claim that has been, or could have been, raised in the Pending Lawsuit, and no claim to which this Settlement Agreement applies, has been assigned or otherwise transferred to any other person or entity not a party hereto.

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


Plaintiff, Mavelyn McCray


Jim Stiles
Director of Water Utilities

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

By: 
Assistant County Attorney

ATTEST:
Sharon R. Bock, Clerk & Comptroller

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

By: _____

By: _____

RELEASE OF ALL CLAIMS

KNOW ALL MEN BY THESE PRESENTS:

That the undersigned, **Mavelyn McCray**, being of lawful age, for the sole consideration of **NINETY THOUSAND DOLLARS AND ZERO CENTS (\$90,000.00)**, 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 **December 2, 2016**, on the 7500 Block of Forest Hill Boulevard, in West Palm 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 Release, 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 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 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 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, the undersigned Plaintiff, Mavelyn McCray, agrees to hold harmless and indemnify 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.

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, Mavelyn McCray, have hereunto set my hand and seal this 29th day of November, 2019.

IN THE PRESENCE OF:

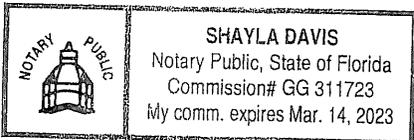
[Signature]
WITNESS

Mavelyn McCray
MAVELYN/MCCRAY

STATE OF FLORIDA)
COUNTY OF PALM BEACH)

The foregoing document was acknowledged before me, an officer duly authorized in the State and County aforesaid this 29 day of November, 2019, by Mavelyn McCray who is personally known to me or has produced FL DL M260 546 596850 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]



Shayla Davis
[Signature]
Notary Public in and for Palm Beach County, Florida
My commission expires: 3/14/2023

BUDGET AVAILABILITY STATEMENT
RISK MANAGEMENT

REQUEST DATE: 12/3/2019

REQUESTED BY: County Attorney

REQUESTED FOR: Mavelyn McCray v. Palm Beach County

REQUESTED AMOUNT: \$90,000

AGENDA DATE: February 4, 2020

BUDGET ACCOUNT NUMBER:

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

BAS APPROVED BY: 

DATE: 12/3/2019

Brian Palacios, Fiscal Manager