Agenda Item #: **3\(-1**

PALM BEACH COUNTY BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

| Meeting Date: | April 9, 2024 | [X] Consent [] Ordinance | [] Regular [] Public Hearing |
|---------------|------------------------------|---------------------------|-----------------------------------|
| Department: | Engineering and Public Works | | |

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 \$85,000.00 in the personal injury action styled <u>YANNIER PALOMINO ORIA v. PALM BEACH COUNTY</u>, Case No.: 2020CA008527MBAB.

Summary: This is a personal injury lawsuit arising from a motor vehicle accident that occurred on September 13, 2018 on 45th Street at or near Metrocentre Boulevard, West Palm Beach (Intersection). While stopped at a red light at the Intersection, Plaintiff Yannier Palomino Oria's vehicle was struck from behind by a County owned vehicle driven by an Engineering and Public Works Department employee. This accident resulted in personal injuries to Mr. Palomino, medical bills in excess of \$69,000.00, and recommendation for neck and back surgery. Palm Beach County has entered into an agreement to settle the lawsuit with Mr. Palomino in the total amount of \$85,000.00, inclusive of attorney's fees and costs, pending approval by the Palm Beach County Board of County Commissioners. Countywide (TAB).

Background and Justification: On September 13, 2018, the then 20-year-old Plaintiff, Yannier Palomino Oria, was stopped at a red traffic light heading eastbound on 45th Street approaching the intersection of Metrocentre Boulevard, in West Palm Beach in a 2012 Scion XD when the County owned 2012 Ford F-150 driven by the Engineering and Public Works employee, Johnnie Jones, struck the rear of the vehicle Plaintiff was driving.

Following the accident, Mr. Palomino sought medical treatment for neck and back pain at Viva Health Centers of LCS. He was subsequently diagnosed with a sprain of ligaments in his cervical, thoracic, and lumbar spine and disc disruptions in his cervical and lumbar spine. Mr. Palomino underwent one epidural steroid injection in his neck and one in his back. His treating orthopedic surgeon recommended that Mr. Palomino undergo a discectomy with arthrodesis versus arthroplasty from C5-C7 and microdiscectomy with laminotomy at L5-S1. To date, Mr. Palomino has incurred medical bills totaling more than \$69,000.00. The global cost for the recommended surgical procedures, inclusive of post-op care, is in excess of \$100,000.00.

This full and final settlement is warranted based on the County's liability exposure and the Plaintiff's injuries. Therefore, it is recommended that the County approve the Settlement Agreement in the amount of \$85,000.00.

| Attac | chments: | |
|-------|-------------------------------|--|
| 1. | Settlement Agreement | |
| 2. | Release of All Claims | |
| 3. | Budget Availability Statement | |
| Reco | ommended By: | . В Соверо окрономур (ф. и се от 122 окрономурования и поставления ократования окр |
| | County Attorney / | Date |
| Appr | roved By: N/A | |
| | County Administrator | Date |

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

| A. Five Year Sı | ummary of Fisca | I Impact: | | |
|---|-----------------|--------------|-----------------------|--------------------|
| Fiscal Years | 2024 | 2025 | 2026 | 2027 |
| 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 X | _ No | |
| Is this item using F Funds? | ederal | Yes | No <u>X</u> | |
| Is this item using S | tate Funds? | Yes | No <u>X</u> | |
| Budget Account N | o: | | | |
| Fund <u>5010</u> | Agency 700 | Orga | anization <u>7130</u> | Object <u>4511</u> |
| B. Recommended | Sources of Fund | ds/Summary o | f Fiscal Impact: | |
| C. Departmental Fiscal Review: | | | | |
| | | | | |
| III. REVIEW COMM | ENTS: | | | |
| | | | | |
| A. OFMB Fiscal and/or Contract Dev. and Control Comments: | | | | |
| OFMB Contract Dev. & Control | | | | |
| | | | a bev. a control | |
| B. Legal Sufficiency Assistant County Attorney | | | | |
| D marit | | | | |
| 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 _____ day of April, 2024, by and between PALM BEACH COUNTY (the "COUNTY"), a political subdivision of the State of Florida, and YANNIER PALOMINO ORIA ("ORIA").

WHEREAS, ORIA sued the COUNTY in a lawsuit presently styled <u>Yannier Palomino Oria v. Palm Beach County</u>, Case No. 2020 CA 008527 MB AB, in the Fifteenth Judicial Circuit Court of Palm Beach County, Florida (the "Pending Lawsuit"), for damages arising from a motor vehicle accident that occurred on September 13, 2018, on 45th Street at or near Metrocentre Boulevard in West Palm Beach, Palm Beach County, Florida (the "Incident");

WHEREAS, the COUNTY has denied liability, causation, and damages, and has raised several affirmative defenses 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. By March 8, 2024, ORIA's attorney, Nelson E. Baez, Esquire, shall deliver to the Palm Beach County Attorney's Office the following executed documents: 1) Settlement Agreement, and 2) Release of All Claims These documents shall be held in trust by the County pending approval of the Settlement Agreement by the Palm Beach County Board of County Commissioners on April 9, 2024.
- 3. Subject to the approval of the Palm Beach County Board of County Commissioners, the COUNTY shall pay to ORIA the amount of **EIGHTY-FIVE THOUSAND DOLLARS AND ZERO CENTS** (\$85,000.00), by a check made payable to the Trust Account of Smith & Ball, PLLC; Tax ID: 85-4105503. Upon receipt of the settlement funds, the parties shall execute and file a Stipulation and Final Order of Dismissal with Prejudice.
- 4. Nelson E. Baez, Esquire, shall not disburse, and ORIA shall not accept, any proceeds from the settlement check described in Paragraph 3 above unless and until the executed Settlement Agreement and Release of All Claims have been delivered to the COUNTY and the executed Stipulation and Final Order of Dismissal with Prejudice has been filed.
- 5. ORIA acknowledges and agrees that he is responsible for, and will resolve, the payment of any and all bills and liens relating to the Accident and Pending Lawsuit, and that the COUNTY shall not be responsible for any portion of said bills and liens.
 - 6. Each party shall bear its own attorney's fees and costs.

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he signed document can be validated at https://app.vinesign.com/Verify

Settlement Agreement Karen Sue Cramer v. Palm Beach County Case No.: 20190-CA-011971 MB AG

- 7. This Settlement Agreement does not constitute an admission of liability by any party. Rather, the Parties expressly deny liability, and have entered into this Settlement Agreement in order to buy their 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. ORIA 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 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.

| STEVE CARRIER Assistant Palm Beach County Engineer |
|---|
| PALM BEACH COUNTY, a Political Subdivision of the State of Florida By: Mayor, Board of County Commissioners |
| |
| |

YANNIER PALOMINO ORIA RELEASE OF CLAIMS TO PALM BEACH COUNTY FOR SEPTMBER 1 2018, MOTOR VEHICLE ACCIDENT

KNOW ALL MEN BY THESE PRESENTS:

YANNIER PALOMINO ORIA ("ORIA") sued PALM BEACH COUNTY ("COUNTY") in a lawsuit presently styled <u>Yannier Palomino Oria v. Palm Beach County</u>, Case No. 2020-CA-008527, in the Fifteenth Judicial Circuit Court of Palm Beach County, Florida (the "Pending Lawsuit"), for damages arising from a motor vehicle accident that occurred on September 13, 2018, on 45th Street near Metrocentre Boulevard in West Palm Beach, Palm Beach County, Florida (the "Accident");

The undersigned, ORIA, being of lawful age and 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 for himself and for his agents, executors, administrators, successors, and assigns, release, acquit and forever discharge COUNTY, and its officers, agents, employees, commissioners, heirs, executors, administrators, successors, insurers, and assigns (together "RELEASEES"), 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, 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, relating to or resulting from only the Incident and the Pending Lawsuit.

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 property damage,

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Case No.: 2020 CA 008527

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, which relate or pertain to the Incident and Pending Lawsuit.

FURTHERMORE, the undersigned agrees to resolve 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, 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 therefore and merely intend to avoid further litigation and buy their peace.

FURTHERMORE, the undersigned hereby declares and represents that any injuries

sustained 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 he hereby releases any and all claims

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Case No.: 2020 CA 008527

against the RELEASEES, and their officers, agents, employees, heirs, executors, administrators,

successors and assigns, for both past and future losses related only to the Incident and Pending

Lawsuit, 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 Incident which is the subject of the

Pending Lawsuit and 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 only the RELEASEES arising out of the

aforementioned Incident. The undersigned has had the benefit of consultation with the attorney

of his choice with respect to the review and execution of this Release of All Claims and is executing

this release knowingly, freely and voluntarily.

THE UNDERSIGNED hereby accepts the tendered settlement draft as final payment of

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Release of All Claims Yannier Palomino Oria v. Palm Beach County Case No.: 2020 CA 008527

the consideration set forth above.

| IN WITNESS HEREC | OF, I, YANNIER PA | LOMINO ORIA, have hereunto set my hand | | |
|--|--|--|--|--|
| and seal this 13th day of | March | _ 2024. | | |
| IN THE PRESENCE OF: Quantum Service of the service | g former | YANNIER PALOMINO ORIA | | |
| Olga Patterson (PRINT WITNESSES' NAM | ME) | | | |
| STATE OF Florida COUNTY OF Palm Beach |) | | | |
| The foregoing Release authorized in the State and Community March 2024, 1 virtually (circle one) who: | se of All Claims wa ounty aforesaid, to tal by Yannier Palomin | s acknowledged before me, an officer duly se acknowledgments, this 13th day of no Oria, in person / or | | |
| [] is personally known to me; OR [x] has produced, as identification; | | | | |
| and who | | | | |
| [] did take an oath; OR did not take an oath. | | | | |
| and who executed the above I All Claims to be freely and vo | · | and who acknowledged the above Release of the purposes therein recited. | | |
| [seal] | | La Cathair | | |
| OLGA PATTERSON Notary Public, State of Florida Commission Number | Notary Public My commissi | | | |
| GG 970718 My Commission Expires on May 15, 2024 | Page 4 c | f 4 | | |

BUDGET AVAILABILITY STATEMENT RISK MANAGEMENT

REQUEST DATE: <u>3/12/2024</u>

REQUESTED BY: County Attorney

REQUESTED FOR: Yannier Palomino Oria v. Palm Beach County Board of County Commissioners

REQUESTED AMOUNT: \$85,000

AGENDA DATE: April 9, 2024

BUDGET ACCOUNT NUMBER:

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

Brian Palacios, Finance Director

BAS APPROVED BY:

DATE: 3/12/2024