



M E M O R A N D U M

DATE: December 3, 2024

TO: City Council

FROM: Peter A. Lee, City Manager
Devan Kikendall, HR & Risk Management Director
William E. Sexton, City Attorney

RE: Proposed Bodily Injury Settlement: Terry Yaple & Estate of Michael Yaple
Date of Loss: April 8, 2022
Claim Number: L003735094
Case Number: 2023-CA-002299

On or about April 8, 2022, an Ocala Police Department vehicle driven by a City employee attempted to cross S Pine Avenue and struck a vehicle occupied by Michael and Terry Yaple. It is evident that the City's driver violated the Plaintiffs' right-of-way and caused the collision that resulted. Thus, the City's liability for the collision is not in dispute. The Plaintiffs filed suit, and the parties have litigated the case extensively. Michael Yaple died in early 2024 for reasons unrelated to this case, and Terry Yaple continued to pursue a claim on behalf of his estate.

The parties mediated the case in October 2024. Prior to mediation, the Plaintiff's last demand to the City to settle the case was for sovereign immunity limits of \$300,000.00. After thorough negotiations at mediation, the City's final offer was a global offer of \$125,000.00. The Plaintiffs' final demand at mediation was \$145,000.00, and mediation resulted in an impasse.

The parties continued to litigate the case, and the City was served with Proposals for Settlement for each claim (\$150,000.00 for Terry Yaple's claim, and \$100,000.00 for the Estate of Michael Yaple). Thus, pursuant to § 768.79, *Fla. Stat.*, if the case were to proceed to trial, the Plaintiffs would be entitled to attorneys' fees if either Plaintiff obtained a judgment in an amount at least 25% greater than their respective proposal amount.

In an effort to resolve the case without further litigation extending into 2025, the City Attorney's Office reinitiated negotiation with Plaintiffs' counsel in November 2024 and conveyed a tentative global offer of \$135,000.00, which was accepted by the Plaintiffs.

Pursuant to Resolution 2019-10, a discretionary settlement in the amount of \$135,000.00 requires approval of the City Council, based upon recommendations from the City Manager, the City Attorney, and the Human Resources & Risk Management Director.

Given the City's apparent liability for the accident, the issue at trial would not be whether the City is responsible for the Plaintiffs' damages; rather, the issue would be the extent of the Plaintiffs' damages. An agreement to settle this matter at this time will avoid the additional costs of continued litigation—including discovery costs, expert witness fees, and other expenses—and will prevent the possibility of an adverse judgment at jury trial in excess of the settlement amount.

RECOMMENDED for approval in accordance with Resolution 2019-10:

HR & RISK MANAGEMENT DIRECTOR

CITY ATTORNEY

DEVAN KIKENDALL
HR & Risk Management Director

WILLIAM E. SEXTON
City Attorney

CITY MANAGER

PETER A. LEE
City Manager

APPROVED in accordance with Resolution 2019-10:

CITY COUNCIL PRESIDENT

City Council President