



CITY COUNCIL AGENDA ITEM

REQUESTED COUNCIL MEETING DATE 6/3/08

SUBJECT: Acceptance of settlement in the case of Michael Lovecchio vs. City of Port Orange.

DEPARTMENT: City Attorney

RECOMMENDED MOTION:

To authorize the settlement of the Michael Lovecchio vs. City of Port Orange, Case No. 2008-30028 CICI pursuant to the terms set forth in the settlement agreement.

SUMMARY:

On May 4, 2007 Plaintiff was arrested for DUI after failing a field sobriety test. He was taken to the Police Department for breathalyzer testing. Plaintiff's alcohol level tested below the legal limit therefore, Plaintiff claims he was wrongfully arrested. He is seeking settlement in the amount of \$3,500.00 to cover costs incurred related to the arrest. It is the City's position that the officer had probable cause for the arrest due to: 1) Plaintiff's failure of the field sobriety test; 2) Plaintiff admitted to drinking alcohol the night of the arrest, 3) the smell of alcohol on Plaintiff's breath, and that 3) Plaintiff is 20 years old (below legal drinking age).

A copy of the settlement agreement is attached. The agreement provides payment of \$3,500.00 to Plaintiff. Although it is the City's position that there is no liability the defense cost of trying the case before a jury would exceed the settlement cost regardless of whether the City prevails. Further, there is always a risk of trying a case before a jury regardless of the strength of your legal position. If you have any questions in regard to this settlement, please give Ann-Margret Emery a call.

ATTACHMENTS: Ordinance Resolution Budget Resolution
 Other Support Documents/Contracts Available for Review in Manager's Office

DEPARTMENT HEAD	NA	Date
FINANCE DEPARTMENT	NA	Date
<i>jest</i> CITY ATTORNEY <i>A. Emery</i>	Approved as to Form and Legality	Date 5/21/08
CITY MANAGER <i>jest</i>	Approved Agenda Item For:	6/3/08

COUNCIL ACTION: Approved as Recommended Disapproved Tabled Indefinitely
 Continued to Date Certain Approved with Modification:

RELEASE OF ALL CLAIMS

GENERAL RELEASE

I. DEFINITIONS:

- A. As used in this Release "Plaintiff" shall mean MICHAEL LOVECCHIO, as well as her heirs, executors, administrators, personal representatives, successors and assigns, singular or plural, wherever the context so admits or requires.
- B. As used in this Release the term "Defendant" shall mean CITY OF PORT ORANGE, as well as its past, present and future agents, agencies, officials, commissioners, employees, Boards, representatives, attorneys, successors and assigns in both their individual and official capacities, and any entity or person in privity with them, jointly or severally, singular or plural, wherever the context so admits or requires.
- C. As used in this Release the term "Insurer" shall mean PREFERRED GOVERNMENTAL CLAIM SOLUTIONS, its agents, employees, representatives, successors, assigns, and any entity or person in privity with them, including PREFERRED GOVERNMENTAL INSURANCE TRUST.

II. RELEASE:

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS: That the said and undersigned Plaintiff, for and in consideration of the payment of the total sum of Three Thousand Five Hundred Dollars and No Cents (\$3,500.00) to him in hand paid, the receipt and sufficiency of which is hereby acknowledged, does hereby remise, release and forever discharge Defendant and Insurer of and from all manner of action and actions, cause and causes of action, suits, debts, dues, sums of money, account, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, executions, claims and demands whatsoever in law or in equity, which Plaintiff ever had, now has, or which any personal representative, successor, heir, or assign of Plaintiff hereafter can, shall or may have, against Releasee, by reason of an alleged false arrest which occurred on or about May 4, 2007, in Volusia County, Port Orange, Florida as alleged by Plaintiff in Michael Anthony Lovecchio v. City of Port Orange, Case No. : 2008-30028-COCI.

It is understood and agreed that this settlement is in full compromise of a disputed claim, and that neither this release nor the payment pursuant to this release shall be construed as an admission of liability.

ATTORNEYS' FEES

Each party hereto shall bear all attorneys' fees and costs arising from the action of its own counsel in connection with this matter, the terms of this settlement agreement, the matters and documents referenced herein, the filing of a dismissal of the Complaint, and all related matters.

DISMISSAL DROPPING SETTLING PARTY AS A DEFENDANT

Following receipt of settlement funds and the execution of this release and settlement agreement, counsel for Plaintiff has, or will, in the immediate future, deliver to counsel for the Defendant an executed dismissal with prejudice dropping the Defendant as a party to the pending action. The Plaintiff has authorized Plaintiff's counsel to execute the dismissal on their behalf and hereby authorizes counsel for the Defendant to file the dismissal with the court and enter it as a matter of record. The court shall retain jurisdiction as to any remaining parties and for enforcing the terms of this settlement.

RESERVATION OF FIRST PARTY BENEFITS

Notwithstanding anything herein to the contrary, this Release shall not release any health care provider or any insurance company from its obligation to provide any personal injury protection coverage, medical payment coverage, uninsured/underinsured motorist coverage, health insurance coverage, major medical insurance coverage, workers' compensation benefits/insurance, and/or disability insurance coverage from all claims and demands, rights and causes of action of any kind the undersigned now has or hereafter may have, on account of personal injuries known or unknown to the undersigned arising from the subject accident.

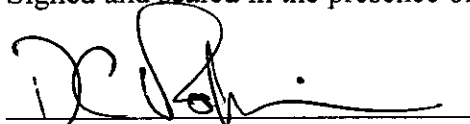
INDEMNITY AND HOLD HARMLESS AGREEMENT

It is further agreed and understood that the undersigned will protect, indemnify and save harmless the releasees from any claims or demands by any person, firm or corporation for expenses related to the incident giving rise to this claim, including, but not limited to, the Federal government, Medicare, Medicaid, insurance companies, physicians, health care institutions, and any attorneys previously employed by the undersigned. The undersigned acknowledges that all such claims will be satisfied by the releasor.

The undersigned acknowledges that she has read this release and understands the terms outlined herein.

Signed this 12 day of May, 2008.

Signed and sealed in the presence of:


Witness

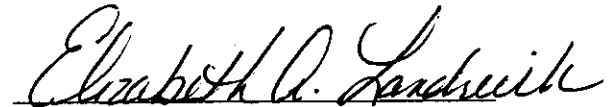

MICHAEL LOVECCHIO


Witness

STATE OF FLORIDA
COUNTY OF Volusia

The foregoing instrument was acknowledged before me this 12th day of May, 2008 by MICHAEL LOVECCHIO, who is personally known to me or who produced _____ as identification and who did/did not take an oath.

My Commission Expires:


Notary Public

