

**City of Carson City
Agenda Report**

Date Submitted: December 2, 2011

Agenda Date Requested: Dec 15, 2011

Time Requested: Consent Agenda

To: Mayor and Board of Supervisors

From: Randal Munn, Chief Deputy District Attorney

Subject Title: For Possible Action: To approve and authorize payment of \$60,000.00 in full settlement of all existing and any potential future claims, causes of action and damages against Carson City, and Jason Bueno individually and Gary Underhill individually, alleged or could have been alleged by Elvin Lee Fred in United States District Court for the District of Nevada, Case No. 3:11-cv-00064-HDM-VPC, or any other court. (*Randal Munn*)

Staff Summary: Plaintiff Elvin Fred alleges to have been wrongfully arrested and subjected to excessive force in violation of his federal constitutional rights and in violation of Nevada state law. The case stems from the arrest of the Plaintiff at the Carson Nugget on the night of January 20, 2009. Plaintiff seeks damages for personal injuries, emotional distress, attorney's fees and costs, and punitive damages against the individual officers. Plaintiff also seeks damages directly against Carson City based upon the alleged existence of an unlawful custom and practice which allegedly caused the constitutional violations in question and for its alleged failure to adequately hire, train and supervise Deputy Bueno and Deputy Underhill.

Type of Action Requested:

☐ Resolution

☐ Ordinance- First Reading

☒ Formal Action/Motion

☐ Other (Specify)

Does This Action Require A Business Impact Statement: ☐ Yes ☒ No

Recommended Board Action: I move to approve and authorize payment of \$60,000.00 in full settlement of all existing and any potential future claims, causes of action and damages against Carson City, and Jason Bueno individually and Gary Underhill individually, alleged or could have been alleged by Elvin Lee Fred in United States District Court for the District of Nevada, Case No. 3:11-cv-00064-HDM-VPC, or any other court. (*Randal Munn*)

Explanation for Recommended Board Action: The individual claims against Deputy Bueno and Deputy Underhill were alleged to have occurred in their course and scope of employment, and defense and indemnification was initially accepted by the City pursuant to the requirements of NRS 41.03415. Facts allowing withdrawal of such defense and indemnification pursuant to NRS 41.0346 have not yet been discovered. NRS 41.0349 requires the City to indemnify Deputy Bueno and Deputy Underhill unless either "fails to cooperate in good faith in the defense", their "acts or omissions" were "not within the scope of [their] public duty or employment", or their "acts or omissions...were wanton or malicious." Any right to withdrawal from such indemnification duty would not be

realized until the end of discovery and dispositive motions. Full settlement prior to completing discovery in this civil case is both in the best interests of Carson City and Deputies Bueno and Underhill.

Applicable Statute, Code, Policy, Rule or Regulation: NRS 41.03415 (tender of defense), NRS 41.0346 (withdrawal of defense), NRS 41.0349 (indemnification of present employee).

Fiscal Impact: \$60,000.00 self-insurance retention payable from Insurance Fund, with any related insurance defense attorneys' fees and costs which have not already been paid to date.

Explanation of Impact: limited impact upon reserve funds.

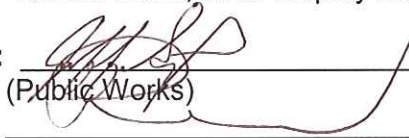
Funding Source: Insurance Fund (590-0745-415-05-13).

Alternatives: 1) Refer back to District Attorney's office for further consideration
2) Do not approve settlement

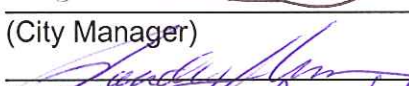
Supporting Material: none

Prepared By: Randal Munn, Chief Deputy District Attorney, Civil Division

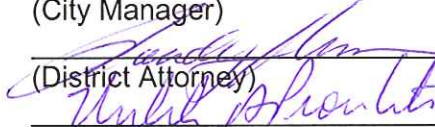
Reviewed By:


(Public Works)

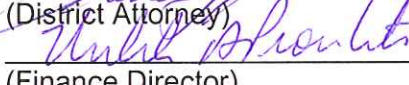
Date: 12/6/11


(City Manager)

Date: 12/6/11


(District Attorney)

Date: 12/6/11


(Finance Director)

Date: 12/6/11

Board Action Taken:

Motion: _____

1) _____ Aye/Nay

2) _____

(Vote Recorded By)