



COMMISSIONERS COURT
COMMUNICATION

REFERENCE NUMBER _____

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DATE: 12/13/2022

SUBJECT: **APPROVAL OF THE SETTLEMENT AGREEMENT AND FULL, FINAL AND COMPLETE RELEASE OF DEFENDANT TARRANT COUNTY, TEXAS IN CONNECTION WITH A SUIT AGAINST TARRANT COUNTY, TEXAS FILED BY CAROL HEEP, INDIVIDUALLY AND AS ADMINISTRATOR OF THE ESTATE OF BRANDON MATTHEW HEEP, CAUSE NO. 236-304306-18**

***** CONSENT AGENDA *****

COMMISSIONERS COURT ACTION REQUESTED

It is requested that the Commissioners Court approve the Settlement Agreement and Full, Final and Complete Release of Defendant Tarrant County, Texas signed by Carol Heep for claims made against Tarrant County and authorize the release of the settlement check without first appearing on the claims register.

BACKGROUND

On December 15, 2016, shortly before 11:30 a.m., Brandon Heep, a field technician for CMJ Engineering, was run over by a 53,000 lb. asphalt roller which was operated by a Tarrant County employee while conducting moisture density testing on a roadway at or near 500 Cheeks-Sparger Road, Colleyville, Texas 76034. Mr. Heep died from his injuries within eleven (11) hours of the incident.

A settlement has been reached between the parties and Carol Heep has agreed to accept the sum of \$50,000.00 as her individual settlement and \$50,000.00 as her survival settlement for a total of \$100,000.00, in full and final settlement of the claims against Tarrant County.

With approval of the Settlement Agreement and Full, Final and Complete Release of Defendant Tarrant County, Carol Heep and Administrator agree to dismiss with prejudice their claims against the County, fully resolving this matter.

This settlement agreement has been approved by the Criminal District Attorney's Office.

FISCAL IMPACT

The fiscal impact to Tarrant County is \$100,000.00 to fully settle the claims of Carol Heep. Funds are available in account 61500-2023/1912000000/575031.

SUBMITTED BY: Criminal District Attorney

PREPARED BY: Polly S Maxwell
APPROVED BY:



CAUSE NO. 236-304306-18

CAROL HEEP, INDIVIDUALLY and as	§	IN THE DISTRICT COURT
ADMINISTRATOR OF THE ESTATE OF	§	
BRANDON MATTHEW HEEP	§	
<i>Plaintiff,</i>	§	
	§	
v.	§	TARRANT COUNTY, TEXAS
	§	
CITY OF COLLEYVILLE, TEXAS and	§	
TARRANT COUNTY, TEXAS	§	
<i>Defendants.</i>	§	236 TH JUDICIAL DISTRICT

**SETTLEMENT AGREEMENT AND FULL, FINAL AND COMPLETE RELEASE
OF DEFENDANT TARRANT COUNTY, TEXAS**

WHEREAS, CAROL HEEP filed suit against TARRANT COUNTY TEXAS, in cause no. 236-304306-18 styled, *Carol Heep, Individually and as Administrator of the Estate of Brandon Matthew Heep v. City of Colleyville and Tarrant County, Texas*, claiming damages arising from an incident on December 15, 2016 ("Action").

WHEREAS the County disputes the claims asserted in the Action and maintains that it would prevail at a trial on the merits.

WHEREAS, the parties hereby enter this settlement agreement voluntarily and without coercion.

WHEREAS, the below signed parties desire to fully and finally settle all claims that Ms. Heep has asserted or could assert against the County in the Action relating to the incident on December 15, 2016.

NOW THEREFORE, Ms. Heep, both in her individual capacity and as the administrator of the Estate of Brandon Heep, does hereby agree upon this Settlement Agreement and Full, Final and Complete Release of all of the issues involving and/or arising out of the incident made the basis of the Action:

Clarification of Plaintiff's Roles

Any reference in this agreement to "Ms. Heep" shall refer to Carol Heep in her individual capacity as Brandon Heep's mother. Any reference in this agreement to "Administrator" shall refer to Carol Heep in her capacity as the administrator of the Estate of Brandon Heep.

Plaintiff's Individual Settlement

Ms. Heep agrees to accept the sum of FIFTY THOUSAND AND 00/100 DOLLARS (\$50,000.00) in full settlement of any and all claims, demands, actions and causes of action, of whatever kind or character, which she may now have, claim to have, or hereafter have against the County, its agents, officials, employees, officers, and/or attorneys or representatives, growing out of, connected with, resulting in, or pertaining to in any respects the matters and the things alleged by her against the County arising out of the incident(s) made the basis of the Action and particularly, but not limited to, any and all claims and demands for negligence, death, personal injuries, physical disabilities, physical and mental pain and suffering, mental anguish, loss of income, loss of ability and capacity to labor and earn money, loss of earnings, emotional injuries, claims for punitive and exemplary damages, claims for equitable relief of any and all kinds, claims for hospital, dentist, chiropractic, psychiatrist, psychologist, and other doctors bills and expenses, expenses for hospital and/or dental care and treatment, expenses for drugs, medications, medical tests and laboratories, expenses of transportation for medical or dental care, expenses for nurses, claims for psychological injuries or emotional distress, claims for loss of consortium and any and all other loss, expense and/or detriment of whatever kind or character, present, past or future, which Ms. Heep, either individually or in any other capacity, may now have, hereafter have, or claim to have, growing out of, resulting from, or connected in any way with any acts and/or omissions whatsoever of the County, its agents, officials, employees, officers, and/or attorneys or representatives as a result of the incident made the basis of the Action.

Survival Settlement

Administrator agrees to accept the sum of FIFTY THOUSAND AND 00/100 DOLLARS (\$50,000.00) in full settlement of any and all claims, demands, actions and causes of action, of whatever kind or character, which the Estate of Brandon Heep may now have, claim to have, or hereafter have against the County, its agents, officials, employees, officers, and/or attorneys or representatives, growing out of, connected with, resulting in, or pertaining to in any respects the matters and the things alleged by Administrator against the County arising out of the incident(s) made the basis of the Action and particularly, but not limited to, any and all claims and demands for negligence, death, personal injuries, physical disabilities, physical and mental pain and suffering, mental anguish, loss of income, loss of ability and capacity to labor and earn money, loss of earnings, emotional injuries, claims for punitive and exemplary damages, claims for equitable relief of any and all kinds, claims for hospital, dentist, chiropractic, psychiatrist, psychologist, and other doctors bills and expenses, expenses for hospital and/or dental care and treatment, expenses for drugs, medications, medical tests and laboratories, expenses of transportation for medical or dental care, expenses for nurses, claims for psychological injuries or emotional distress, claims for loss of consortium and any and all other loss, expense and/or detriment of whatever kind or character, present, past or future, which Administrator may now have, hereafter have, or claim to have, growing out of, resulting from, or connected in any way with any acts and/or omissions whatsoever of the County, its agents, officials, employees, officers, and/or attorneys or representatives as a result of the incident made the basis of the Action.

Settlement Payment

Both payments of the \$50,000.00 settlement amount, totaling \$100,000.00, shall be paid as follows:

A warrant will be issued in the amount of \$100,000.00. This warrant will be made payable to "Anderson & Riddle, LLP / IOLTA Trust Account".

The warrant will be delivered to James Kiser, Anderson & Riddle, LLP, 1604 8th Avenue, Fort Worth, TX 76104. This is the full and final amount to be paid; no further money will be paid to Ms. Heep, the Administrator, to her or the Administrator's attorneys, or to any other person or entity acting as Ms. Heep's or the Administrator's agent or representative. The County makes no representation to Ms. Heep or the Administrator regarding the tax consequences of this designation, and she and the Administrator are liable for any and all taxes due thereon, if any.

Discharge & Indemnification of Defendant Tarrant County

In exchange for the settlement payment, Ms. Heep and Administrator agree to dismiss with prejudice their claims against the County in the Action. Each party will be responsible for bearing its own costs in the Action.

It is understood and agreed that Ms. Heep and Administrator intend to hereby forever discharge and acquit and fully release the County, its agents, officials, employees, officers, attorneys and representatives, of and from all claims and demands, actions and causes of action, of whatever kind or character, which Ms. Heep and/or the Administrator may now have or hereafter have, from any acts and/or omissions growing out of, resulting from, or connected in any way with the incidents made the basis of the Action.

It is further understood and agreed that all of the expenses of Ms. Heep and the Administrator growing out of or resulting from the said incident incurred in the past and which may be incurred in the future, including the expense of medical care, doctors, hospitals and all other costs and expenses will be paid by Ms. Heep or the Administrator, and that the amounts paid herein is the entire cash consideration for this Settlement Agreement and Full, Final and Complete Release. **Ms. Heep and the Administrator hereby jointly indemnify and forever hold harmless the County, its agents, officials, employees, officers, attorneys and representatives, from any and all claims and demands for such liens, bills, and expenses incurred by anyone as a result of the said incident made the basis of the Action.**

It is understood and agreed that the total sum of \$100,000.00 paid herein to Ms. Heep and the Administrator is not merely a recital, but is the cash consideration for this Settlement Agreement and Full, Final and Complete Release.

Ms. Heep and Administrator expressly agree and represent that each has, or will pay all medical bills, including, but not limited to, dental, hospital, chiropractic, psychiatric, psychological, nurses and other doctors' bills and expenses, and all other expenses incurred because of the said incident made the basis of this dispute. **Ms. Heep and the Administrator hereby each indemnifies and forever holds harmless the County, its agents, officials, employees, officers, attorneys and**

representatives from any and all claims and demands for such liens, bills, and expenses including, but not limited to, those described in this paragraph, and especially of and from any liens under the Hospital Lien Law of the State of Texas, workers compensation liens and Medicare and Medicaid liens and/or superliens.

Ms. Heep and Administrator hereby further represent and warrant that they have entered this Settlement Agreement and Full, Final and Complete Release of their own free will and accord, in accordance with their own judgment, and upon the advice of their attorneys, and states that they have not been induced to enter into this Settlement Agreement and Full, Final and Complete Release by any statement, act or representation of any kind or character on the part of the County or on the part of anyone. Ms. Heep and Administrator acknowledges that they had the assistance of competent counsel in this Action who have vigorously engaged in negotiations on their behalf, and who have prior to signature of this document explained to Ms. Heep and the Administrator the benefits and risks of both settlement and non-settlement of this matter. Ms. Heep and Administrator further acknowledge that they hold harmless the County, its agents, officials, employees, officers, attorneys and representatives from any claim of attorneys' fees; payment of attorney's fees and costs is solely between Ms. Heep and the Administrator and their respective attorneys, and the County will not pay or be called upon to pay any additional amount as attorney's fees or otherwise, except as herein set out.

In addition, in consideration of said payment, Ms. Heep and Administrator hereby represent and warrant that this settlement is being made purely upon a compromise basis in order to avoid further trouble, litigation and expense, and that the County does not admit liability to Ms. Heep, the Administrator, or anyone else as a result of the matters complained of or which might have been complained of but do and have at all times denied any and all such liability. Ms. Heep and Administrator represent that each enters this agreement and accepts its consequences voluntarily and, that in any proceeding or forum of any kind, each is forever barred and estopped from claiming otherwise.

It is understood and agreed that the general release given in this Settlement Agreement and Full, Final and Complete Release by Ms. Heep and Administrator to the County is to cover all claims of all types, whether arising under common law, the statutes or regulations of the State of Texas, of any other state, or of the United States, or any foreign country.

The County expressly warrants and represents that the City of Colleyville did not act, serve, or perform as the County's agent, official, employee, officer, attorney and/or representative—in any capacity—during, relating to, or arising from the incident made the basis of the Action.

Ms. Heep and Administrator expressly warrant and represents 1) that they are executing this Settlement Agreement and Full, Final and Complete Release on their own behalf; 2) that Administrator is the administrator of the Estate of Brandon Heep; 3) that they are executing this Settlement Agreement and Full, Final and Complete Release on behalf of the Estate of Brandon Heep; 4) that each is legally competent to execute this agreement in all capacities; and 5) that in no capacity has either Ms. Heep or the Administrator made any assignment, pledge, sale, or transfer of any right, title, interest, or claim.

Ms. Heep and Administrator further agree and expressly warrant that each will indemnify and hold completely harmless the County, its agents, officials, employees, officers, attorneys and representatives, and each of them, from any claims derivative of Brandon Heep, his estate and heirs, Ms. Heep, and/or the Administrator that may be made in the future, including any claim that may be made by Ms. Heep or the Administrator by any person claiming an interest in Brandon Heep's estate, or by any person to whom she or the Administrator allegedly assigned any rights, and said indemnification will include, but not be limited to, all amounts of all claims, attorney's fees, and costs of court.

It is further understood and agreed that this Settlement Agreement and Full, Final and Complete Release contains the entire agreement of the parties. No change, modification, waiver or discharge of any or all of the terms and conditions of this Agreement shall be effective unless made in writing and signed by each party.

This agreement shall be deemed equally drafted by all signatories and the parties they represent, and the language shall not be construed against any party by virtue of authorship hereof. This agreement shall be construed to fully and finally settle all disputes between the parties hereto. The provisions hereof are severable. Should any portion hereof be found invalid, the remainder of the agreement shall continue in force and effect. Enforcement, if such should be necessary, shall be by action in state court in Tarrant County, Texas.

It is further understood and agreed that the law of the State of Texas applies with respect to the interpretation and construction of this Agreement.

WITNESS OUR SIGNATURES on this the _____ day of _____, 2022.

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Carol Heep
CAROL HEEP, IN HER INDIVIDUAL CAPACITY

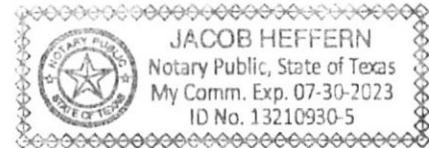
STATE OF TEXAS §
COUNTY OF TARRANT §

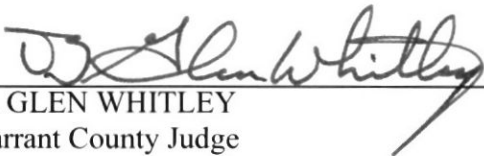
This instrument was acknowledged before me on the 30th day of November 2022
by CAROL HEEP.

Jacob Heffern
NOTARY PUBLIC, In and For the State of TEXAS

FOR CLAIMANT
APPROVED AS TO FORM:

James S. Kiser
Guy H. Riddle
James S. Kiser
ANDERSON & RIDDLE, LLP
1604 Eighth Avenue
Fort Worth, TX 76104
ATTORNEYS FOR CAROL HEEP

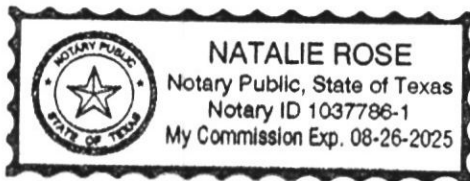


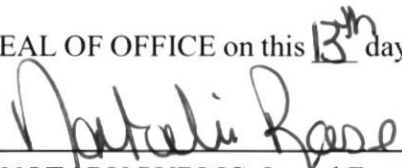

B. GLEN WHITLEY
Tarrant County Judge

STATE OF TEXAS §
COUNTY OF TARRANT §

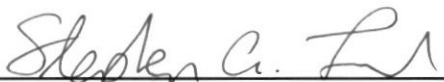
BEFORE ME, the undersigned authority, on this day personally appeared B. GLEN WHITLEY, Tarrant County Judge, known to me to be person whose name is subscribed to the foregoing instrument, and acknowledged to me that he has read the foregoing instrument, is authorized to make this agreement, and that he executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this 13th day of December 2022.




NOTARY PUBLIC, In and For the State of TEXAS

**FOR THE COUNTY
APPROVED AS TO FORM*:**


Stephen A. Lund
Assistant Criminal District Attorney
Tarrant County District Attorney's Office
Tarrant County Justice Center
401 West Belknap, 9th Floor
Fort Worth, Texas 76196-0201
(817) 884-1233
(817) 884-1675 - Facsimile
ATTORNEY FOR TARRANT COUNTY, TEXAS

* By law, the District Attorney's Office may only advise or approve contracts or legal documents on behalf of its clients. It may not advise or approve a contract or legal document on behalf of other parties. Our review of this document was conducted solely from the legal perspective of our client. Our approval of this document was offered solely for the benefit of our client. Other parties should not rely on this approval, and should seek review and approval by their own respective attorney(s).

CERTIFICATION OF
AVAILABLE FUNDS: \$ 100,000⁰⁰

Genevieve Tidwell

Tarrant County Auditor

