

TO: Mayor via City Secretary **REQUEST FOR COUNCIL ACTION**

<b>SUBJECT:</b> An Ordinance approving and authorizing settlement of a lawsuit styled <i>Benard v. Officer F. Rodriguez</i> ; Civil Action No. 4:15-cv-00734, U.S. District Court for the Southern District of Texas, Houston Division.	<b>Category #</b>	<b>Page 1 of 1</b>	<b>Agenda Item #</b>
<b>FROM (Department or other point of origin):</b> Legal Department	<b>Origination Date</b> 07/07/17	<b>Agenda Date</b>	
<b>DIRECTOR'S SIGNATURE:</b> 	<b>Council District affected:</b> All		
<b>For additional information contact:</b> Henry N. Carnaby – Sr. Assistant City Attorney (832) 393-6209 Don Fleming – Section Chief, LECR (832) 393-6303	<b>Date and identification of prior authorizing Council action:</b> N/A		
<b>RECOMMENDATION: (Summary)</b> That Council adopt an Ordinance approving and authorizing a Settlement and Release Agreement between George Benard and Officer F. Rodriguez in the amount of \$85,000.00.			
<b>Amount and Source of Funding:</b> \$85,000.00 – Fund 1004 – Property & Casualty			
<p><b>SPECIFIC EXPLANATION:</b></p> <p style="text-align: center;"><b>FOR SETTLEMENT PURPOSES ONLY</b></p> <p>George Benard was shot by Houston Police Officer F. Rodriguez, Jr. on March 19, 2013 during the execution of a no-knock search and arrest warrant. Officer Rodriguez was the first of seven members of the Houston Police Department to enter the residence at 6725 Sherwood Drive in Southeast Houston. Mr. Benard was shot when he failed to comply with officer's verbal instructions and made physical movements that Officer Rodriguez interpreted as presenting an immediate danger to himself and other police officers. Officer Rodriguez fired one shot which struck Benard in the abdomen causing serious injuries. Benard was subsequently determined to have been unarmed. HPD's Internal Affairs Division ("IAD") conducted an investigation and found the shooting to be justified.</p> <p>On March 19, 2015, Plaintiff filed his lawsuit pursuant to 42 U.S.C. Section 1983, alleging constitutional violations against the City and the Houston Police Department in Civil Action No. 4:15-cv-00734; <i>George Benard vs. the City of Houston</i>; in the United States District Court for the Southern District of Texas, Houston Division. The complaint was subsequently amended on January 7, 2016 to include Plaintiff's mother, Elizabeth Gonsoulin, as an additional plaintiff and all seven members of the Narcotics Division Squad executing the warrants, as Defendants. Plaintiffs claimed the City and individual officers violated their Fourth Amendment rights by using excessive force. Defendants filed motions for summary judgment and a Magistrate Judge recommended dismissal of all of the claims by Elizabeth Gonsoulin and all of the claims against the City and individual officers, with the exception of the excessive force claim filed individually against Officer Rodriguez. On March 22, 2017 Judge Gray Miller adopted the Magistrate's recommendation and dismissed all but the 4<sup>th</sup> Amendment excessive force claim against Officer Rodriguez.</p> <p>The City Legal Department continued to represent Officer F. Rodriguez under the City's obligation to represent and indemnify City employees in Sections 2-303 and 2-204 of the Houston, Texas Code of Ordinances. Plaintiff and Officer F. Rodriguez engaged in mediation and agreed to resolve Plaintiff's claims for a settlement amount of \$85,000.00. The Legal Department recommends that Council adopt an ordinance approving and authorizing settlement of Plaintiff's claims against Officer F. Rodriguez by issuing a check to the Interest on Lawyer Trust Account (IOLTA) of the Gadson Law Group, in the amount of \$85,000.00.</p>			
<b>REQUIRED AUTHORIZATION</b>			
<b>Other Authorization:</b>	<b>Other Authorization:</b>	<b>Other Authorization:</b>	