MEMORANDUM

June 15, 2004

TO: THE LOS ANGELES COUNTY CLAIMS BOARD

FROM: BRIAN T. CHU
Senior Deputy County Counsel
General Litigation Division

RE: **Imelda Moreno, Through Her Guardian Ad Litem, Irma Gomez v. County of Los Angeles**
Los Angeles Superior Court Case No. BC 291769

DATE OF INCIDENT: May 7, 2002

AUTHORITY REQUESTED: $300,000

COUNTY DEPARTMENT: DEPARTMENT OF PUBLIC WORKS

CLAIMS BOARD ACTION:

☐ Approve ☐ Disapprove ☑ Recommend to Board of Supervisors for Approval

_____, Chief Administrative Office
ROCKY A. ARMFIELD

_____, County Counsel
JOHN F. KRATTLI

_____, Auditor-Controller
MARIA M. OMS

on July 19, 2004

HOA.239920.2

SUMMARY

This is a recommendation to settle for $300,000, the lawsuit brought by Imelda Moreno, through her Guardian Ad Litem, Irma Gomez, seeking damages for the personal injuries she sustained on May 7, 2002, in an automobile accident.

LEGAL PRINCIPLES

The County may be liable for automobile accidents that are caused by a dangerous condition of public property. The County may lose its immunity from liability caused by a reasonable and approved design of public property if a jury finds proof of changed conditions. If found liable, the County is responsible for its proportionate share of fault in addition to the entire amount of economic damages sustained notwithstanding its percentage of fault.

SUMMARY OF FACTS

This accident occurred on May 7, 2002, at the intersection of Florence Avenue and Miramonte Boulevard, which is located in the unincorporated County territory. Florence Avenue is a two-way street with two lanes and a left turn lane in each direction of travel. Miramonte Boulevard is offset through the intersection and requires vehicles to make an S-type maneuver to reach the opposite side of Florence Avenue. In addition to traffic signals, the intersection has crosswalks and pedestrian signals with pedestrian signal pushbuttons controlling all four approaches.

Imelda Moreno, a 10-year-old, started to ride her bicycle across Florence Avenue within the crosswalk while the cross-traffic was stopped for a red traffic signal. At the same time, a van was approaching the intersection in the curb lane of Florence Avenue. Just as the traffic light for Florence Avenue turned green, the van entered the crosswalk and struck Imelda Moreno who also had just entered the crosswalk.

The California Highway Patrol investigated the accident, and concluded that the driver of the van was the primary cause of the accident because he failed to make certain that the intersection was clear before entering it. Eyewitnesses were uncertain whether Imelda Moreno started across Florence Avenue during a green or yellow traffic signal phase, or a flashing or solid "Don't Walk" pedestrian signal phase for her direction.

The traffic signal timing that allows pedestrians to clear the crosswalk across Florence Avenue met the minimum standards set forth in the CalTrans Traffic Manual and the Federal Highway Administration's Manual on Uniform Traffic Control Devices (MUTCD).

Imelda Moreno alleges that the traffic signal timing was a factor in causing this accident and that the increasing use of the intersection by motorists, pedestrians, and bicycles, along with the frequency of traffic accidents warranted a change in the signal timing.

Imelda Moreno sustained severe injuries as a result of the accident, including a neck fracture, lacerations to head and hands, and leg pain. The neck fracture has rendered her a full quadriplegic, which has also resulted in additional internal complications. Imelda Moreno will require lifetime, around-the-clock care, including future medical treatment and equipment, physical therapy, vocational training, medication, and transportation equipment.

DAMAGES

Imelda Moreno claims the following damages and losses:

Loss of future income and earning capacity (present value)	$ 784,000
Medical Treatment (Medi-Cal Lien)	$ 400,000
Future Medical Treatment (pv)	$ 16,350,000
General Damages (Pain and Suffering, paralysis, and psychological injuries)	$ 10,000,000
TOTAL:	$ 27,534,000

STATUS OF CASE

On May 3, 2004, a mediation was conducted resulting in this proposed settlement. The trial date has been vacated pending approval of this recommended settlement.

The insurance company insuring the driver of the van has tendered its policy limits of $15,000 toward settlement, and the driver has no significant assets by which Imelda Moreno could recover a judgment. Approximately $200,000 of the settlement proceeds will be allocated to Plaintiff's attorneys for fees and costs, and to the State of California to extinguish the Medi-Cal lien. The remainder of the proceeds may be directed by Plaintiff to be used to purchase an annuity. The structure of the annuity has not been selected at this time.

Expenses incurred by the County in the defense in this matter are attorney fees of $72,000 and costs of $18,000.

EVALUATION

This is a matter of contested liability. Although we believe that the timing of the traffic and pedestrian signals were reasonable and appropriately authorized at the time it was originally designed, a jury could find that the combination of increased traffic and the accident history establishes a changed condition which would extinguish the County's immunity for the design of the signal timing. Additionally, a jury could conclude that the unusual geometric configuration of the offset intersection and signal timing created a dangerous condition by not providing sufficient vehicle clearance time. A settlement at this time will avoid further litigation costs and a potential jury verdict in excess of the recommended settlement amount.

We believe that settlement of this matter in the amount of $300,000 is in the best interest of the County. The Department of Public Works concurs in this settlement recommendation.

APPROVED:

GARY N. MILLER
Assistant County Counsel
General Litigation Division

BTC:ac

DEPARTMENT OF PUBLIC WORKS

CORRECTIVE ACTION PLAN

LAWSUIT OF: Imelda Moreno, Through Her Guardian Ad Litem, Irma Gomez v. County of Los Angeles
LASC Case No. BC 291769

INCIDENT DATE: May 7, 2002

INCIDENT LOCATION: Intersection of Florence Avenue and Miramonte Boulevard, Unincorporated County of Los Angeles

RISK ISSUES: A public entity can be held liable for damages caused by a dangerous condition of public property. Under the law of joint and several liability, a public entity can be held responsible for its proportionate share of liability in addition to the entire economic damages suffered by the plaintiff.

INVESTIGATIVE REVIEW: On May 7, 2002, 10 year-old Imelda Moreno was riding her bicycle in a crosswalk attempting to cross Florence Avenue northbound at the signalized intersection with Miramonte Avenue in the unincorporated County area. While she was still within the intersection's crosswalk, the traffic signal for Florence Avenue turned from red to green. At the same time, a vehicle approaching the intersection in the curb lane on Florence Avenue continued into the intersection without ensuring that it was clear of other traffic. The vehicle struck Imelda Moreno just as she entered the curb lane of Florence Avenue. The California Highway Patrol concluded that the vehicle's driver violated Vehicle Code section 21451(a), which states: "A driver facing a circular green signal shall proceed straight through or turn right or left or make a U-turn unless a sign prohibits a U-turn. Any driver, including one turning, shall yield the right-of-way to other traffic and to pedestrians lawfully within the intersection or an adjacent crosswalk." Eyewitnesses could not confirm which traffic or pedestrian signal phases were showing on the signals for Miramonte Boulevard when Imelda Moreno started across Florence Avenue.

The width of Florence Avenue curb to curb is 70 feet and is striped for two travel lanes in each direction with left turn pockets. Miramonte Boulevard is offset on either side of Florence Avenue by approximately 70 feet. The length of the pedestrian clearance interval across Florence Avenue was timed based on the distance from curb to the middle of the farthest travel lane and an assumed pedestrian rate of speed of 4 feet per second. The total pedestrian clearance interval was 16 seconds consisting of 13 seconds of a flashing "Don't Walk" phase plus 3 seconds of a solid "Don't Walk" phase coinciding with the yellow phase for the Miramonte Boulevard traffic signal. There was no provision for an all-red clearance phase following the green-yellow phase for Miramonte Boulevard. All signals were operating as designed.

POLICY ISSUES: At the time of this accident, the Department followed the standards specified by CalTrans' Traffic Manual and the Federal Highway Administration's Manual on Uniform Traffic Control Devices (MUTCD) relating to pedestrian clearance timing. The MUTCD is recognized as the national standard for traffic control devices used on all public roads. At that time, the CalTrans

Traffic Manual and MUTCD required the pedestrian clearance interval to be based on the distance minimally from curb to the center of the farthest travel lane. The pedestrian clearance interval across Florence Avenue met the minimum standards under CalTrans and the MUTCD at the time of the accident.

As of May 20, 2004, however, CalTrans has adopted the MUTCD which prescribes uniform standards and specifications for all traffic control devices in California. The MUTCD amended its pedestrian clearance interval standard, effective December 22, 2003, to require the pedestrian clearance interval to be based on the distance encompassing the full width of the traveled portion of the roadway. The Federal Highway Administration has specified a target date of December 22, 2008 by which agencies must effectuate changes to their traffic and pedestrian signal timing in compliance with the new standard.

CORRECTIVE ACTION: The Department conducted a traffic investigation of the intersection, including a field review, in November 2002 following the accident. At that time, there was minimal information about the circumstances of the accident and the contentions of deficiency. Because all signals, signs, and striping appeared to be sufficient, no recommendations were made for modifications.

Imelda Moreno's contentions of defect in signal timing design had to be evaluated during litigation. While the timing of the pedestrian clearance interval met the minimum standards established at the time, the Department also recognizes the risks of liability and financial exposure presented by this incident. As such, the Department does not oppose the business decision to settle this matter in the indicated amount.

The Department will be undertaking changes in the pedestrian clearance intervals for all its intersections within the jurisdictional boundaries in compliance with the FHWA. For the intersection of Miramonte Avenue and Florence Avenue specifically, the Department will make the change to signal timing in the next four (4) weeks.