

EXHIBIT 1

TO

AFFIDAVIT OF ARCHE L. McADOO

DURHAM



1869
CITY OF MEDICINE

CITY OF DURHAM

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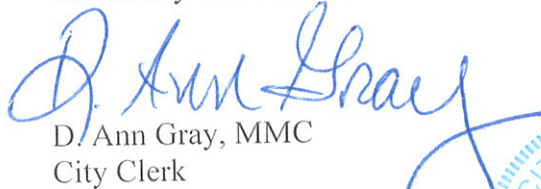


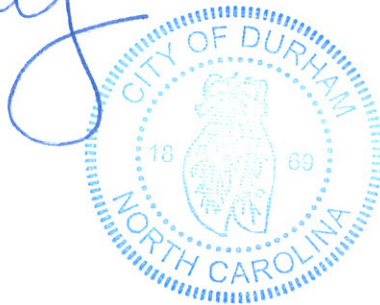
SUBJECT: A RESOLUTION TO ADOPT A UNIFORM TORT CLAIMS SETTLEMENT POLICY

**NORTH CAROLINA
DURHAM COUNTY**

I, D. Ann Gray, duly appointed City Clerk of the City of Durham, North Carolina, do hereby certify that the attached is a true and accurate copy of Resolution #9468 entitled “**A RESOLUTION TO ADOPT A UNIFORM TORT CLAIMS SETTLEMENT POLICY**” approved by the Durham City Council on June 18, 2007 which is on file in the Office of the City Clerk in City Hall.

WITNESS my hand and the corporate seal of the City of Durham, North Carolina, this the 1st day of December 2008.


D. Ann Gray, MMC
City Clerk



A RESOLUTION TO ADOPT A
UNIFORM TORT CLAIMS
SETTLEMENT POLICY

WHEREAS, the City Council adopted the "Resolution to Adopt a Policy to Waive Governmental Immunity in Limited Circumstances" (#9200) and the related "Resolution to Establish a Funded Reserve to Pay Claims Where Governmental Immunity Has Been Waived" (#9201) on December 20, 2004, pursuant to N.C.G.S. §160A-485(a); and

WHEREAS, the City Council had adopted said resolutions to address the settlement of claims against the City; and

WHEREAS, recent Court decisions have made it clear that the City has the authority to settle claims against it without raising or asserting defenses that would be raised and pled in response to legal action filed against the City; now, therefore

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DURHAM:

The City of Durham hereby adopts the following uniform standards for the settlement of claims. This policy shall apply to the consideration, review and payment, if any, of all tort claims, including where potential defenses may be available to the City, and regardless of the nature of those defenses. The cumulative recovery limit under this policy for all claims arising from any one accident or occurrence, whether from one or multiple persons, shall not exceed the self-insured retention limit under the City's applicable excess liability policy or policies for claims covered by the City's insurance. Where the City determines that it more likely than not has a defense of governmental immunity concerning the claim, and there is no insurance held by the City that would cover the claim, the cumulative recovery limit for any one accident or occurrence, whether from one or multiple persons, shall not exceed \$350,000.

1. It is the City's policy to settle claims prior to trial if it appears to the City that the City, or an employee or officer of the City acting within the scope and course of his or her employment with the City, committed a tortious act resulting in injury or damage to a person or to the property of another. In deciding whether to settle a claim with a tort claimant, the City shall consider the following factors:
 - a. Whether there was a negligent act by a City employee or officer;
 - b. The extent of injuries or damages;
 - c. Strength and quality of any evidence in support of the claim.
 - d. Whether there was an intentional tort committed by a City employee or officer;
 - e. Whether any defenses may be available to the City;
 - f. Whether any defenses may be available for the employee in his or her individual capacity;

- g. Whether the City employee or officer violated any applicable policy, regulation or order which resulted in the injury or damage to person or property;
 - h. The estimated cost of defending the case;
- 2. After assessing the factors enumerated in Section 1 above, if the City determines that it would be appropriate to make a settlement offer to resolve the dispute without a trial, and further determines that the City more likely than not has a defense of governmental immunity concerning the claim, the City will consider only the following expenses and damages in formulating the amount of the settlement offer:
 - a. Tangible property damage, but only if proximately caused by the negligent operation of a motor vehicle, machinery or equipment by employees or officers of the City;
 - b. Medical expenses, including dental and veterinary expenses;
 - c. Chiropractic expenses or physical therapy expenses for no more than three consecutive months during any calendar year;
 - d. Lost wages for time authorized out of work by physicians licensed to practice medicine in North Carolina; and
 - e. Out of pocket expenses, but only if proximately caused by the negligent operation of a motor vehicle, machinery or equipment by employees or officers of the City.
- 3. For claims filed pursuant to the provisions of N.C.G.S. 28A-18-1 et seq., and for which the defense of governmental immunity more likely than not applies, the City will consider the following expenses and damages in formulating the amount of a settlement offer, as an alternative to the factors in Section 2:
 - a. Tangible property damage, but only if proximately caused by the negligent operation of a motor vehicle, machinery or equipment by employees or officers of the City;
 - b. Out of pocket expenses, but only if proximately caused by the negligent operation of a motor vehicle, machinery or equipment by employees or officers of the City;
 - c. Expenses for care, treatment and hospitalization of the decedent resulting from the injury which caused the death;
 - d. Reasonable funeral expenses of the decedent; and
 - e. The present monetary value of the decedent to the persons entitled to recovery of damages, which shall include and is limited to compensation for the loss of the reasonably expected
 - i. Net income of the decedent; and
 - ii. Services, protection, care and assistance of the decedent, whether voluntary or obligatory, to such persons.

4. The City will not pay any of the following in settlement of a claim, nor will it consider any of the following in formulating an offer for settlement of a claim for which the defense of governmental immunity more likely than not applies:
 - a. Attorneys' fees of the claimant and any litigation-related expenses
 - b. Pain and suffering, emotional distress or mental anguish on the part of the claimant;
 - c. Non-compensatory, intangible or consequential damages, which include, but are not limited to, third party mental anguish, bereavement from the death of a loved one, loss of consortium, assistance, society and/or conjugal fellowship;
 - d. Claims for punitive, vicarious, exemplary, treble or other similar damages
 - e. Damages in excess of \$350,000 arising from any one accident or occurrence that would not otherwise be covered by insurance held by the City;
 - f. Claims that could be addressed, or for which the City could be held liable, under any worker's compensation, unemployment compensation, or similar law or insurance;
 - g. Claims that are in the nature of insurance subrogation.
 - h. Any other Claims, fees, expenses or damages that do not fall specifically within the purview of the expenses listed above in Section 2 for General Liability Claims or Section 3 for Wrongful Death Claims.
5. If a settlement complying with the terms of this Resolution is not achieved, the City will assert all appropriate defenses, including the defense of governmental immunity.
6. In exchange for settlement pursuant to this Resolution, the claimant must execute a release of claims against the City, its employees and officers, and any other agent or entity involved for which the City may have liability.
7. Any settlement agreement reached between the City and a tort claimant pursuant to this Resolution is in the nature of a contract and is for the purpose of completely resolving the dispute. The basis of the City's authority to enter such settlement agreements includes the City's general corporate authority to enter into contracts. Any settlement agreement or offer of settlement by the City pursuant to this Resolution:
 - a. Will not constitute a waiver of any affirmative defense;
 - b. Does not create for the claimant a property right or property interest in a settlement offer.
8. This Resolution is effective upon adoption, and applies to all claims pending on that date as well as claims that arise thereafter. The City reserves the right to modify or terminate this Resolution at any time, and to have any such modification or termination apply to any claim not paid or for which there has

not yet been a settlement or final decision of a court or other authority of competent jurisdiction.

9. This Resolution is not severable. If a court of competent jurisdiction determines that any provision of this Resolution or the application of such provision to any person or in any circumstance is invalid or unlawful, then this Resolution shall be deemed immediately repealed in its entirety as to all claims without further action by the City Council of the City of Durham, and the City will assert all available and appropriate defenses against all claims, to the fullest extent permitted by law.
9. "Resolution to Adopt a Policy to Waive Governmental Immunity in Limited Circumstances" (#9200) and the related "Resolution to Establish a Funded Reserve to Pay Claims Where Governmental Immunity Has Been Waived" (#9201) are hereby repealed.
10. Any other resolutions still in effect which conflict or which are inconsistent with this resolution are modified to the extent of any such conflict or inconsistency so as so conform to the provisions and standards of this resolution.

This the 18th day of JUNE, 2007.

**APPROVED BY
CITY COUNCIL**

JUN 18 2007

D. Ben Gray
CITY CLERK