

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: July 10, 2018 [X] Consent [] Regular
[] Ordinance [] Public Hearing
Department:
Submitted By: County Attorney

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve a Settlement Agreement, inclusive of attorney’s fees and costs, in the total amount of \$75,000 in the personal injury action styled Joyce Erkus v. Palm Beach County, Case No. 502017CA008124XXXXMB.

Summary: On February 19, 2016, at the WUD Southern Region Water Reclamation Facility, Plaintiff Joyce Erkus suffered bodily injury and incurred medical expenses. Countywide (RMF)

Background and Justification (or Policy Issues): On February 19, 2016, while walking along the public path at the WUD Southern Region Water Reclamation Facility, Ms. Erkus tripped and fell on a raised crack in the pathway. As a result of her fall, Ms. Erkus suffered bilateral intraarticular distal radius fracture and bilateral carpal tunnel syndrome. She underwent open reduction internal fixation surgery on both wrists, completed physical therapy, and treated a trigger finger and her pain with injections. Ms. Erkus developed posttraumatic osteoarthritic changes in her left wrist. She continues to experience pain and limitations in her activities of daily living. Her medical bills exceeded \$170,000.

Therefore, it is recommended that the County approve the Settlement Agreement in the amount of \$75,000.

This full and final settlement is warranted based on the County’s liability exposure and the magnitude of the injuries claimed.

Attachments:

- 1. Settlement Agreement
- 2. Release of All Claims
- 3. Budget Availability Statement

Recommended By: [Signature] DMN 6/26/18
Department Director Date
Approved By: N/A
Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2018	2019	2020	2021	2022
Capital Expenditures					
Operating Costs	75,000				
External Revenues					
Program Income (County)					
In-Kind Match (County)					
NET FISCAL IMPACT	75,000				
# ADDITIONAL FTE					
POSITIONS (CUMULATIVE)					

Is Item included in current budget? Yes X No

Does this Item include the use of federal funds? Yes No X

Budget Account No.:

Fund 5010 Agency 700 Organization 7130 Object 4511

B. Recommended Sources of Funds/Summary of Fiscal Impact:

C. Departmental Fiscal Review:

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development & Control Comments:

Polyn Kawa 6/13/18
OFMB 413 4/13/18 4/13

A. S. Jones 6/11/18
Contract Dev. & Control

B. Legal Sufficiency

Rachel Foley
Assistant County Attorney

C. Other Department Review

Jim Smith
Department Director

SETTLEMENT AGREEMENT

THIS AGREEMENT made and entered into this 5th day of June, 2018, by and between PALM BEACH COUNTY, (which shall be referred to as "COUNTY"), and JOYCE ERKUS.

WHEREAS, JOYCE ERKUS sued the COUNTY in a lawsuit presently styled JOYCE ERKUS and MAIA LAWN AND LANDSCAPE SERVICES, INC., a Florida corporation v. PALM BEACH COUNTY, Case No. 502017CA008124XXXXMB AI, in the Circuit Court of Palm Beach County, Florida (the "Pending Lawsuit"), for damages arising from an incident on a walking path around the lake at the Southern Region Water Reclamation Facility in Boynton Beach, Palm Beach County, Florida;

WHEREAS, the COUNTY has denied liability and raised several affirmative defenses in the Pending Lawsuit; and

WHEREAS, the parties hereto wish to amicably resolve that portion of the Pending Lawsuit that involves the COUNTY without further litigation of the claims made and defenses raised therein.

NOW, THEREFORE, in consideration of the mutual covenants hereinafter set forth, the sufficiency of which are hereby acknowledged, the parties agree as follows:

1. The foregoing recitals are true and correct and incorporated herein by reference.
2. Within a reasonable time of full execution and receipt hereof, and subject to final administrative approval, the COUNTY shall pay to JOYCE ERKUS the amount of seventy five thousand ⁰⁰/₁₀₀ (\$75,000.00), by a check made payable to Joyce Erkus and Halpern, Santos, & Pinkert, P.A. whose Tax I.D. No. is 65-0890133.
3. Within ten (10) days of receipt of the COUNTY'S payment, Ian D. Pinkert, Esq., or other counsel for Plaintiff, shall execute and deliver to the Palm Beach County Attorney's Office (i) a Release of All Claims in the form of the attached hereto as Exhibit A, and (ii) the Stipulation and Final Order of Dismissal with Prejudice, in the form of the attached hereto as Exhibit B, which, in turn, the Palm Beach County Attorney's Office will file with the court.
4. Neither Ian D. Pinkert, Esq., nor any person at his firm shall disburse, and JOYCE ERKUS shall not accept, any proceeds from the settlement check described in paragraph 2 unless and until the Release of All Claims has been delivered to the COUNTY and the Final Order of Dismissal with Prejudice has been filed in accordance with paragraph 3 above.
5. JOYCE ERKUS acknowledges and agrees that she is responsible for the payment of any liens against this settlement and that the COUNTY shall not be responsible for any portion of said liens, subrogation claims or rights of reimbursement. JOYCE ERKUS, as well as any subrogation claims or rights of reimbursement, on behalf of herself and her officers, agents,

employees, heirs, executors, administrators and assigns, further agrees to indemnify, defend, and hold the COUNTY, its officers, agents, elected officials, employees, their heirs, executors, administrators and assigns, harmless from and against all suits, actions, proceedings, claims, demands, and damages, including attorneys fees, arising out of or related to such liens or claims of liens, subrogation claims or rights of reimbursement.

6. Each party shall bear its respective attorneys fees and costs.

7. This Settlement Agreement does not constitute an admission of liability by any party.

8. In any litigation brought to enforce the terms or remedy a violation of this Settlement Agreement, the prevailing party shall be entitled to an award of reasonable attorney's fees in addition to any other recovery.

9. JOYCE ERKUS declares and acknowledges that the terms of this Settlement Agreement have been completely read, fully understood, discussed with counsel, and voluntarily accepted as a full and final compromise of any and all claims they may have against the COUNTY arising out of or relating to the subject incident.

10. The parties have considered Medicare's interests in this settlement and have determined that an allocation for future Medicare covered expenses is not required due to the fact that Plaintiff's Claim is completely denied and the Defendant/Respondent has not accepted liability for any of Plaintiff's claims for payment to date.

11. Plaintiff, Plaintiff's counsel and the Law Firm of the Plaintiff's counsel agree to hold harmless and indemnify the Defendant/Respondent for any pre-settlement Medicare conditional payments reimbursement demanded or required by the Medicare Secondary Payer Recovery Contractor (MSPRC), CMS, collection agency or any other governmental entity, currently known, discovered or demanded in the future.

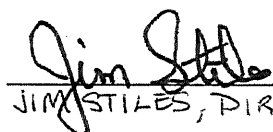
12. This Settlement Agreement shall be binding on the parties hereto, their assigns, transferees, heirs, and other successors in interest.


13. The parties represent that no claim that has been, or could have been, raised in the Pending Lawsuit, and no claim to which this Settlement Agreement applies, has been assigned or otherwise transferred to any other person or entity not a party hereto.


JOYCE ERKUS v. PALM BEACH COUNTY Settlement Agreement
Case No. 502017CA008124XXXXMB AI

IN WITNESS WHEREOF, the parties have caused this Settlement Agreement to be executed as of the date first set forth above.


Plaintiff, JOYCE ERKUS

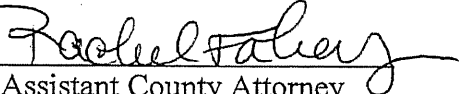

JIM STILES, DIRECTOR OF WATER UTILITIES


Ian D. Pinkert, Esq.
Counsel for Joyce Erkus


Rachel M. Fahey, Esq.
Counsel for PALM BEACH COUNTY

IN WITNESS WHEREOF, the parties have caused this Settlement Agreement to be executed as of the date first set forth above in the case of JOYCE ERKUS v. PALM BEACH COUNTY, Case No. 502017CA008124XXXXMB AI.

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

By: 
Assistant County Attorney

ATTEST:
Sharon R. Bock, Clerk & Comptroller

PALM BEACH COUNTY BOARD
OF COUNTY COMMISSIONERS

By: _____
Deputy Clerk

By: _____
Mayor Melissa McKinlay

RELEASE OF ALL CLAIMS

KNOW ALL MEN BY THESE PRESENTS:

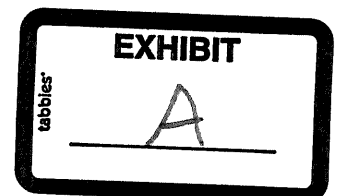
That the undersigned, Joyce Erkus, being of lawful age, for the sole consideration of ~~Seventy Five Thousand~~ ^{00/100} (\$ 15,000.00), to the undersigned in hand paid, the receipt and sufficiency whereof is hereby acknowledged, does hereby and for her executors, administrators, successors and assigns, release, acquit and forever discharge **PALM BEACH COUNTY BOARD OF COUNTY COMMISSIONERS**, (hereinafter "COUNTY"), and their officers, agents, employees, heirs, executors, administrators, successors and assigns, none of whom admit any liability to the undersigned, but all of whom expressly deny any such liability, from any and all claims, demands, rights, damages, costs, loss of service, expenses, compensation, actions, causes of action or suits of any kind or nature whatsoever, which the undersigned may now have or which may hereafter accrue or develop, on account of or in any way growing out of any and all known and unknown, foreseen and unforeseen, bodily and personal injuries, and property damages, and any and all consequences thereof, relating to or resulting from an alleged incident that occurred on or about **February 19, 2016** in Boynton Beach, Palm Beach County, Florida.

FURTHERMORE, the undersigned agrees that each party shall bear their own costs and attorney's fees, and the undersigned shall bear sole responsibility for any and all hospital, physician, diagnostic, rehabilitation, training, maintenance, medical or pharmaceutical expenses, bills, statements, liens or subrogable interests, of any nature whatsoever (collectively "medical bills"), which are or may be outstanding and payable on the date of execution of this release, or which may be incurred and payable in the future. The undersigned further agrees to indemnify and save harmless the Releasees from any requests for payment or attempts for collection therefrom. Should legal action be instituted against the Releasees for payment or collection of the aforementioned expenses, the undersigned agree to indemnify and save harmless the Releasees for any attorney's fees, costs and/or judgments which may be entered against the Releasees with respect to the collection of the medical bills.

FURTHERMORE, the undersigned Plaintiff, Joyce Erkus agrees to hold harmless and indemnify the Defendant for any pre-settlement Medicare conditional payments and/or reimbursements demanded or required by the Medicare Secondary Payer Recovery Contractor (MSPRC), CMS, collection agencies, or any other governmental entity, currently known, discovered, or demanded in the future.

FURTHERMORE, the undersigned understands and agrees that this settlement is the compromise of a doubtful and disputed claim, and that the payment made shall not be construed as an admission of liability on the part of the Releasees, and that the Releasees deny any liability therefor and merely intend to avoid further litigation and buy their peace.

FURTHERMORE, the undersigned hereby declares and represents that any injuries sustained may be permanent and progressive and that recovery therefrom is uncertain and indefinite and in making this Release the undersigned understands and agrees that the undersigned relied wholly upon the undersigned's own judgment, belief and knowledge of the nature, extent, effect and



duration of any injuries and liability therefore, without reliance upon any statement or representation by the Releasees, or by their representatives or by any physician or surgeon employed by them.

FURTHERMORE, the undersigned states that while she hereby releases any and all claims against the Releasees, and their officers, agents, employees, heirs, executors, administrators, successors and assigns, for both past and future losses, including medical expenses, health care expenses and related expenses, the necessity for future medical treatment and expenses incurred is speculative and unknown at this time and therefore, as a result, the undersigned reserve the right to pursue and recover all future medical expenses, health care expenses and related expenses, from any person, firm, or organization who may be responsible for payment of such expenses, including any first-party health or automobile insurance coverage, but such reservation specifically does not include the Releasees.

FURTHERMORE, notwithstanding the language contained in this Release, this release shall not be construed as releasing any medical providers for potential claims which may arise based upon treatment and care rendered as a result of the accident which is the subject of this Release. Moreover, this Release shall not be construed as releasing any health insurance carrier or other insurer from medical and lost wage benefits to which the Releasor is entitled.

THE UNDERSIGNED hereby declare that the undersigned has completely read, fully understood and voluntarily accepted the foregoing Release of All Claims for the purpose of making a full and final compromise settlement and adjustment of any and all claims, disputed or otherwise, on account of the injuries and damages set forth above, and for the express purpose of precluding forever any further or additional claims against the Releasees arising out of the aforementioned incident.

THE UNDERSIGNED hereby accepts the tendered settlement draft as final payment of the consideration set forth above.

IN WITNESS HEREOF, I, Joyce Erkus, have hereunto set my hand and seal this 11th day of June, 2018.

IN THE PRESENCE OF:

Jennifer Hernandez
WITNESS SIGNATURE

Jennifer Hernandez
(PRINT WITNESS' NAME)

Joyce Erkus
JOYCE ERKUS

STATE OF FLORIDA)
) ss.
COUNTY OF PALM BEACH)

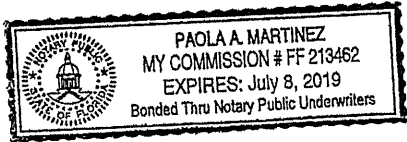
The foregoing two-page Release of All Claims was acknowledged before me, an officer duly authorized in the State and County aforesaid, to take acknowledgments, this 11th day of June, 2018, by Joyce ERLUS, who:

☐ is personally known to me; OR
☐ has produced _____,
as identification; and who

☐ did take an oath; OR
☐ did not take an oath.

and who executed the within Release of All Claims, and who acknowledged the within Release of All Claims to be freely and voluntarily executed for the purposes therein recited.

[seal]



Paola Martinez
Paola Martinez

Notary Public in and for Palm Beach County, Florida

My commission expires: 7/8/19

STATEMENT OF ATTORNEY FOR RELEASOR

I, Ian D. Pinkert, Esquire, state that I am the attorney for Plaintiff, Joyce Erkus, the above-signed Releasor; that I have explained to Plaintiff, Joyce Erkus, all the terms of this Release and the Settlement Agreement upon which it is based; and that Plaintiff, Joyce Erkus, has represented to me that she understands all the terms and their significance. Plaintiff, Joyce Erkus, has signed this Release knowingly, voluntarily and on my advice.

DATED this 11 day of June, 2018.



Ian D. Pinkert, Esq.
Florida Bar No. 84572

IN THE CIRCUIT COURT OF THE
15TH JUDICIAL CIRCUIT IN AND FOR
PALM BEACH COUNTY, FLORIDA

CASE NO.: 502017CA008124XXXXMB AI

JOYCE ERKUS,

Plaintiff,

v.

PALM BEACH COUNTY, and MAIA LAWN AND
LANDSCAPE SERVICES, INC., a Florida corporation,

Defendants.

STIPULATION FOR FINAL ORDER OF DISMISSAL WITH PREJUDICE

COMES NOW the Plaintiff, JOYCE ERKUS, by and through his attorney, joined by the Defendant, PALM BEACH COUNTY, by and through its attorney, and show unto the Court that all matters in controversy have been compromised and settled to the satisfaction of the parties. It is agreed that the action of the Plaintiff against Defendant, PALM BEACH COUNTY, be dismissed with prejudice, each party to bear its own costs and attorney's fees. The Plaintiff shall hold Defendant PALM BEACH COUNTY harmless from all subrogation claims and other liens that are or may be claimed by any party as a result of the matters giving rise to the Plaintiff's claim against Defendant, PALM BEACH COUNTY.

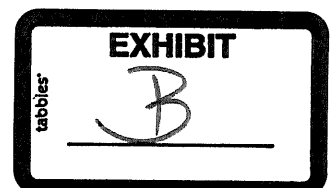
Respectfully submitted on this _____ day of _____ 2018.

Ian D. Pinkert, Esquire

Attorney for Plaintiff
Florida Bar No. 84572
Halpern Santos & Pinkert, P.A.
150 Alhambra Circle, Suite 100
Coral Gables, FL 33134
Email: ian@hsptrial.com

Rachel Fahey, Esquire

Attorney for Defendant
Florida Bar No. 105734
Palm Beach County Attorney's Office
300 North Dixie Hwy, Suite 359
West Palm Beach, FL 33401
Email: rfahey@pbcgov.org;
dfishel@pbcgov.org; aosslund@pbcgov.org



BUDGET AVAILABILITY STATEMENT
RISK MANAGEMENT

REQUEST DATE: 04/19/2018

REQUESTED BY: County Attorney

REQUESTED FOR: Joyce Erkus v. Palm Beach County

REQUESTED AMOUNT: \$75,000

AGENDA DATE: July 10, 2018

BUDGET ACCOUNT NUMBER:

FUND: 5010 DEPT: 700 UNIT: 7130 OBJ: 4511

BAS APPROVED BY: 
Brian Palacios, Fiscal Manager

DATE: 06/12/2018
