

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: March 22, 2022

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 \$90,000.00 in the personal injury action styled Maria V. Costanzo vs. Palm Beach County Board of County Commissioners, Case No. 502020CA002803XXXXMB AA.

Summary: This is a personal injury lawsuit arising from a trip and fall accident in Boca Raton. Plaintiff was walking on a Palm Beach County-owned asphalt pathway when she tripped on a 1"-deep crater in the asphalt causing her to fall forward. Plaintiff suffered hand, wrist, and arm injuries as a result of the accident and underwent medical treatment, including two surgeries. Countywide (JM).

Background and Justification (or Policy Issues): On April 13, 2017, Plaintiff, Maria V. Costanzo, a 69-year old female, was walking on an asphalt pathway along the north of Boca Lago Boulevard that is owned and maintained by the County. During the walk, Plaintiff tripped on a 1"-deep crater in the asphalt causing her to fall. Plaintiff put her left hand out to break her fall. As a result, Plaintiff suffered injuries to her left hand, wrist, and arm, including a compound fracture of her wrist. The road and bridge superintendent testified that the pathways are inspected regularly; however, despite the sworn testimony of the road and bridge superintendent, there was evidence that the condition had existed for at least 5 years prior to Plaintiff's fall. Following the incident, Plaintiff sought medical treatment for her injuries. During her post-accident treatments, Plaintiff underwent two surgeries to her left wrist, several months of physical therapy, and multiple orthopedic consultations. Plaintiff has been diagnosed with complex regional pain syndrome in her left hand and wrist due to the permanent nerve damage she sustained from the accident. Due to her injuries, Plaintiff incurred medical bills totaling \$141,952.02. Plaintiff continues to attend physical therapy sessions and experiences pain and limitations in her activities of daily life.

This full and final settlement is warranted based on the County's liability exposure and the injuries sustained by the Plaintiff. Therefore, it is recommended that the County approve the Settlement Agreement in the amount of \$90,000.00.

Attachments:

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

Recommended By: _____



Department Director

Date

Approved By: N/A

County/Deputy/Asst. County Administrator

Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2022	2023	2024	2025	2026
Capital Expenditures					
Operating Costs	90,000.00				
External Revenues					
Program Income(County)					
In-Kind Match(County)					
NET FISCAL IMPACT	90,000.00				
#ADDITIONAL FTE					
POSITIONS (CUMULATIVE)					

Is Item Included in Current Budget? Yes No

Does this item include the use of federal funds? Yes No

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 Dev. and Control Comments:

Polson 3/4/22
 OFMB 3/4

Dr. J. J. J... 3/17/22
 Contract Dev. & Control
 3-7-22 TW

B. Legal Sufficiency

[Signature]
 Assistant County Attorney

C. Other Department Review

Department Director

(THIS SUMMARY IS NOT TO BE USED AS A BASIS FOR PAYMENT.)

SETTLEMENT AGREEMENT

THIS AGREEMENT made and entered into this ___ day of _____ 2022, by and between PALM BEACH COUNTY BOARD OF COUNTY COMMISSIONERS (hereinafter referred to as the "COUNTY"), a political subdivision of the State of Florida, and MARIA V. COSTANZO (hereinafter referred to as "COSTANZO").

WHEREAS, COSTANZO sued the COUNTY in a lawsuit presently styled Maria V. Costanzo v. Palm Beach County Board of County Commissioners, Case No. 502020CA0002803XXXXMB in the Circuit Court of Palm Beach County, Florida (hereinafter referred to as "Pending Lawsuit"), for damages arising from an incident that occurred on or about April 13, 2017, at or near Boca Lago Boulevard in Boca Raton, Florida (hereinafter referred to as "Accident");

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

WHEREAS, the parties hereto wish to amicably resolve the Pending Lawsuit 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 thirty (30) days after the COUNTY receives a fully executed original of this Settlement Agreement, and subject to final administrative/Board of County Commissioners approval, the COUNTY shall pay to COSTANZO the amount of NINETY THOUSAND DOLLARS (\$90,000.00), by a check made payable to Dawson Law Firm Trust Account f/u/b/o Maria Costanzo, Tax I.D 59-2569406.
3. Within ten (10) days of receipt of the COUNTY'S payment, Joseph R. Dawson, Esq. shall deliver to the Palm Beach County Attorney's Office (i) an executed Release of All Claims in the form of the attached hereto as Exhibit A, and (ii) the executed 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. Joseph R. Dawson, Esq. shall not disburse, and COSTANZO shall not accept, any proceeds from the settlement check described in paragraph 2 above unless and until the Release of All Claims has been delivered to the COUNTY and the Final Order of Dismissal with Prejudice has been signed by the Circuit Court Judge assigned to the Pending Lawsuit.
5. COSTANZO acknowledges and agrees that she is responsible for the payment of any and all medical bills, liens, and subrogation claims concerning, pertaining, or relating to the accident and pending lawsuit that the COUNTY shall not be responsible for any portion of said

liens, including, but not limited to any such claims from, by, or related to Medicare. COSTANZO, on behalf of herself and her officers, agents, employees, heirs, executors, administrators and assigns, further agrees to indemnify, defend, and hold the COUNTY and its officers, commissioners, agents, elected officials, employees, heirs, executors, administrators and assigns, harmless from and against all suits, actions, proceedings, claims, demands, and damages, including attorney's fees, arising out of or related to such liens, claims of lien, or subrogation claims.

6. Each party shall bear its respective attorney's fees and costs.

7. This Settlement Agreement does not constitute an admission of liability by any party. Rather, the COUNTY expressly denies liability, and has entered into this Settlement Agreement in order to buy its peace.

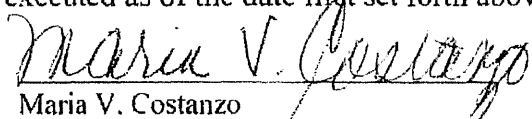
8. In any litigation brought to enforce the terms or remedy a violation of this Settlement Agreement, the prevailing party shall be entitled to an award of reasonable attorney's fees in addition to any other recovery.

9. COSTANZO 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 that he may have against the COUNTY arising out of or relating to the Accident and Pending Lawsuit.


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

11. 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.

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



Maria V. Costanzo
Plaintiff



Adam Faustini, Division Director
Palm Beach County Engineering and Public Works

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

PALM BEACH COUNTY,
a Political Subdivision of the State of Florida

By: 

Assistant County Attorney

By: _____
Mayor, Board of County Commissioners

ATTEST:
JOSEPH ABRUZZO, Clerk and Comptroller

By: _____

RELEASE OF ALL CLAIMS**KNOW ALL MEN BY THESE PRESENTS:**

That the undersigned, **MARIA V. COSTANZO**, being of lawful age, for the sole consideration of **NINETY THOUSAND AND XX/100 DOLLARS (\$90,000.00)**, 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 (together "Releasees"), 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 accident that occurred on or about April 13, 2017, at or near Boca Lago Boulevard in 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, 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 defend, 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, Maria V. Costanzo, agrees to hold harmless, defend, and indemnify the Releasees for any pre-settlement Medicare conditional payments, set asides, 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 therefore 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 declares 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 has had the benefit of an attorney with respect to the review and execution of this Release of All Claims and is executing this release on her own free will and accord.

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

IN WITNESS HEREOF, I, Maria V. Costanzo, have hereunto set my hand and seal this

23 day of Feb 2022.

IN THE PRESENCE OF:

[Signature]
WITNESS SIGNATURE
Damaris Serna
(PRINT WITNESS' NAME)

[Signature]
MARIA V. COSTANZO

STATE OF Florida)
COUNTY OF Palmer Beach) ss.

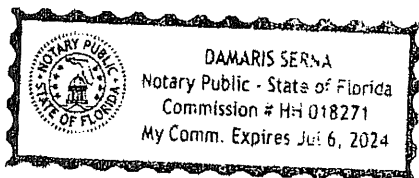
The foregoing two-page Release of All Claims was acknowledged before me, an officer duly authorized in the State and County aforesaid, to take acknowledgments, this 23 day of Feb 2022, by Maria Costanzo, in person / or virtually (circle on) who:

[] is personally known to me; OR
 has produced FL Driver License, 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]

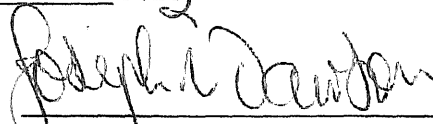


[Signature]
Damaris Serna
Notary Public in and for
Florida County, Palmer Beach
My commission expires: 7-6-24

STATEMENT OF ATTORNEY FOR RELEASOR

I, **Joseph R. Dawson, Esq.** state that I am the attorney for Plaintiff, **Maria V. Costanzo** (hereinafter, "Plaintiff"), the above-signed Releasor; that I have explained to Plaintiff all the terms of this Release and the Settlement Agreement upon which it is based; and that Plaintiff has represented to me that he understands all the terms and their significance. Plaintiff has signed this Release knowingly, voluntarily and on my advice.

DATED this 22 day of Feb 2021



Joseph R. Dawson, Esq.
Florida Bar No.: 347450
Counsel for Plaintiff
110 Southeast Sixth Street, Suite 1900
Fort Lauderdale, Florida 33301

BUDGET AVAILABILITY STATEMENT
RISK MANAGEMENT

REQUEST DATE: 3/2/2022

REQUESTED BY: County Attorney


REQUESTED FOR: Maria V. Costanzo v. Palm Beach County Board of County Commissioners

REQUESTED AMOUNT: \$90,000

AGENDA DATE: March 22, 2022

BUDGET ACCOUNT NUMBER:

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

BAS APPROVED BY: 
Brian Palacios, Fiscal Manager

DATE: 3/2/2022