

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2023	2024	2025	2026	2027
Capital Expenditures					
Operating Costs	\$100,000				
External Revenues					
Program Income(County)					
In-Kind Match(County)					
NET FISCAL IMPACT	\$100,000				
#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 Dev. and Control Comments:

ASD 5/4/23
 OFMB QA 519
 MG 5/4

Ar. J. ... 5/5/23
 Contract Dev. & Control
5/4/23

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)

Background and Justification (Continued from Page 1): On December 11, 2020, the County and the City of Boca Raton jointly petitioned the 11th Circuit for a re-hearing before all the 11th circuit appellate judges. Nearly two years later, on July 29, 2022, the 11th Circuit denied the joint petition for re-hearing, and on August 1, 2022, the 11th Circuit issued a mandate ordering the trial court to enter a preliminary injunction consistent with Plaintiffs' requested relief prohibiting Palm Beach County (and the City of Boca Raton) from enforcing their respective ordinances.

On August 23, 2022, the Palm Beach County Board of County Commissioners unanimously passed Ordinance No. 2022-020 repealing Chapter 18, Article V, Section 18-121, et seq., Palm Beach County Code, Ordinance No. 2017-046 (the challenged ordinance in this action). Plaintiffs amended their complaint to bring additional claims (including claims of conspiracy) in federal court, and the County moved to dismiss Plaintiffs' Amended Complaint. To avoid additional lengthy litigation, on February 22, 2023, the County served offers of judgment on the respective Plaintiffs for \$50,000.00 each, which the Plaintiffs accepted as to all damages on all claims by each Plaintiff. The Court retained jurisdiction to determine reasonable attorney's fees and costs to which Plaintiffs claim entitlement.

This settlement is warranted based on: a) the County's liability exposure and the injuries allegedly sustained by the Plaintiffs, including but not limited to, alleged loss of business, advertising, and prospective clients, and; b) otherwise extensive litigation which could result in a substantial increase in exposure to the County for costs (including reasonable attorney's fees) claimed by the Plaintiffs through the close of merits litigation over Plaintiffs' damages claims.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION

Case No.: 9:18-cv-80771-RLR

ROBERT W. OTTO, PH.D., LMFT,
individually ,and on behalf of his patients,
JULIE H. HAMILTON, PH.D., LMFT,
individually and on behalf of her patients,

Plaintiffs,

v.

CITY OF BOCA RATON, FLORIDA, and
COUNTY OF PALM BEACH, FLORIDA,

Defendants.

**DEFENDANT, PALM BEACH COUNTY'S
OFFER OF JUDGMENT TO PLAINTIFF, ROBERT W. OTTO**

Pursuant to Federal Rule of Civil Procedure 68, Defendant, Palm Beach County (“County”), makes the following offer of judgment (“Offer”) to Plaintiff, Robert Otto (“Otto”):

1. The County makes this Offer more than 14 days before the date set for trial.
2. The County hereby offers to allow entry of judgment against it as to Otto in the amount of fifty thousand dollars (\$50,000.00), plus the County’s pro rata share of Otto’s costs (including reasonable statutory attorney’s fees when deemed to be a component of costs such as under 42 U.S.C. § 1988, as determined by the Court) accrued to date for all of Otto’s claims for relief.
3. The County’s Offer is unconditional and is made to fully and finally resolve Otto’s claims against the County in this action, including costs and attorney’s fees.

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4. In accordance with Rule 68, this Offer is not being filed with the Court at this time, but will be filed at such time as the Offer is accepted or if necessary to enforce the provisions of Rule 68.

5. In accordance with Rule 68, the County's Offer of Judgment will remain open and irrevocable for 14 days after being served.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via Electronic Mail on February 22, 2023 on all counsel of record on the attached Service List.

/s/ Marianna Sarkisyan
Marianna Sarkisyan, Esquire
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CASE NO.: 9:18-CV-80771-RLR

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ATTACHMENT 2

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION

Case No.: 9:18-cv-80771-RLR

ROBERT W. OTTO, PH.D., LMFT,
individually ,and on behalf of his patients,
JULIE H. HAMILTON, PH.D., LMFT,
individually and on behalf of her patients,

Plaintiffs,

v.

CITY OF BOCA RATON, FLORIDA, and
COUNTY OF PALM BEACH, FLORIDA,

Defendants.

**DEFENDANT, PALM BEACH COUNTY'S
OFFER OF JUDGMENT TO PLAINTIFF, JULIE H. HAMILTON**

Pursuant to Federal Rule of Civil Procedure 68, Defendant, Palm Beach County ("County"), makes the following offer of judgment ("Offer") to Plaintiff, Julie H. Hamilton ("Hamilton"):

1. The County makes this Offer more than 14 days before the date set for trial.
2. The County hereby offers to allow entry of judgment against it as to Hamilton in the amount of fifty-thousand dollars (\$50,000.00), plus the County's pro rata share of Hamilton's costs (including reasonable statutory attorney's fees when deemed to be a component of costs such as under 42 U.S.C. § 1988, as determined by the Court) accrued to date for all of Hamilton's claims for relief.
3. The County's Offer is unconditional and is made to fully and finally resolve Hamilton's claims against the County in this action, including costs and attorney's fees.

This space intentionally left blank

4. In accordance with Rule 68, this Offer is not being filed with the Court at this time, but will be filed at such time as the Offer is accepted or if necessary to enforce the provisions of Rule 68.

5. In accordance with Rule 68, the County's Offer of Judgment will remain open and irrevocable for 14 days after being served.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via Electronic Mail on February 22, 2023 on all counsel of record on the attached Service List.

/s/ Marianna Sarkisyan
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ATTACHMENT 3

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 9:18-CV-80771-ROSENBERG/REINHART

ROBERT W. OTTO, et al.,

Plaintiffs,

v.

CITY OF BOCA RATON, FLA., and
COUNTY OF PALM BEACH, FLA.,

Defendants.

**PLAINTIFFS' NOTICE OF ACCEPTANCE OF THE OFFERS OF JUDGMENT OF
DEFENDANT COUNTY OF PALM BEACH, FLORIDA
AND PLAINTIFFS' REQUEST FOR CLERK'S ENTRY OF FINAL JUDGMENT**

Pursuant to Fed. R. Civ. P. 68(a), Plaintiff, Robert W. Otto ("Otto") hereby accepts the Offer of Judgment served upon him by Defendant, County of Palm Beach, Florida ("County"), which is attached hereto as **Exhibit A**, and requests the Clerk to enter Judgment against the County as required by Rule 68(a).

Pursuant to Fed. R. Civ. P. 68(a), Plaintiff, Julie H. Hamilton ("Hamilton") hereby accepts the Offer of Judgment served upon her by the County, which is attached hereto as **Exhibit B**, and requests the Clerk to enter Judgment against the County as required by Rule 68(a).

The foregoing Offers of Judgment resolve the County's liability for Plaintiffs' costs and attorney's fees (Exh. A at ¶ 2; Exh. B at ¶ 2), the amount of which shall be established in separate proceedings following entry of final judgment in this action.

Because Plaintiffs have now accepted offers of judgment from all Defendants (*see also* dkt. 196), there are no longer any substantive claims pending against any party (other than Plaintiffs' forthcoming motion for fees and costs, to be filed after Judgment in accordance with Local Rule 7.3). Accordingly, the Court and/or Clerk is requested to enter Final Judgment in favor of Plaintiffs, and against Defendants, on each of Plaintiffs' claims, pursuant to the Offers of Judgment accepted by Plaintiffs and Fed. R. Civ. P. 54.

Respectfully submitted,

Dated: March 3, 2023

/s/ Horatio G. Mihet
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Horatio G. Mihet (FL Bar 026581)
Roger K. Gannam (FL Bar 240450)
LIBERTY COUNSEL
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Phone: (407) 875-1776
Email: court@lc.org

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on March 3, 2023, I caused a true and correct copy of the foregoing to be filed electronically with this Court. Service will be effectuated on all counsel of record via this Court's ECF/electronic notification system.

/s/ Horatio G. Mihet
Horatio G. Mihet

Attorney for Plaintiffs

ATTACHMENT 4

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 18-CV-80771-ROSENBERG/REINHART

**ROBERT W. OTTO and JULIE H.
HAMILTON,**

Plaintiffs,

v.

**CITY OF BOCA RATON, FLA., and
COUNTY OF PALM BEACH, FLA.,**

Defendants.

FINAL JUDGMENT

Plaintiffs ROBERT OTTO and JULIE HAMILTON settled their claims against Defendants CITY OF BOCA RATON, FLORIDA and COUNTY OF PALM BEACH, FLORIDA, pursuant to Fed. R. Civ. P. 68, through accepted offers of judgment. [DE 196, 203.] The Court accordingly enters this Final Judgment in favor of Plaintiffs ROBERT OTTO and JULIE HAMILTON and against Defendants CITY OF BOCA RATON, FLORIDA and COUNTY OF PALM BEACH, FLORIDA, on all of Plaintiffs' claims for relief, and ORDERS and ADJUDGES as follows:

1) Defendant CITY OF BOCA RATON, FLORIDA shall pay Plaintiff ROBERT OTTO the sum of \$50,000.00 (fifty thousand dollars and no cents), as and for damages on all of his claims for relief;

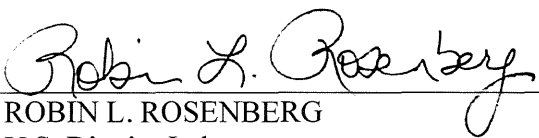
2) Defendant CITY OF BOCA RATON, FLORIDA shall pay Plaintiff JULIE HAMILTON the sum of \$25,000.00 (twenty-five thousand dollars and no cents), as and for damages on all of her claims for relief;

3) Defendant COUNTY OF PALM BEACH, FLORIDA shall pay Plaintiff ROBERT OTTO the sum of \$50,000.00 (fifty thousand dollars and no cents), as and for damages on all of his claims for relief;

4) Defendant COUNTY OF PALM BEACH, FLORIDA shall pay Plaintiff JULIE HAMILTON the sum of \$50,000.00 (fifty thousand dollars and no cents), as and for damages on all of her claims for relief; and

5) The Court retains jurisdiction to determine, in subsequent proceedings, attorney's fees and costs pursuant to Local Rule 7.3.

DONE AND ORDERED in West Palm Beach, Florida, this 6th day of April, 2023.


ROBIN L. ROSENBERG
U.S. District Judge

Copies provided to counsel of record.

ATTACHMENT 5

BUDGET AVAILABILITY STATEMENT RISK MANAGEMENT

REQUEST DATE: 5/1/2023

REQUESTED BY: County Attorney

REQUESTED FOR: Robert W. Otto and Julie H. Hamilton v. City of Boca Raton, Fla. and Palm Beach County

REQUESTED AMOUNT: \$100,000.00

AGENDA DATE: May 16, 2023

BUDGET ACCOUNT NUMBER:

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

BAS APPROVED BY: _____



Brian Palacios, Fiscal Manager

DATE: 5/1/2023