

**BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY**

ADD ON

Meeting Date: March 19, 2008

Division: COUNTY ATTORNEY

Bulk Item: Yes XX No

Staff Contact Person: Bob Shillinger, x3470

AGENDA ITEM WORDING: Approval of settlement agreement in the matter of South Florida Employment and Training Consortium v. Agency for Workforce Innovation, DOAH case number 06-4333 and payment of \$22,988.57 to resolve that dispute.

ITEM BACKGROUND: The County, along with several other South Florida local governments, entered into an agreement to create the South Florida Employment and Training Consortium (SFETC) in 2004. Under the agreement, the local government entities agreed to contribute a pro-rata share to resolve any liabilities that SFETC incurred for disallowed costs. In 2006, the Agency for Workforce Innovation disallowed costs totaling \$651,282.00 and demanded payment by the member entities for that amount. After the SFETC and its members provided additional documentation, AWI reduced the amount it was seeking to \$343,688.00. Monroe County's portion of that debt is \$22,988.57. Fortunately, over \$300,000.00 has been collected from providers who failed to provide sufficient documentation of their services. That money is being held in a trust fund by the Miami-Dade Finance Department. If all five local governments execute the agreement and pay their respective pro-rata shares, that money will be redistributed to the consortium members at their respective pro-rata rates which would bring approximately \$20,000.00 back to Monroe County.

This item is being added on after the deadline because there is a hearing scheduled before DOAH on April 1st and 2nd and this agreement was finalized after the agenda deadline. If this agreement is not executed by all five entities, it is possible but not probable that the hearing will be postponed. Once this matter goes to hearing, the proposed deal is likely off the table and each local government entity, including Monroe County, has an increased exposure for costs.

The Director of Community Services joins in the recommendation of legal staff.

PREVIOUS RELEVANT BOCC ACTION: Board agreed to enter into consortium in 2004.

CONTRACT/AGREEMENT CHANGES: n/a

STAFF RECOMMENDATIONS: Approval.

TOTAL COST: \$343,688.00. **BUDGETED:** Yes No xx

COST TO COUNTY: \$22,988.57 **SOURCE OF FUNDS:** *Ad valorem*

REVENUE PRODUCING: Yes No x **AMOUNT PER MONTH** **Year**

APPROVED BY: County Atty OMB/Purchasing Risk Management

DOCUMENTATION: Included Not Required

DISPOSITION: **AGENDA ITEM #**

SETTLEMENT AGREEMENT

I. PARTIES

This Settlement Agreement ("Agreement") is entered into by, between, and among Miami-Dade County, Monroe County, the City of Miami, the City of Hialeah, and the City of Miami Beach, former member jurisdictions of the South Florida Employment and Training Consortium ("SFETC") and the State of Florida Agency for Workforce Innovation ("the Agency").

II. PREAMBLE

A. WHEREAS, Miami-Dade County, Monroe County, the City of Miami, the City of Hialeah, and the City of Miami Beach entered into a Consortium Agreement effective July 1, 2004 and expiring on June 30, 2006; and

B. WHEREAS, the aforesaid Consortium Agreement created the South Florida Employment and Training Consortium ("SFETC"); and

C. WHEREAS, the Chief Elected Officials of the aforesaid former member jurisdictions of the SFETC served as the Chief Elected Officials for Region 23 of the State of Florida pursuant to the federal Workforce Investment Act of 1998 and state law; and

D. WHEREAS, Paragraph 11 of the aforesaid Consortium Agreement states:

11. Each member jurisdiction of the Consortium agrees to promptly contribute to any SFETC liability incurred under this Agreement as follows:
 - a. No liability shall be paid by any Consortium member or by the SFETC unless ordered by a court of competent jurisdiction or other superior state or federal government entity or unless otherwise agreed by affirmative vote of the SFETC Board. The majority vote necessary to approve payment of any financial claim or financial liability shall include the vote of either the City of Miami or Miami-Dade County to be effective.
 - b. Costs and other expenses disallowed by the state or federal government or by the SFETC/SFW Boards with respect to contracts between the SFETC/SFW Boards and an individual Consortium member jurisdiction for the provision of workforce services shall be paid by

and shall be the financial liability solely of the same individual Consortium member jurisdiction.

- c. Costs and other expenses disallowed with respect to contracts between SFETC/SFW Boards and any service providers or caused by SFW staff errors shall be paid by and shall be the financial liability of:

Miami-Dade County	42.2%
Miami, City of	33.3%
Hialeah, City of	11.1%
Miami Beach, City of	6.7%
Monroe County	<u>6.7%</u>
TOTAL	100%

; and

E. WHEREAS, the Agency, a superior state governmental entity, sent a Management Decision to the South Florida Workforce Board dated September 27, 2006, pertaining to an audit of federal funds awarded through the Agency for the Year Ended June 30, 2005, which states in pertinent part: "AWI has established a debt for the disallowed costs associated with Finding CF 2005-6 in the amount of \$651,282. This debt must be repaid to AWI using a non-Federal funding source. We request that this payment is made by December 31, 2006."; and

F. WHEREAS, Finding CF 2005-6 found unjustified prepaid transportation costs in the amount of \$651,282.00 for three programs: U.S. Department of Labor, passed through the Agency, WIA Cluster; U.S. Department of Health and Human Services, passed through the Agency, Temporary Assistance for Needy Families; U.S. Department of Health and Human Services, passed through the Florida Department of Children and Families, Refugee and Entrant Assistance Program; and

G. WHEREAS, the Agency determined that under OMB Circular A-133 Allowable Costs/Cost Principles, costs must be documented in accordance with OMB Circular A-102 Common Rule for State, Local, and Indian Tribal Governments to a point where costs can be determined to be allowable or not; and

H. WHEREAS, Section 29 U.S.C.A. 2832(3)(B)(i)(I) provides that the Chief Elected Official(s) shall serve as the local grant recipient and shall be liable for any misuse of the federal grant funds; and

I. WHEREAS, 20 CFR Section 667.705 provides that the grant recipient is responsible for all federal funds under its grant(s) and that the political jurisdiction(s) of the Chief Elected Official(s) is liable for any misuse of the grant funds allocated to the local area; and

J. WHEREAS, the aforesaid former member jurisdictions of the SFETC have provided to the Agency additional documentation related to the disallowed costs, and the Agency has reviewed this documentation and determined that the aforesaid former member jurisdictions of the SFETC have justified \$307,594.00 of the disallowed costs.

III. TERMS AND CONDITIONS

NOW, THEREFORE, in consideration of mutual promises, covenants, and obligations set forth below, and for good and valuable consideration as stated herein, the parties agree as follows:

1. The aforesaid former member jurisdictions of the SFETC agree to repay the amount of \$343,688.00 in disallowed costs to the Agency, from a non-federal funding source within thirty (30) days from the date of execution of this Settlement Agreement by all parties. Along with the payment, the aforesaid former member jurisdictions of the SFETC shall provide a schedule, which sets forth the grant, grant amount, and grant year for the repayment costs of \$343,688.00.

a. In accordance with Paragraph 11.b. of the Consortium Agreement, the City of Hialeah shall pay the Agency For Workforce Innovation the sum of \$575.00 from a non-federal funding source not later than thirty (30) days from the date of execution of this Settlement Agreement by all parties.

b. In accordance with Paragraph 11.c. of the Consortium Agreement, Miami-Dade County shall pay the Agency For Workforce Innovation the sum of \$144,793.68 (derived by subtracting \$575.00 from \$343,688.00 and multiplying the resulting sum of \$343,113.00 by 42.2%) from a non-federal funding source not later than thirty (30) days from the date of execution of this Settlement Agreement by all parties.

c. In accordance with Paragraph 11.c. of the Consortium Agreement, the City of Hialeah shall pay the Agency For Workforce Innovation the sum of \$38,085.54 (derived by subtracting \$575.00 from \$343,688.00 and multiplying the resulting sum of \$343,113.00 by 11.1%) from a non-federal funding source not later than thirty (30) days from the date of execution of this Settlement Agreement by all parties.

d. In accordance with Paragraph 11.c. of the Consortium Agreement, the City of Miami shall pay the Agency For Workforce Innovation the sum of \$114,256.62 (derived by subtracting \$575.00 from \$343,688.00 and multiplying the resulting sum of \$343,113.00 by 33.3%) from a non-federal funding source not later than thirty (30) days from the date of execution of this Settlement Agreement by all parties.

e. In accordance with Paragraph 11.c. of the Consortium Agreement, Monroe County shall pay the Agency For Workforce Innovation the sum of \$22,988.57 (derived by subtracting \$575.00 from \$343,688.00 and multiplying the resulting sum of \$343,113.00 by 6.7%) from a non-federal funding source not later than thirty (30) days from the date of execution of this Settlement Agreement by all parties.

f. In accordance with Paragraph 11.c. of the Consortium Agreement, the City of Miami Beach shall pay the Agency For Workforce Innovation the sum of \$22,988.57 (derived by subtracting \$575.00 from \$343,688.00 and multiplying the resulting sum of \$343,113.00 by 6.7%) from a non-federal funding source not later than thirty (30) days from the date of execution of this Settlement Agreement by all parties.

2. The aforesaid former member jurisdictions of the SFETC and the Agency acknowledge hereby that the U.S. Department of Labor and the U.S. Department of Health and Human Services have the authority to demand repayment of misused federal funds from the recipients of those funds. The aforesaid former member jurisdictions of the SFETC agree that if either the U.S. Department of Labor or the U.S. Department of Health and Human Services requires either the Agency or the aforesaid former member jurisdictions of the SFETC to repay federal funds related to Final Management Decision Finding CF 2005-6, the aforesaid former member jurisdictions of the SFETC shall fully indemnify the Agency for the entire amount of such a repayment, to wit, the balance of \$307,594.00.

3. The parties also acknowledge that U.S. Department of Labor or the U.S. Department of Health and Human Services may require the repayment of prepaid transportation costs in addition to the amount that is the subject of this Settlement Agreement. If either the U.S. Department of Labor or the U.S. Department of Health and Human Services requires either the Agency or the aforesaid former member jurisdictions of the SFETC to repay these federal funds, the aforesaid former member jurisdictions of the SFETC will indemnify the Agency for any disallowed costs attributable to SFETC.

4. Upon execution of this Settlement Agreement by all parties, the parties shall file a Joint Notice of Settlement and Voluntary Dismissal of DOAH Case No. 06-4333.

5. The parties hereto stipulate and agree that this document represents the entire agreement by, between, and among them and that the provisions contained herein may not be changed or altered without the express written consent of all of the parties.

6. All of the parties hereto participated in the preparation of this stipulation and Settlement Agreement, and in the process of preparation thereof, each and all of the parties acknowledge hereby that each party was fully and adequately represented by its own respective legal counsel and has received legal advice from its own respective legal counsel.

7. In the event of any litigation arising out of this Settlement Agreement, this Settlement Agreement shall not be construed in favor of or against any party by reason of its process of preparation.

8. All parties to this Settlement Agreement shall bear their own respective legal costs and attorney's fees, if any, with respect to the preparation and execution of this Settlement Agreement and DOAH Case No. 06-4333.

9. This Settlement Agreement shall be effective on the date of signature of the last signatory to this Settlement Agreement ("Effective Date"), to wit, the date that all of the

parties hereto have executed this Settlement Agreement. Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Settlement Agreement. This Settlement Agreement shall be signed in counter-part originals by each and all of the parties hereto and each such counter-part original shall be deemed an original for all purposes. Each such counter-part original of each and all of the aforesaid former members of the SFETC shall be executed by the duly authorized respective Chief Elected Official of the aforesaid former member jurisdictions of the SFETC.

IN WITNESS HEREOF, THE CHIEF ELECTED OFFICIALS AND THE AGENCY HAVE EXECUTED THIS AGREEMENT:

FORMER MEMBER JURISDICTIONS OF THE SOUTH FLORIDA TRAINING AND EMPLOYMENT CONSORTIUM

Miami-Dade County

DATED: _____ BY: _____
Mayor
Miami-Dade County
Approved as to form and legal sufficiency by
County Attorney _____

Monroe County

DATED: _____ BY: _____
Mayor
Monroe County
Approved as to form and legal sufficiency by
County Attorney [Signature] 3/12/08

City of Miami

DATED: _____ BY: _____
Mayor
City of Miami
Approved as to form and legal sufficiency by
City Attorney _____

City of Hialeah

DATED: _____ BY: _____
Mayor
City of Hialeah
Approved as to form and legal sufficiency by
City Attorney _____

City of Miami Beach

DATED: _____ BY: _____
Mayor
City of Miami Beach
Approved as to form and legal sufficiency by
City Attorney _____

AGENCY FOR WORKFORCE INNOVATION

DATED: _____

BY: _____
BARBARA K. GRIFFIN, DEPUTY DIRECTOR
Agency for Workforce Innovation

Approved as to form and legal sufficiency.

KIMBERLY SISCO WARD, DEPUTY GENERAL COUNSEL

From: Tell, Peter (CAO) [mailto:TELLP@miamidade.gov]

Sent: Tuesday, March 11, 2008 1:25 PM

To: Curry, Cynthia W. (CEO); darosemond@ci.miami.fl.us; Barsell-Debbie; Marinelli, Frederick H. [HF]; Inguanzo, Ramiro

Cc: Rick Beasley; Ward, Kimberly S.; KRMendez@miamigov.com; Shillinger-Bob; wgrodnick@hialeahfl.gov; yarilysam@miamibeachfl.gov; YamilexMorales@miamibeachfl.gov; steverothstein@miamibeachfl.gov; Gustavo Alonso; Christine Garcia; Padron, Blanca (FIN)

Subject: Settlement Agreement -DOAH Case No. 06-4333- Unjustified Prepaid Transportation Costs-SFETC Liability to State of Florida AWI

Attached please find a Settlement Agreement for execution by the respective Mayors of each and all of the five former member jurisdictions of the South Florida Employment and Training Consortium. This Settlement Agreement has been approved by me for form and legal sufficiency for my client, Miami-Dade County, and has been approved by Kimberly Ward, Deputy General Counsel, State of Florida AWI. Please transmit this Settlement Agreement to your respective Mayors for execution as soon as possible. The administrative hearing in the above-styled DOAH Hearing has been continued only until April 1, 2, 2008. Therefore, time is of the essence. I have included on this e mail distribution the respective legal counsel of Monroe County, City of Miami, City of Miami Beach and City of Hialeah so that you can obtain independent legal advice since the Miami-Dade County Attorneys Office only represents Miami-Dade County and not the other four former member jurisdictions of the South Florida Employment and Training Consortium.

- 1) If you have questions regarding the financial aspects of this Settlement Agreement please call Rick Beasley, Executive Director, South Florida Workforce Investment Board at 305-594-7615.
- 2) If there are legal questions from respective legal counsel please contact me at 305-375-1024.
- 3) Since it is extremely unlikely that I will be able to get another Agreed Continuance of the DOAH hearing above referenced I will need some documentation (e mail explanation) from you if you are not going to be able to process this Settlement Agreement and obtain the execution of same by your respective Mayor by the last week of March. With such an e mail explanation I may be able to convince the State AWI to agree to another continuance until the first week in May for the DOAH hearing. (The pendency of the DOAH proceeding automatically stays the required payment) As I have indicated in prior e mails, if the matter is not settled as proposed herein and appears to be going to a DOAH hearing on April 1, 2, 2008, then I will be filing a voluntary dismissal on behalf of Miami-Dade County in the DOAH hearing prior to such hearing dates to protect my client, Miami-Dade County, from having to pay costs and attorneys fees to State AWI. The other four former member jurisdictions by and through their respective attorneys will have to deal with that DOAH hearing and the potential liability for costs and attorneys fees for their respective jurisdictions if the Settlement Agreement is not consummated or file voluntary dismissals on behalf of their respective jurisdictions prior to April 1,2, 2008. Please note that payment to the State AWI must be from a non-federal funding source.
- 4) As of March 3, 2008, Miami-Dade County Finance Department Trust Fund 643TSF/643001 has \$305,077.50 in monies recovered and collected by Miami-Dade County staff (Rick Beasley and his able staff) from the numerous service providers whose prepaid transportation costs remained unjustified. As you will note from the Settlement Agreement Hialeah was a service provider and \$575.00 remained unjustified. Interest earned on the sum of \$305,077.50 through and including March 3, 2008 was \$7433.40. After this Settlement Agreement is executed by all of the Mayors and after all of the monies are paid to the State AWI to the satisfaction of the State AWI, I will be sending you a second proposed agreement to release and disburse the aforesaid Trust Fund monies in accordance with the same percentages of liability set forth in the Consortium Agreement. Upon execution by the five Mayors of this second subsequent agreement I will instruct the Miami-Dade County Finance Department to disburse the

monies accordingly. It is not anticipated that any more monies will in all likelihood be collected or recovered. The interest aforementioned is considered program income by State AWI pursuant to federal regulations and upon disbursal of the res of the Trust Fund to the five former member jurisdictions as above referenced the interest accrued to date will be transmitted to State AWI minus the \$100 administrative cost expense to be paid to Miami-Dade County Finance Department per federal regulations.

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