

Agenda Item #: 3.D.1

PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS  
AGENDA ITEM SUMMARY

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Meeting Date: October 6, 2015

☒ Consent      ☐ Regular

☐ Public Hearing

Department

Submitted By:    County Attorney

Submitted For:    Environmental Resources Management Department

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**I. EXECUTIVE BRIEF**

**Motion and Title:**    **Staff recommends motion to approve:**    A) a Settlement Agreement with Holy Trinity Episcopal Church of West Palm Beach, Inc., Holy Trinity Properties, Inc., and the City of West Palm Beach.

**Summary:** Holy Trinity Episcopal Church of West Palm Beach, Inc., and Holy Trinity Properties, Inc., (hereinafter collectively referred to as "Holy Trinity") sued Palm Beach County ("the County") and the City of West Palm Beach ("the City") in a lawsuit styled *Holy Trinity Episcopal Church of West Palm Beach, Inc., et. al. v. Palm Beach County, et. al.*, Case No.: 50 2013 CA 012016 XXXX MB AI (Fifteenth Circuit Court) ("the Lawsuit"), alleging that the County inversely condemned Holy Trinity's riparian rights by installing the South Cove restoration project in the waters off of Flagler Boulevard in downtown West Palm Beach. The parties attended mediation on August 24, 2015, and agreed to a proposed Settlement Agreement, contingent upon the approval of the Board of County Commissioners, the City's Commission, and Holy Trinity's Vestry and Diocese of South Florida Property and Loan Committee. Under the proposed Settlement Agreement, Holy Trinity would acknowledge the County's right to attach its boardwalk to the City's seawall, would execute a release on behalf of the City and the County, and would dismiss its pending lawsuit with prejudice, after the following actions occur: 1) the County applies for and obtains on behalf of Holy Trinity a conceptual dock permit from the Army Corps of Engineers and the Florida Department of Environmental Protection for a forty-slip boat dock, accommodating at least ten (10) slips for forty-foot boats and 30 slips for boats ranging in size from twenty-five feet to forty feet; 2) the City reviews and approves the dock permit application, including review for compliance with zoning and building regulations; 3) the County pays Holy Trinity one hundred sixty-thousand dollars (\$160,000) and 4) the City pays Holy Trinity sixty-five thousand dollars (\$65,000).

District 7 (ATP)

(continued on page 3)

**Attachments:**

1.    Settlement Agreement

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Recommended by: \_\_\_\_\_

County Attorney

Date

Approved by: \_\_\_\_\_

Environmental Resources Management

Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2016	2017	2018	2019	2020
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	160,000	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	160,000	_____	_____	_____	_____

# ADDITIONAL FTE

POSITIONS (Cumulative)\_\_\_\_\_

Is Item Included in Current Budget? Yes\_\_\_\_\_ No X

Budget Account No.: Fund\_\_\_\_\_ Department\_\_\_\_\_ Unit\_\_\_\_\_ Object\_\_\_\_\_

Reporting Category\_\_\_\_\_

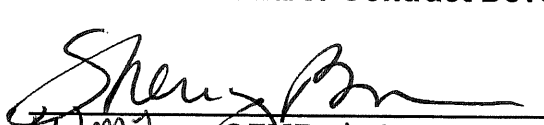
B. Recommended Sources of Funds/Summary of Fiscal Impact:

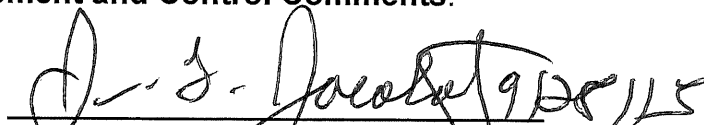
Sufficient funding exists in the Vessel Registration Fee Trust Fund – Non-Specific (1225) reserves. The required resolution and budget transfer will be presented to the board prior to payment.

C. Departmental Fiscal Review: \_\_\_\_\_

III. REVIEW COMMENTS

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

  
SP MJ  
9/11/11  
OFMB 9/11/11

  
Contract Development and Control  
BWheeler 9/28/15

B. Legal Sufficiency:

  
Senior 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)

Holy Trinity Episcopal Church of West Palm Beach, Inc., and Holy Trinity Properties, Inc., (hereinafter collectively referred to as "Holy Trinity") sued Palm Beach County ("the County") and the City of West Palm Beach ("the City") in a lawsuit styled *Holy Trinity Episcopal Church of West Palm Beach, Inc., et. al. v. Palm Beach County, et. al.*, Case No.: 50 2013 CA 012016 XXXX MB AI (Fifteenth Circuit Court)("the Lawsuit"), alleging that the County inversely condemned Holy Trinity's riparian rights by installing the South Cove restoration project in the waters off of Flagler Boulevard in downtown West Palm Beach.

Holy Trinity also alleges that the City breached a contract between the church and the City wherein the City agreed to protect the riparian rights of the church from impairment. Holy Trinity claims that the restoration project impairs its right to an unobstructed view of the water, and impairs Holy Trinity's right to build a dock within its area of riparian interest. Holy Trinity claims that it has suffered \$2.4 million in damages as a result of the alleged impairment of its riparian rights. Holy Trinity also alleges that it had incurred approximately one hundred sixty thousand dollars (\$160,000) in expert and attorney's fees and costs.

The parties attended mediation on August 24, 2015, and agreed to a proposed Settlement Agreement, contingent upon the approval of the Board of County Commissioners, the City's Commission, and Holy Trinity's Vestry and Diocese of South Florida Property and Loan Committee. Under the proposed Settlement Agreement, Holy Trinity would acknowledge the County's right to attach its boardwalk to the City's seawall, would execute a release on behalf of the City and the County, and would dismiss its pending lawsuit with prejudice. In exchange, the County would apply for and obtain at its own expense on behalf of Holy Trinity a conceptual dock permit from the Army Corps of Engineers and the Florida Department of Environmental Protection or the South Florida Water Management District, as applicable. The conceptual dock permit would allow for at least ten slips that would accommodate forty-foot boats and at least 30 additional slips for boats ranging in size from twenty-five feet to forty feet. The City agreed to support the conceptual dock permit application, once the application has been reviewed for compliance with zoning and building regulations, and agreed to allow connection of the dock to its seawall. The County would also pay Holy Trinity one hundred sixty thousand dollars (\$160,000), and the City would pay Holy Trinity sixty-five thousand dollars (\$65,000), for a total settlement amount of two hundred twenty-five thousand dollars (\$225,000). Staff recommends approval of the Settlement Agreement.

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA  
CIRCUIT CIVIL DIVISION

HOLY TRINITY EPISCOPAL CHURCH  
OF WEST PALM BEACH, INC., et al.,  
Plaintiffs,

v.

Case No.: 502013CA012016XXXXMB

PALM BEACH COUNTY, a political subdivision  
of the State of Florida, and CITY OF WEST  
PALM BEACH, a Florida municipal corporation.

Defendants.

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**MEDIATED SETTLEMENT AGREEMENT**

As a result of a Mediation Conference held on August 24, 2015, the parties reached the following Settlement Agreement:

1. Defendants, Palm Beach County ("the County") and the City of West Palm Beach ("the City"), within thirty days of the satisfaction of the condition(s) contained in this Agreement, will pay to Plaintiffs, Holy Trinity Episcopal Church of West Palm Beach, Inc., and Holy Trinity Properties, Inc. ("the Church"), the cumulative sum of \$225,000.00 in full settlement and satisfaction of all claims for compensation in this case, including any and all attorney's fees and expert witness costs. \$160,000 of the \$225,000.00 payment will be paid by the County, and \$65,000 will be paid by the City.

2. This Agreement is conditioned upon approval by the Board of County Commissioners of Palm Beach County, the City Commission of the City of West Palm Beach and the Church's Vestry and Diocese of Southeast Florida Property and Loan Committee. Each party will place the agreement for consideration on the agendas of their respective Boards within sixty days of the date of this Agreement.

3. This Agreement is conditioned upon the County obtaining a conceptual dock permit on behalf of the Church, at the County's sole expense, from the Army Corps of Engineers and the State of Florida Department of Environmental Protection or South Florida Water Management District, as appropriate, for forty (40) boat slips, ten (10) of which will be for boats that are forty (40) feet in length and the rest being for boats that range between twenty-five (25) to forty (40) feet in length. The County shall prepare the conceptual dock permit application within ninety days of the effective date of this Agreement. The Church shall cooperate with the conceptual dock permit application including, but not limited to, serving as a co-applicant, if necessary. This Agreement is further conditioned upon the City cooperating with the conceptual dock permit

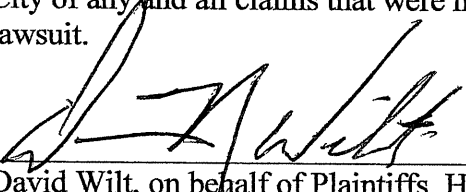
application, as necessary, including but not limited to, review of the conceptual dock permit application for compliance with City zoning and building regulations, and confirming compliance of same prior to the County submitting the application .

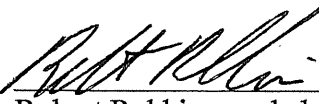
4. The County will not expand the County's South Cove Project.


5. Upon receipt of the payment provided for in Paragraph 1, the Church will confirm in writing the County's entitlement to connect the County's boardwalk to the City's seawall. Upon the fulfillment of Paragraph 3, the County shall confirm in writing its agreement to the Church's connection of its dock to the City's seawall. The City agrees that it shall allow the connection of a properly permitted dock to its seawall, subject to appropriate zoning and building review, as reflected in Paragraph 3.

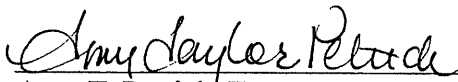
6. The effective date of this Agreement shall be the date the last party has approved the Agreement, consistent with Paragraph 2 above.

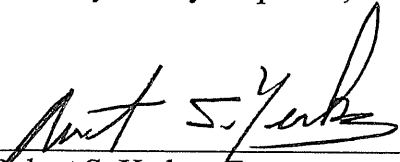
7. This Agreement and Addendum, if any, dated August 24, 2015, contain all of the agreements of the parties. Upon payment as provided for in Paragraph 1, above, the Church shall cause to be executed a General Release in favor of the County and the City of any and all claims that were made or could have been made in the above-styled lawsuit.

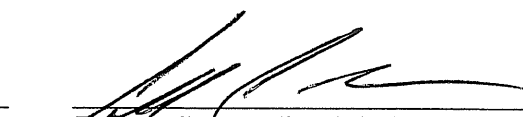
  
David Wilt, on behalf of Plaintiffs, Holy Trinity Episcopal Church of West Palm Beach, Inc. and Holy Trinity Properties, Inc.

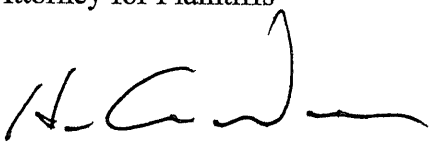
  
Robert Robbins, on behalf of Defendant, Palm Beach County

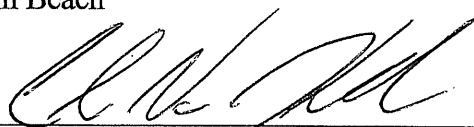
  
Laura Warner, on behalf of Plaintiffs, Holy Trinity Episcopal Church of West Palm Beach, Inc. and Holy Trinity Properties, Inc.

  
Amy T. Petrick, Esq.  
Attorney for Defendant, Palm Beach County

  
Robert S. Yerkes, Esq.  
Attorney for Plaintiffs

  
Jeffrey Green, City Administrator,  
on behalf of Defendant, City of West Palm Beach

  
H. Adams Weaver, Esq.  
Attorney for Plaintiffs

  
Christopher Van Hall, Esq.  
Attorney for Defendant, City of West Palm Beach