

**PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS  
AGENDA ITEM SUMMARY**

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<b>Meeting Date:</b>	October 20, 2015	<b>Consent [X]</b>	<b>Regular [ ]</b>
		<b>Public Hearing [ ]</b>	

<b>Department:</b>	Water Utilities Department
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**I. EXECUTIVE BRIEF**

**Motion and Title:** **Staff recommends motion to authorize:** a reallocation of a portion of the City of South Bay's Utility Transfer Fees (Host Fees) pursuant to a Mediated Settlement Agreement between the Cities of Belle Glade and South Bay.


**Summary:** On January 15, 2013, the Board of County Commissioners (BCC) approved the Stipulated Settlement Agreement (R2013-0093) which included the Glades Utility Authority Detailed Seven Point Absorption Plan (Absorption Plan). This Absorption Plan authorized the Cities of Belle Glade, Pahokee, and South Bay to receive Host Fees equal to 7% of customer payments received by the County from payments by customers within each respective Glades City. On January 21, 2015, Belle Glade and South Bay entered into a Mediated Settlement Agreement (Settlement Agreement) in which South Bay agreed to pay Belle Glade a total of \$500,000 for unpaid utility charges, with \$300,000 of that amount to be deducted from South Bay's Host Fees. As per the Mediated Settlement Agreement, South Bay provided the County a letter authorizing a monthly reduction of \$5,000 from its Host Fees which are to be paid to Belle Glade beginning October 1, 2015, until the sum of \$300,000 has been paid to Belle Glade. Therefore, Staff recommends approval to reduce and reallocate South Bay's Host Fees to meet the terms of the Settlement Agreement. District 6 (MJ)

**Background and Justification:** The Settlement Agreement resolves the lawsuit Belle Glade brought against South Bay for an outstanding debt related to Belle Glade's provision of utility service to South Bay. The total amount of the settlement is \$500,000, of which \$200,000 was paid by cashier's check and the remaining \$300,000 is to be deducted from South Bay's Host Fees and reallocated to Belle Glade over a period of 60 months.


**Attachments:**

1. One (1) Copy of Letter from the City of South Bay to County dated January 27, 2015, (Exhibit "A")
2. One (1) Copy of Mediated Settlement Agreement

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<b>Recommended By:</b>		10-6-15
	Department Director	Date

<b>Approved By:</b>		10/7/15
	Assistant County Administrator	Date

## II. FISCAL IMPACT ANALYSIS

### A. Five Year Summary of Fiscal Impact:

Fiscal Years	2016	2017	2018	2019	2020
Capital Expenditures	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
External Revenues	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
Operating Expenses	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
In-Kind Match County	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
NET FISCAL IMPACT	<u>0</u> *	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
# ADDITIONAL FTE POSITIONS (Cumulative)	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>

Budget Account No.:    Fund                      Dept                      Unit                      Rsrc

Is Item Included in Current Budget?    Yes            No X            Reporting Category    N/A

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

\* No Fiscal Impact

C. Department Fiscal Review: Debra M. Vest

## III. REVIEW COMMENTS

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

[Signature]  
9/30 9/30 OFMB

[Signature] 10/11/15  
Contract Development and Control  
B. O. Hecker 10-14-15

### B. Legal sufficiency:

[Signature] 10/5/15  
Assistant County Attorney

### C. Other Department Review:

\_\_\_\_\_  
Department Director

This summary is not to be used as a basis for payment.



**City of South Bay**

South Bay City Hall  
335 SW 2nd Avenue  
South Bay, FL 33493  
Telephone: 561-996-6751  
Facsimile: 561-996-7950

[www.southbaycity.com](http://www.southbaycity.com)

**Commission**

Shanique S. Scott  
Mayor

Taranza McKelvin  
Vice Mayor

Esther E. Berry

Joe Kyles Sr.

John Wilson

Leondrae D. Camel  
City Manager

Jessica Figueroa  
City Clerk

Burnadette Norris-Weeks  
City Attorney

"An Equal Opportunity  
Affirmative Action Employer"

Exhibit "A"

January 27, 2015

Via Email [JStiles@pbwater.com](mailto:JStiles@pbwater.com) and  
regular U.S. Mail

James Stiles, Department Director  
Palm Beach County Water Utilities Department  
8100 Forest Hill Boulevard  
West Palm Beach, FL 33413

Re: Distribution of Host Fees

Dear Mr. Stiles:

Attached please find the "Mediated Settlement Agreement" entered into between the City of South Bay ("South Bay") and the City of Belle Glade ("Belle Glade"). In accordance with this Agreement, South Bay has agreed to pay Belle Glade \$500,000.00 to settle the pending wastewater services litigation. On January 20, 2015, South Bay paid Belle Glade \$200,000.00. To facilitate the payment of the \$300,000.00 balance, South Bay hereby requests and authorizes Palm Beach County to distribute \$5,000.00 of the monthly host fees (due and owing South Bay) to Belle Glade beginning with the monthly host fees collected for the period beginning October 1, 2015 and continuing monthly until the \$300,000.00 balance is paid in full. At your earliest convenience, please advise the undersigned of what, if any other actions, documents, etc. are necessary to begin the County's payment of the host fees to the City of Belle Glade. Thank you for your cooperation in this matter.

Sincerely,

Shanique Scott  
Mayor

Enclosure: Mediated Settlement Agreement

cc: Leondrae Camel, City Manager, City of South Bay  
Burnadette Norris-Weeks, City Attorney, City of South Bay  
Lomax Harrelle, City Manager, City of Belle Glade  
Glen J. Torcivia, City Attorney, City of Belle Glade  
Debra West, Assistant Director, Palm Beach County Water Utilities  
Shannon LaRocque, Assistant County Administrator, Palm Beach County  
Michael W. Jones, Assistant County Attorney, Palm Beach County

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

CASE NO.: 502013CA006312XXXXMB  
Division AG

CITY OF BELLE GLADE, a  
Florida municipal corporation,

Plaintiff,

vs.

CITY OF SOUTH BAY, a  
Florida municipal corporation,

Defendant.

MEDIATED SETTLEMENT AGREEMENT

THIS IS A MEDIATED SETTLEMENT AGREEMENT between the CITY OF BELLE GLADE, its officers, employees and agents, whose mailing address is 110 Dr. Martin Luther King Jr. Blvd., Belle Glade, Florida 33430 ("Belle Glade") and the CITY OF SOUTH BAY, whose mailing address is 335 S.W. 2<sup>nd</sup> Avenue, South Bay, Florida 33493 ("South Bay") and serves to resolve all claims arising from the civil lawsuit styled "City of Belle Glade vs. City of South Bay" (Case No. 502013CA006312XXXXMB) filed with the Circuit Court of the Fifteenth Judicial Circuit in and for Palm Beach County, Florida (the "Agreement").

NOW THEREFORE, Belle Glade and South Bay, intending to be legally bound, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, do hereby agree as follows:

1. **Effective Date.** Each party agrees to place this Agreement on the next agenda of its respective governing body for consideration and approval. The effective date of this Agreement shall be the last date a governing body approves the Agreement (the "Effective Date").

2. **Payment.** South Bay agrees to pay to Belle Glade the total amount of Five Hundred Thousand Dollars (\$500,000.00) (the "Agreed Sum"). South Bay shall pay Belle Glade Two Hundred Thousand Dollars (\$200,000) of the Agreed Sum by cashier's check on or

Settlement Agreement



before Tuesday, January 20, 2015 by 2:00 p.m. Regarding payment of the \$300,000.00 representing the balance of the Agreed Sum, South Bay shall within five (5) days of the Effective Date, submit a letter and any other requested documents authorizing Palm Beach County to distribute Five Thousand Dollars (\$5,000.00) of South Bay's monthly host fees to Belle Glade, commencing with host fees for the month of October, 2015, until the Agreed Sum is paid off in full. The letter shall be in a form substantially similar to the one attached hereto as **Exhibit "A"**. Such transfers shall be agreed to by Palm Beach County in writing within forty-five (45) days of the Effective Date or as otherwise agreed to in writing by Belle Glade. If Palm Beach County does not agree to the transfers or fails to transfer for any reason or if South Bay has otherwise failed to secure such an agreement with Palm Beach County within the timelines provided for herein or as otherwise agreed to by Belle Glade, South Bay shall remit payments to Belle Glade as follows: within five (5) days of each of its monthly receipt of its host fees from Palm Beach County, South Bay shall issue a cashier's check for \$5,000.00 to Belle Glade until the Agreed Sum is paid off in full. If South Bay fails to remit payment when due and fails to pay the same after notice by Belle Glade and a thirty day cure period following such notice, South Bay shall pay the remaining balance of the agreed sum to Belle Glade within thirty days following the cure period.

If South Bay fails to timely pay the Agreed Sum to Belle Glade as set forth in this Agreement, Belle Glade may, by motion to the Circuit Court, request the Court to enforce this Agreement through the entry of judgment for the balance of the Agreed Sum and any other relief authorized by this Agreement, including, but not limited to attorneys' fees, costs and expenses, and prejudgment interest, and any other relief otherwise authorized by law or in equity.

3. **Attorneys' Fees and Costs.** Except as otherwise included in the Agreed Sum, each party shall bear its own attorneys' fees and costs related to this dispute and the negotiation and drafting of this Agreement.

4. **No Admission.** This Agreement shall not be deemed to be an admission of any liability by either party or an admission of any fact, allegation or statement made by either party.

5. **Court Approval.** The parties agree that as soon as is reasonably possible after the Effective Date, Belle Glade shall submit the Stipulation of Dismissal to the Circuit Court for consideration and approval of the Agreement. The parties agree to submit the attached proposed

Order (**Exhibit "C"**) to the Circuit Court that includes, at a minimum, that the Circuit Court approves the Agreement and shall retain jurisdiction to enforce such Agreement.

6. **Mutual Release.** Upon Belle Glade's receipt of the full Agreed Sum and in consideration of the mutual premises contained herein, the parties hereby release, acquit, and forever discharge each other and their officers, employees and agents from any and all actions, causes of actions, claims, counterclaims, demands, damages, costs, expenses, interest, attorneys' fees and compensation whatsoever, now or in the past existing, whether known or unknown, in any way relating to or arising out of the claims raised by Belle Glade in Case No. 502013CA006312XXXXMB filed in the Circuit Court of the 15<sup>th</sup> Judicial Circuit in and for Palm Beach County, Florida.

7. **Dismissal.** Within two (2) days of Belle Glade's receipt of the \$200,000.00 payment towards the Agreed Sum, Belle Glade shall file the "Stipulation for Dismissal with Prejudice" attached hereto as **Exhibit "B"** (the "Stipulation") and file it with the Circuit Court.

8. **Miscellaneous.**

8.1 Time is of the essence in this Agreement.

8.2 This Agreement is made in the State of Florida and shall be governed exclusively by Florida law. Venue for any litigation shall be in Palm Beach County, Florida, exclusively.

8.3 This is the entire agreement between the parties and shall not be modified or amended except by a written document signed by both parties.

8.4 The parties acknowledge that they have read the Agreement, understand it and agree to abide by its terms and conditions; that the parties were provided the opportunity to seek the advice of legal counsel; that each party's legal counsel did review this Agreement; and that each party is entering into this Agreement knowingly and voluntarily.

8.5 Each party binds itself and its partners, successors, executors, administrators and assigns to the other party of this Agreement and to the partners, successors, executors, administrators and assigns of such other party in respect to all covenants, provisions or obligations of this Agreement. Nothing herein shall be construed as creating any personal liability on the part of any officer, employee, or agent of either party related to the settlement of the lawsuit.

- 8.6 The terms and provisions of this Agreement may be enforced by specific performance and damages, in addition to any other remedies for breach hereof.
- 8.7 If any legal action or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any provision of this Agreement, the successful or prevailing party shall be entitled to recover reasonable attorneys' fees, prejudgment interest at the statutory rate, court costs and all expenses (including taxes) even if not taxable as court awarded costs (including, without limitation, all such fees, costs and expenses incident to appeals) incurred in that action or proceeding, and the immediate entry of judgment on the Agreement, in addition to any other relief to which such party may be entitled.
- 8.8 If any term or provision of this Agreement, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement, or the application of such terms or provision, to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this Agreement shall be deemed valid and enforceable to the extent permitted by law.
- 8.9 Failure of a party to enforce or exercise any of its right(s) under this Agreement shall not be deemed a waiver of that party's right to enforce or exercise said right(s) at any time thereafter.
- 8.10 This Agreement shall not be construed more strongly against either party regardless of who was more responsible for its preparation.
- 8.11 The parties expressly acknowledge that it is not their intent to create or confer any rights or obligations in or upon any third person or entity under this Agreement.
- 8.12 This Agreement shall become valid and effective for both parties only upon the approval of their respective governing bodies.
- 8.13 This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.
- 8.14 Either or both parties to this Agreement may sign this Agreement via facsimile or email and such signature is as valid as the original signature of such party.

8.15 Within two hours of the receipt of the \$200,000.00 payment to Belle Glade, counsel for Belle Glade shall notify the Court of the cancellation of the January 21, 2015 hearing on Belle Glade's Motion for Summary Judgment.

IN WITNESS WHEREOF, the parties have signed this Agreement as of the 21<sup>st</sup> day of January, 2015.

ATTEST:

By:

DEBRA E. BUFF, MMC, CITY CLERK

CITY OF BELLE GLADE

By:

STEVE B. WILSON, MAYOR

By:

GLEN J. TORCIVIA, CITY ATTORNEY

STATE OF FLORIDA  
COUNTY OF PALM BEACH

BEFORE ME, the undersigned, personally appeared STEVE B. WILSON, MAYOR, on behalf of the CITY OF BELLE GLADE who is personally known to me or who produced N/A as personal identification and who executed the foregoing instrument and acknowledged before me that he/she executed the same, for the uses and purposes therein expressed.

WITNESS my hand and official seal this 21<sup>st</sup> day of January, 2015

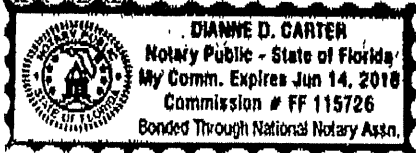
Signed:

Dianne D. Carter  
Notary Public

DIANNE D. CARTER  
Print name of Notary Public

My Commission Expires: June 14, 2018

[NOTARY SEAL]



ATTEST:

By:

Jessica Ferguson  
CITY CLERK

By:

CITY ATTORNEY

CITY OF SOUTH BAY

By:

MAYOR



8.15 Within two hours of the receipt of the \$200,000.00 payment to Belle Glade, counsel for Belle Glade shall notify the Court of the cancellation of the January 21, 2015 hearing on Belle Glade's Motion for Summary Judgment.

IN WITNESS WHEREOF, the parties have signed this Agreement as of the \_\_\_\_ day of \_\_\_\_\_, 2015.

**CITY OF BELLE GLADE**

ATTEST:

By: DEBRA S. BUFF, MMC, CITY CLERK

By: STEVE B. WILSON, MAYOR

By: GLEN J. TORCIVIA, CITY ATTORNEY

STATE OF FLORIDA  
COUNTY OF PALM BEACH

BEFORE ME, the undersigned, personally appeared STEVE B. WILSON, MAYOR, on behalf of the CITY OF BELLE GLADE who is personally known to me or who produced \_\_\_\_\_ as personal identification and who executed the foregoing instrument and acknowledged before me that he/she executed the same, for the uses and purposes therein expressed.

WITNESS my hand and official seal this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

Signed: \_\_\_\_\_  
Notary Public

[NOTARY SEAL]

Print name of Notary Public \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

**CITY OF SOUTH BAY**

ATTEST:

By: Jessica Figueroa  
CITY CLERK

By: [Signature]  
MAYOR

By: [Signature]  
CITY ATTORNEY

STATE OF FLORIDA  
COUNTY OF PALM BEACH

BEFORE ME, the undersigned, personally appeared Shanique Scott, MAYOR, on behalf of the CITY OF SOUTH BAY who is personally known to me or who produced \_\_\_\_\_ as personal identification and who executed the foregoing instrument and acknowledged before me that he/she executed the same, for the uses and purposes therein expressed.

WITNESS my hand and official seal this 20 day of January, 2015.

Signed: \_\_\_\_\_

Notary Public

Mary Varnum  
Print name of Notary Public

My Commission Expires: 11-27-18

[NOTARY SEAL]

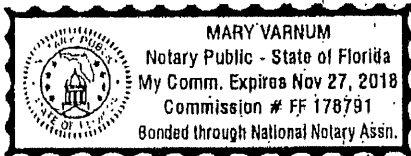


Exhibit "A"

January 12, 2015

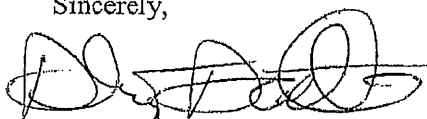
Robert Weisman, County Administrator  
Palm Beach County  
301 N. Olive Avenue  
West Palm Beach, FL 33401

Re: Distribution of Host Fees

Dear Mr. Weisman:

Attached please find the "Mediated Settlement Agreement" entered into between the City of South Bay and the City of Belle Glade. In accordance with this Agreement, the City of South Bay hereby authorizes Palm Beach County to distribute \$5,000.00 of the monthly host fees due and owing South Bay to the City of Belle Glade as of October 1, 2015 until the \$300,000.00 balance of the Agreed Sum (as defined in the Mediated Settlement Agreement) remaining due after payment of the first \$200,000.00 by South Bay is paid in full. At your earliest convenience, please advise the undersigned of what, if any other actions, documents, etc. are necessary to begin the County's payment of the host fees to the City of Belle Glade. Thank you for your cooperation in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Shanique Scott', with a stylized, cursive script.

Shanique Scott  
Mayor

Enclosure: Mediated Settlement Agreement

cc: Lomax Harrelle, City Manager, City of Belle Glade  
Glen J. Torcivia, City Attorney, City of Belle Glade  
Debra West, Assistant Director, Palm Beach County Water Utilities

**Exhibit "B"**

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

CASE NO.: 502013CA006312XXXXMB  
Division AG

CITY OF BELLE GLADE, a  
Florida municipal corporation,

Plaintiff,

vs.

CITY OF SOUTH BAY, a  
Florida municipal corporation,

Defendant.

---

**STIPULATION OF DISMISSAL WITH PREJUDICE**  
**AND APPROVAL OF MEDIATED SETTLEMENT AGREEMENT**

1. Pursuant to Florida Rule of Civil Procedure 1.420(1)(a), this Stipulation of Dismissal with Prejudice ("Dismissal") is hereby made and entered into by and between both parties to this action on the date last executed below: City of Belle Glade ("Belle Glade") and City of South Bay ("South Bay") (collectively the "Parties").

2. It is agreed, understood and stipulated by and between the Parties that the above-entered action has been amicably resolved through the "Mediated Settlement Agreement", dated the \_\_\_\_ day of January, 2015, a copy of which is attached hereto, and that Belle Glade hereby dismisses this action with prejudice.

3. The Parties have read and understand each and every provision of this Dismissal, and it is entered into knowingly and voluntarily.

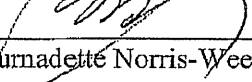
4. Each party shall bear its own attorneys' fees and costs incurred in this action.

5. The Court hereby approves the terms of the Mediated Settlement Agreement and retains jurisdiction to enforce the terms of the Mediated Settlement Agreement.

**IN WITNESS WHEREOF**, the parties have executed this Stipulated Dismissal with Prejudice as of the date last executed below.

By: \_\_\_\_\_  
Glen J. Torcivia, Esq.  
City Attorney for Plaintiff, City of Belle Glade

Dated: \_\_\_\_\_

By:  \_\_\_\_\_  
Burnadette Norris-Weeks, Esq.  
Attorney for Defendant, City of South Bay

Dated: \_\_\_\_\_

CFN 20150030959  
OR BK 27303 PG 1399  
RECORDED 01/28/2015 11:00:05  
Palm Beach County, Florida  
AMT

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

CASE NO.: 502013CA006312XXXXMB  
Division AG

CITY OF BELLE GLADE, a  
Florida municipal corporation,

Plaintiff

vs.

CITY OF SOUTH BAY, a  
Florida municipal corporation,

Defendant.

**FINAL DISPOSITION FORM**

(Fla. R. Civ. P. Form 1.998)

**THE CLERK IS DIRECTED TO CLOSE THIS FILE  
MEANS OF FINAL DISPOSITION**

- |   |   |
|---|---|
| <input type="checkbox"/> Dismissed Before Hearing           | <input type="checkbox"/> Disposed by Non-Jury Trial |
| <input checked="" type="checkbox"/> Dismissed After Hearing | <input type="checkbox"/> Disposed by Jury Trial     |
| <input type="checkbox"/> Dismissed by Default               | <input type="checkbox"/> Other                      |
| <input type="checkbox"/> Disposed by Judge                  |   |

**ORDER ON STIPULATION OF DISMISSAL WITH PREJUDICE AND  
APPROVAL OF MEDIATED SETTLEMENT AGREEMENT**

THIS CAUSE having come before the Court on the Plaintiff's "Unopposed Motion to Approve Mediated Settlement Agreement and Stipulation of Dismissal with Prejudice", and the Court being fully advised in the premises, it is hereupon,

**ORDERED AND ADJUDGED** that said Motion is hereby:

GRANTED. The "Mediated Settlement Agreement" is hereby approved, and this Court retains jurisdiction of this matter in order to enforce, construe, interpret, and otherwise ensure compliance by the parties of the "Mediated Settlement Agreement". This matter is hereby dismissed with prejudice with each party to bear their own fees and costs as set forth in the "Stipulation of Dismissal with Prejudice and Approval of Mediated Settlement Agreement". *Case shall be closed for administrative purposes only. (10)*

**DONE AND ORDERED** in Chambers at West Palm Beach, Palm Beach County, Florida,  
this 22 day of Jan., 2015.

CIRCUIT COURT JUDGE

**Copies Furnished:**

Glen J. Torcivia, Attorney for the Plaintiff  
Burnadette Norris-Weeks, Attorney for the Defendant

**FILED**  
2015 JAN 22 AM 11:55  
SHARON R. BOCK, CLERK  
PALM BEACH COUNTY, FL  
CIRCUIT CIVIL 5