

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date:	December 19, 2017	<input checked="" type="checkbox"/> Consent	<input type="checkbox"/> Regular
		<input type="checkbox"/> Ordinance	<input type="checkbox"/> Public Hearing
Department:			
Submitted By:	County Attorney		

I. EXECUTIVE BRIEF

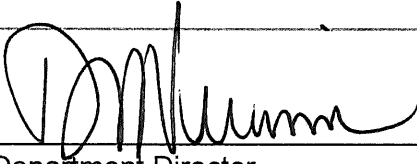
Motion and Title: Staff recommends motion to approve a settlement the amount of \$151,500, inclusive of the cost of mediation (\$1,500), and attorney’s fees and costs, in the case styled Michael Gleman v. Palm Beach County Board of County Commissioners, case number 502015CA013856, resulting from the suspension and termination of a former Water Utilities Department employee.

Summary: On October 20, 2016, the Water Utilities Department terminated Plaintiff, citing violations of Merit Rules and progressive discipline from an October 23, 2015, suspension. Plaintiff was suspended for “[s]tating that there were NEC and OSHA code violations/ citations when none existed.” Plaintiff sued under the Florida Whistleblower Act, seeking his lost wages and benefits; compensation for his intangible damages such as humiliation, mental anguish, and loss of reputation; reinstatement to his former position; and for his attorney’s fees and litigation costs. Countywide (RMF)

Background and Justification: On September 23, 2015, Plaintiff attended a Contract Review Committee (“CRC”) Meeting and stated that work was being done to correct NEC and OSHA code violations at a water treatment plant and that he did not recommend the cost supplement for approval. After the CRC Meeting, Plaintiff discussed his views on the supplement with an employee of the Office of the Inspector General (“OIG”). According to the suspension notification, Water Utilities Department (“WUD”) suspended Plaintiff for “[s]tating that there were NEC and OSHA code violations/ citations when none existed,” for discussing his personal opinion at the CRC Meeting, and for stating that the supplement was not recommended for approval. Plaintiff informed the OIG of his suspension and sued the County under the Florida Whistleblower Act (“FWA”), alleging that his suspension unlawfully punished him for engaging in protected activity at the CRC Meeting and with the OIG. (Continued on Page 3)

Attachments:

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

Recommended By:		11-29-17
	Department Director	Date
Approved By:	N/A	
		Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2018	2019	2020	2021	2022
Capital Expenditures					
Operating Costs	\$151,500				
External Revenues					
Program Income(County)					
In-Kind Match(County)					
NET FISCAL IMPACT	\$151,500				
#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

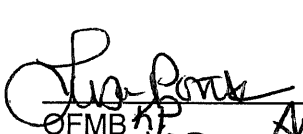
Budget Account No:
Fund 5010 Agency 700 Organization 7130 Object 4511


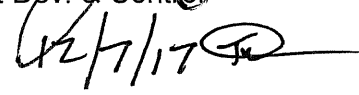
B. Recommended Sources of Funds/Summary of Fiscal Impact:

C. Departmental Fiscal Review:

III. REVIEW COMMENTS

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


OFMB 12/1/17
11/30 AK 11/30


Contract Dev. & Control 12/17/17
12/7/17 

B. Legal Sufficiency


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)

In September 2016, Plaintiff faxed a letter to a number associated with the County Administrator, alleging bid suppression by WUD. On October 5, 2016, WUD notified Plaintiff of the pre-termination hearing that would be held concerning five identified issues with his job performance. The notice stated that he was under progressive discipline from his 2015 suspension and that "the next step" was termination. At his pre-termination hearing, Plaintiff alleged that the termination was punishment for whistleblowing activities. Plaintiff's counsel presented the WUD Director with a copy of the faxed letter to the County Administrator immediately before the Director upheld the staff recommendation to terminate Plaintiff. Plaintiff sued under the FWA, alleging that his termination was based upon his protected activity at the CRC Meeting, with the OIG, and in his faxed letter to the County Administrator.

Plaintiff was a ten-year employee of WUD, with a base salary of about \$106,000, accrued vacation and sick time, insurance benefits, and retirement benefits. Plaintiff's lost salary and benefits for his suspension and thirteen (13) months of unemployment to date, together with front-pay for the five (5) years he projected he would have worked had he not been terminated, along with his attorney's fees and costs, would exceed \$700,000. Plaintiff made a pre-mediation demand of \$550,000. The settlement of \$150,000, together with the \$1,500 to the mediator, fully and finally resolves Plaintiff's claims without reinstating his employment.

Therefore, it is recommended that the County approve the Settlement Agreement in the amount of \$151,500.00.

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

Case No.: 502015CA013856XXXMB AF

MICHAEL GLEMAN,

Plaintiff,

vs.

PALM BEACH COUNTY,
BOARD OF COUNTY
COMMISSIONERS

Defendant.

_____ /

STIPULATION AND SETTLEMENT AGREEMENT

Pursuant to the agreement of the parties, the provisions of Chapter 44, Florida Statutes, Fla.R.Civ.Proc. 1.700-1.730, and all other applicable court orders and procedures, a mediation was conducted in the above-styled matter before Jack Cook, Certified Circuit Civil Mediator, on November 17, 2017, and THE PARTIES HERETO STIPULATE AND AGREE AS FOLLOWS:

Upon the fulfillment of the agreements herein, the Parties shall execute and file a usual and customary joint voluntary dismissal with prejudice, dismissing all claims, in this case. The parties, Plaintiff, MICHAEL GLEMAN, and Defendant, PALM BEACH COUNTY BOARD OF COUNTY COMMISSIONERS, agree, subject to the approval of the Palm Beach County Board of County Commissioners, to fully and finally settle this lawsuit for the settlement amount of 150,000.00 (one hundred fifty thousand dollars and zero cents) payable to "Garcia Law Firm trust account and Michael Gleman". The parties agree that Plaintiff shall dismiss the lawsuit with prejudice and shall execute a release in favor of Palm Beach County for any and all claims that were raised, could have been raised, or should have been raised in the lawsuit as well as any and all claims that Plaintiff may have against Palm Beach County arising from, concerning, or relating to his employment with Palm Beach County. Palm Beach County shall pay for the cost of mediation in this lawsuit. Palm Beach County shall pay the settlement amount within 30 days of obtaining

 RF

written approval of the Palm Beach County Board of County Commission of the settlement conditioned on:

(1) Staff recommending it for approval at the December 19, 2017, Board of County Commissioners meeting.

(2) Defendant shall provide a proposed release to Plaintiff by November 22, 2017. Plaintiff shall execute and deliver the agreed upon release to Palm Beach County by November 29, 2017, by the close of business. The release shall be held in escrow and shall have no effect until Settlement fund are paid, and

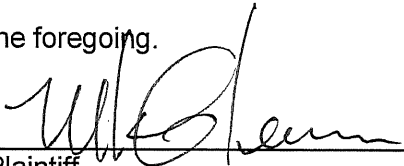
(3) Upon receipt of the settlement check from Palm Beach County, Plaintiff's attorney shall hold the settlement monies in trust until the dismissal of the law suit with prejudice is filed and the court formally dismisses the law suit with prejudice by Agreed Order of Dismissal with Prejudice.



Each party shall be responsible for their own attorney's fees and costs in this matter.


This STIPULATION AND SETTLEMENT AGREEMENT is entered into freely by the parties with their full knowledge and consent, and there have been no promises made to any of the parties which are not contained in this agreement.

WE THE UNDERSIGNED hereby acknowledge our agreement and authority to agree to the foregoing.



Plaintiff
Michael Gleman

Print Name



Attorney for Plaintiff
Isidro M. Garcia


Print Name

Plaintiff

Print Name

Attorney for Plaintiff

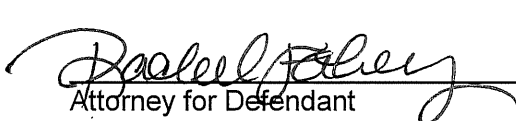
Print Name



Defendant
SCOTT MARTING

Print Name
Palm Beach County BCC


Defendant



Attorney for Defendant
RACHEL FAHEY

Print Name

Print Name

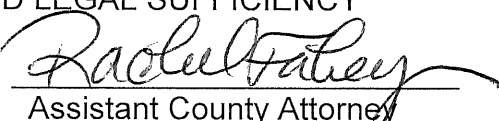


Attorney for Defendant
Andrew Pelizzo

Print Name

Copies furnished to: All parties.

IN WITNESS WHEREOF, the parties have caused this Settlement Agreement to be executed as of the date first set forth above in the case of Michael Gleman v. Palm Beach County Board of County Commissioners, Case No. 502015CA013856XXXXMB AF.

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY
By: 
Assistant County Attorney

ATTEST:
Sharon R. Bock, Clerk & Comptroller

PALM BEACH COUNTY BOARD
OF COUNTY COMMISSIONERS

By: _____

By: _____

**MICHAEL GLEMAN'S RELEASE OF ALL CLAIMS AGAINST
PALM BEACH COUNTY BOARD OF COUNTY COMMISSIONERS**

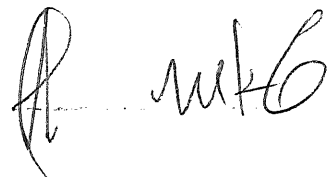
The undersigned, **MICHAEL GLEMAN** ("Gleman"), being of lawful age, for the sole consideration of **ONE HUNDRED AND FIFTY THOUSAND DOLLARS (\$150,000.00)** to the undersigned, as well as the cost of mediation to the mediator, which occurred on Friday, November 17, 2017, the sufficiency whereof is hereby acknowledged, does hereby and for his heirs, executors, administrators, successors and assigns, release, acquit and forever discharge **PALM BEACH COUNTY BOARD OF COUNTY COMMISSIONERS**, including all of their commissioners, officers, agents, employees, attorneys, insurers, heirs, executors, administrators, successors and assigns ("the County"), 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 Gleman raised, could have raised, or should have raised in the lawsuit styled *Michael Gleman v. Palm Beach County Board of County Commissioners, In the Circuit Court of the Fifteenth Judicial Circuit, in and for Palm Beach County, Case Number 502015CA013856* ("lawsuit"), as well as any and all other claims Gleman may now have or which may hereafter accrue or develop, against the County arising from, concerning, or relating to Gleman's employment with the County, said employment having been terminated on **October 20, 2016**. This release shall NOT operate to bar any potential claim against any third party who has or had a contractual relationship with the County, or the employees of said third parties, including MWH Global, now part of Santec, and Hinterland Group, Inc.

FURTHERMORE, Gleman agrees that each party shall bear their own costs and attorney's fees, and that Gleman 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 agreement, or which may be incurred and payable in the future. Gleman further agrees to indemnify and save harmless the County from any requests for payment or attempts for collection therefrom. Should legal action be instituted against the County for payment or collection of the aforementioned expenses, Gleman agrees to indemnify and save harmless the County for any attorney's fees, costs and/or judgments which may be entered against the County.

FURTHERMORE, Gleman 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 County, and that the County denies any liability therefor and merely intend to avoid further litigation and buy their peace.

FURTHERMORE, Gleman further declares and represents that no promise, inducement or agreement not herein expressed has been made to the undersigned, and that this Release contains the entire agreement between the parties hereto, and that the terms of this agreement are contractual and not merely a recital.

THE UNDERSIGNED hereby declares that he 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 claimed in his lawsuit, and for the express purpose of



BUDGET AVAILABILITY STATEMENT
RISK MANAGEMENT

REQUEST DATE: 11/21/17

REQUESTED BY: County Attorney

REQUESTED FOR: Michael Gleman v. Palm Beach County


REQUESTED AMOUNT: \$151,500

AGENDA DATE: December 19, 2017

BUDGET ACCOUNT NUMBER:

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

BAS APPROVED BY:


Brian Palacios, Fiscal Manager

DATE: 11/21/2017