

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: April 16, 2019

Consent

Regular

Ordinance

Public Hearing

Department: County Attorney's Office

Submitted By: County Attorney's Office

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve a Settlement Agreement with Cove Club Investors, Ltd., a Florida Limited Partnership d/b/a Boca Dunes Golf and Country Club ("Cove Club") in the amount of \$550,000.00 to settle a lawsuit against Palm Beach County ("County") arising out of issues concerning County Water Treatment Plant #9.

Summary: Cove Club operates a semi-private golf and country club, known as Boca Dunes Golf and Country Club, in Boca Raton, Florida. In 2013 Cove Club sued the County in the lawsuit styled *Cove Club Investors, LTD. v. Palm Beach County*, in the Circuit Court of the 15th Judicial Circuit in and for Palm Beach County, Florida, Case No. 2013-CA-003916 ("Pending Lawsuit"), for an injunction, damages, inverse condemnation, trespass, negligence, and private nuisance regarding the County's alleged pumping of excessive amounts of water from wells located on or about Cove Club's golf course, interfering with Cove Club's ability to irrigate the golf course and causing water features to run dry. Cove Club alleges that these events began occurring in the mid-2000s and has alleged damages to its business in excess of \$10 million dollars, including the value of water use rights taken; loss of golf course revenue; costs to modify its irrigation system; pump station replacement costs; pump repair costs; as well as expert fees incurred. After court-ordered mediation in September 2015 and extensive negotiations thereafter, the parties conditionally settled the Pending Lawsuit for \$550,000.00, subject to the approval of the Palm Beach County Board of County Commissioners. District 5 (AP)

Background and Justification (On Page 3):

Attachments:

1. Two (2) copies Settlement Agreement with seven attached Exhibits:
 Exhibit 1 – General Release by Cove Club in favor of Palm Beach County
 Exhibit 2 – General Release by Palm Beach County in favor of Cove Club
 Exhibit 3 – Stipulation for final order of dismissal with prejudice and final order of dismissal with prejudice
 Exhibit 4 – Partial release of utility easements
 Exhibit 5 – Public supply water wellsite easement – Cove Club to Palm Beach County
 Exhibit 6 - Public supply water wellsite easement – Boca Dunes –Boca Raton LP to Palm Beach County
 Exhibit 7 – Letter Palm Beach County will send to the South Florida Water Management District
2. Budget Availability Statement

Recommended By: _____


Department Director

4/9/19
Date

Approved By: _____

N/A
County/Deputy/Asst. County Administrator

Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2019	2020	2021	2022	2023
Capital Expenditures					
Operating Costs	<u>\$550,000.00</u>				
External Revenues					
Program Income (County)					
In-Kind Match (County)					
Net Fiscal Impact	<u>\$550,000.00</u>				
# ADDITIONAL FTE POSITIONS (Cumulative)	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>

Is Item Included In Current Budget? Yes X No _____

Budget Account Exp No: Fund 4001 Department 720 Unit 1110 Object 4905

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

Water Utility User Fees

C. Departmental Fiscal Review: _____

III. REVIEW COMMENTS

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

Lisa Pina 4/10/19
OFMB 4/10/19

Ann S. Jenobant 4/10/19
Contract Administration

B. Legal Sufficiency:

[Signature]
Assistant County Attorney

C. Other Department Review:

Department Director

Background and Justification:

Due to the factual and legal issues raised in the Pending Lawsuit, including complex environmental and hydrological issues, the County retained outside counsel, to assist in defending against this lawsuit. The County also retained outside consulting experts. In September 2015 the parties attended court-ordered mediation and reached a tentative agreement, with the assistance of County's outside counsel, to settle the Pending Lawsuit, subject to Board of County Commission approval. That settlement agreement included the County paying Cove Club \$550,000 as well as the County relinquishing certain easements it had to maintain its equipment on Cove Club's property as well as Cove Club granting the County new easements to maintain its equipment. The parties ultimately failed to settle the Pending Lawsuit in the fall of 2015 due to an inability to agree on certain language the County's outside counsel recommended be included in the General Release Cove Club was required to execute in favor of the County in order to protect the County's legal interests.

The settlement agreement now before the Board is similar to the one reached in the fall of 2015 in the following respects. First, the County agrees to pay the same sum of money to Cove Club, \$550,000. Second, the County agrees to relinquish certain easements it had to maintain its equipment on Cove Club's property. Third, Cove Club agrees to grant the County new easements to continue to maintain its equipment. The current settlement agreement differs from the previous one in two respects, both of which benefit the County. First, regarding the General Release Cove Club is required to execute in favor of the County to settle the Pending Lawsuit, Cove Club has now agreed to the language the County's outside counsel recommended be included in the General Release. The dispute over this General Release language was the reason why the September 2015 tentative mediated settlement agreement was not presented to the Board of County Commissioners for its review and consideration. Second, the County's outside counsel chose to withdraw from representing the County in the Pending Lawsuit. In doing so, he was contractually required to repay the County \$81,729.73 in attorney's fees the County paid to him, which he did in November 2018. Staff recommends approval of the settlement agreement.