Memorandum

MIAMI-DADE COUNTY

Date:	April 8, 2008
To:	Honorable Chairman Bruno A. Barreiro and Members, Board of County Commissioners
From:	George M. Burgess County Manager R. A. Cuevas, Jr. County Attorney
Subject:	Approval of Settlement Agreement Between and Among Former Members of South Florida Employment and Training Consortium and State of Florida Agency For Workforce Innovation

Agenda Item No. 12(A)(4)

Recommendation

It is recommended that the Board of County Commissioners ("Board") authorize the execution of the attached Settlement Agreement between and among the former members of the South Florida Employment and Training Consortium ("Consortium") and the State of Florida's Agency for Workforce Innovation (AWI) on the terms and conditions set forth in the attached Settlement Agreement. This Settlement Agreement will address issues that occurred under the previous administration and predecessor regional workforce board.

Scope

The scope of this item is countywide.

Fiscal Impact

Pursuant to the original Consortium Agreement, the County will pay for 42.2 percent, or $144,793.68, of the $343,688 settlement amount owed to AWI. However, the final fiscal impact to the County may be reduced further as a result of a potential redistribution of the disallowed transportation costs collected thus far. Be advised that the County's obligation will be paid from the general fund.

Background

On July 1, 2004, Miami-Dade County, Monroe County, the City of Miami, the City of Miami Beach and the City of Hialeah (five former Consortium members) entered into a Consortium Agreement which created the South Florida Employment and Training Consortium. During a routine audit of federal funds awarded to the Consortium for its first year ending June 30, 2005, the Consortium's independent auditor discovered a number of unjustified prepaid transportation costs in the Consortium's Prepaid Transportation Account. These unjustified transportation costs were related to three programs under the Consortium's jurisdiction: 1) WIA Adult Services, Youth Services and Dislocated Services; 2) Temporary Assistance for Needy Families; and 3) the Refugee and Entrant Assistance Program. These events took place under the previous administration that managed the program with the predecessor regional workforce board and the predecessor management team.

The unjustified transportation costs in the Prepaid Transportation Account were associated with undistributed cards and unjustified cards. Undistributed transportation cards were actual cards at either the Consortium's administrative office or that of its service providers. Unjustified cards were transportation cards that were distributed by the Consortium's service providers to a participant, but the service provider failed to submit the supporting documentation for those distributions to the Consortium.

In an attempt to promote more accountability and transparency, on August 1, 2005 the Consortium changed from a prepayment system to a cost reimbursement system. However, the Consortium still had a significant amount of unjustified cards on its books. Because some service providers were not submitting justification packages as requested, the allowability of some transportation expenses could not be readily determined. These undetermined amounts were considered questioned costs and were reported as such to AWI. On September 27, 2006, AWI rendered a decision regarding the auditor's findings and in total, AWI identified $651,282.00 in undistributed and unjustified cards that were considered disallowed costs and advised that this amount must be repaid to AWI using a non-Federal funding source.

As of June 30, 2007, service providers had submitted additional documentary justifications for the distributed transportation cards and the AWI Office of the Inspector General has accepted said justifications. In addition, a substantial portion ($305,652.50) of the aforementioned disallowed costs was subsequently collected by SFWIB staff on behalf of the former members of the Consortium and these monies have been deposited in a Miami-Dade County Trust Account for the benefit of the five former members of the Consortium.

Upon a review of this additional information, AWI has determined that the five former members of the Consortium have justified $307,594.00 of the previously disallowed costs and as such, the amount currently due to AWI is $343,688.00.

The attached Settlement Agreement provides for the repayment to AWI by all five former member jurisdictions in accordance with the percentages set forth in the Consortium Agreement in effect at that time and as such, it is recommended that the attached Resolution be approved authorizing execution of the Settlement Agreement.

Cynthia W. Curry
Assistant County Manager

MEMORANDUM

(Revised)

TO: Honorable Chairman Bruno A. Barreiro and Members, Board of County Commissioners

DATE: April 8, 2008

FROM: R. A. Cuevas, Jr. County Attorney

SUBJECT: Agenda Item No. 12(A)(4)

Please note any items checked.

_____ "4-Day Rule" ("3-Day Rule" for committees) applicable if raised

_____ 6 weeks required between first reading and public hearing

_____ 4 weeks notification to municipal officials required prior to public hearing

_____ Decreases revenues or increases expenditures without balancing budget

_____ Budget required

_____ Statement of fiscal impact required

_____ Bid waiver requiring County Manager's written recommendation

_____ Ordinance creating a new board requires detailed County Manager's report for public hearing

_____ Housekeeping item (no policy decision required)

✓ No committee review

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 12(A)(4)
4-8-08

RESOLUTION NO. _____

RESOLUTION APPROVING AND AUTHORIZING EXECUTION OF SETTLEMENT AGREEMENT BETWEEN AND AMONG THE FORMER MEMBER JURISDICTIONS OF THE SOUTH FLORIDA EMPLOYMENT AND TRAINING CONSORTIUM AND THE STATE OF FLORIDA AGENCY FOR WORKFORCE INNOVATION

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board hereby approves the execution of a Settlement Agreement of the pending litigation between and among the former member jurisdictions of the South Florida Employment And Training Consortium and the State of Florida Agency For Workforce Innovation, in substantially the form attached and made a part hereto; and authorizes the Mayor or designee and the County Attorney to execute same for and on behalf of Miami-Dade County.

The foregoing resolution was offered by Commissioner , who moved its adoption. The motion was seconded by Commissioner and upon being put to a vote, the vote was as follows:

Bruno A. Barreiro, Chairman
Barbara J. Jordan, Vice-Chairwoman

Jose "Pepe" Diaz	Audrey M. Edmonson
Carlos A. Gimenez	Sally A. Heyman
Joe A. Martinez	Dennis C. Moss
Dorrin D. Rolle	Natacha Seijas
Katy Sorenson	Rebeca Sosa
Sen. Javier D. Souto	

The Chairperson thereupon declared the resolution duly passed and adopted this 8th day of April, 2008. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By:_____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency. PST

Peter S. Tell

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	6.7%
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_____

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 SISKO WARD, DEPUTY GENERAL COUNSEL