Memorandum

MIAMI-DADE COUNTY

Date: February 17, 2009

To: Honorable Chairman Dennis C. Moss
and Members, Board of County Commissioners

From: George M. Burgess
County Manager

Subject: Settlement Agreement with Midtown Towing

Agenda Item No. 8(F)(1)(A)

Recommendation

It is recommended that the Board approve the attached settlement agreement in the amount of $71,000 between Miami-Dade County and Midtown Towing, Inc. to settle a pre-suit breach of contract claim against the County in regards to a towing services contract.

Background

On May 1, 2006, Contract M7527-1/07 was awarded to Midtown Towing as primary vendor for Zones 1 and 2. As a result of miscommunication to the General Services Administration (GSA) Fleet Shops (the primary user), towing calls that were supposed to be handled by Midtown Towing were instead directed to another vendor who was not awarded the contract for Zones 1 and 2. Upon discovering the error, GSA redirected the calls to the appropriate vendor; however, six months of towing calls were not handled in accordance with the contract. Midtown Towing incurred costs in anticipation of the business that they never received. This settlement is to resolve all outstanding claims as a result of this error.

In evaluating the settlement amount, staff reviewed and audited approximately 3,000 invoices for Westbrook Motors covering the period from May 2006 through December 2006 and identified 758 for towing work performed in Zones 1 and 2. Those invoices totaled $71,653.57. Midtown Towing disputed this amount, claiming that their losses were significantly higher and occurred over a much longer period of time. The parties agreed, however, subject to approval by the Board, to compensation for only those verified invoices. The $71,000 will be paid from Fleet Management's internal service funds.

I have reviewed the issue and determined that the misdirected calls were inadvertent and resulted from unclear information being communicated to employees in the field. Staff has been counseled and new procedures were implemented to ensure that the award sheets sent to the field staff clearly identify the appropriate vendor for each service.

Director, General Services Administration

MEMORANDUM
(Revised)

TO: Honorable Chairman Dennis C. Moss and Members, Board of County Commissioners

DATE: February 17, 2009

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

SUBJECT: Agenda Item No. 8(F)(1)(A)

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 Mayor'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. 8(F)(1)(A)
2-17-09

RESOLUTION NO. _____

RESOLUTION AUTHORIZING SETTLEMENT WITH MIDTOWN TOWING, INC., IN THE AMOUNT OF $71,000, TO SETTLE A PRE-SUIT BREACH OF CONTRACT CLAIM IN REGARDS TO A TOWING SERVICES CONTRACT; AND AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXERCISE ANY AND ALL OTHER RIGHTS CONFERRED THEREIN

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 DADE COUNTY, FLORIDA, that this Board hereby approves the settlement between Miami-Dade County and Midtown Towing of Miami, Inc., in the amount of $71,000, to settle a pre-suit breach of contract claim in regards to a towing services contract as described in the memorandum accompanying this item; and authorizes the County Mayor or County Mayor's designee to exercise any and all other rights conferred therein.

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:

Dennis C. Moss, Chairman
Jose "Pepe" Diaz, Vice-Chairman

Bruno A. Barreiro	Audrey M. Edmonson
Carlos A. Gimenez	Sally A. Heyman
Barbara J. Jordan	Joe A. Martinez
Dorrin D. Rolle	Natacha Seijas
Katy Sorenson	Rebeca Sosa
Sen. Javier D. Souto	

The Chairperson thereupon declared the resolution duly passed and adopted this 17th day of February, 2009. 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.

Oren Rosenthal

RELEASE OF ALL CLAIMS

KNOW ALL MEN BY THESE PRESENTS:

That the Undersigned, being of lawful age, as the agent of [Legal name of client] for the sole consideration of **SEVENTY ONE THOUSAND AND NO/100 DOLLARS ($71,000.00)** to the undersigned in hand paid, receipt whereof is hereby acknowledged, do/does hereby and for my/our/its heirs, executors, administrators, successors and assigns release, acquit and forever discharge **MIAMI-DADE COUNTY (formerly known as METROPOLITAN DADE COUNTY)** its agents, servants, successors, heirs, executors, administrators and all other persons, firms, corporations, associations or partnerships of and from any and all claims, actions, causes of action, demands, rights, damages, costs, loss of service, expenses, liens, and compensation whatsoever, which [Midtown Towing] now has/have or which may hereafter accrue on account of or in any way growing out of any and all known and unknown causes from the performance of [towing contract]. as pertains to the assignment of tows to WESTBROOK TOWING.

It is understood and agreed that this settlement is the compromise of a doubtful and disputed claim, and that the payment made is not to be construed as an admission of liability on the part of the party or parties hereby released, and that said releasees deny liability therefor and intend merely to avoid litigation and buy their peace.

The undersigned further declare(s) and represent(s) that it has the legal authority to bind [Midtown Towing] and 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 Release are contractual and not a mere recital.

MIDTOWN TOWING

BY: Lauraine Lichtman

WITNESS:

Michael S. Kaufman, Esq.

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