Memorandum

MIAMI-DADE COUNTY

Date: April 7, 2009

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

From: George M. Burgess
County Manager

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

Subject: Settlement Agreement with Forestville Corporation and Tri-S Security Corporation

---

Recommendation

It is recommended that the Board approve the attached Settlement Agreement and Mutual Release between Miami-Dade County and Forestville Corporation (Forestville) and Tri-S Security Corporation (Tri-S) in the amount of $516,713.38 to Miami-Dade County, and authorize the Mayor or his designee to execute the agreement and all other documents necessary to implement the agreement.

Scope

This Settlement Agreement and Mutual Release is for claims made in association with the requirement for the vendor to provide roving patrol services at County Trash Transfer Stations and field supervision to all posts under Emergency Bid Number EM7797-2/07-OTR.

Background

The Forestville Corporation (subsequently purchased by Tri-S Security Corporation) was awarded sectors 1-A and 1-E under Emergency Bid Number EM7797-2/07-OTR to provide security guard services for the County at various sites, including a number of trash transfer stations operated by the Solid Waste Management Department.

While conducting an inspection at a trash transfer station (TTS), General Services Administration (GSA) Security Management staff identified questionable practices being employed by Forestville. Following a preliminary review, GSA established that Forestville had, on a recurring basis, billed the County for certain services that the contract required be performed by two separate personnel, while the firm covered the posts with only one individual.

Upon being confronted with the County's findings, Forestville did not deny the practice, but rather argued that the practice had been instituted by the firm's former Project Manager for the contract, and that it had been done with the concurrence of the County. Given the contract's clear language on the subject, no evidence to support the claim that County staff had approved the practice, and no sense that Forestville intended to provide any restitution, GSA Security Management removed the Trash Transfer Stations from Forestville and assigned those posts to another vendor under Emergency Bid Number EM7797-2/07-OTR. In addition, staff reviewed all other posts remaining under contract to Forestville for billing discrepancies; none were identified.

In addition to its internal action, GSA contacted the Miami-Dade Police Department, Public Corruption Investigative Bureau (PCIB) for assistance in further investigating the matter. The information and documentation provided by GSA Security Management, in conjunction with information obtained by PCIB through investigative interviews and subpoenas, ultimately substantiated the charges. The County estimates the total breach, including costs and fees to equal $682,496.74.

The State Attorney's Office ultimately elected to defer any criminal action(s) until such time as the County endeavored to negotiate a settlement with Forestville and Tri-S over the disputed billing.

Following extended discussions, Forestville has agreed to resolve the matter by paying the County the amount of $537,789.74 within thirty (30) days of the date that this agreement becomes effective, either in the form of a credit against any outstanding invoices held by the County or as a cash payment. This amount represents the estimated value of the additional position for which the County was billed without receiving the service. It is further agreed that $17,528.49 in disputed invoices shall be withdrawn and that the services identified in those invoices are not compensable under the contract.

The proposed settlement guarantees remuneration from Forestville, which is now a fully-owned subsidiary of Tri-S Corporation and it binds Tri-S, which is not directly bound by the subject contract. This agreement becomes effective upon the execution of this agreement by the County Mayor or designee and approval of the Board of County Commissioners of Miami-Dade County, Florida and the expiration of the requisite veto period.

Director, General Services Administration

MEMORANDUM

(Revised)

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

DATE: April 7, 2009

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

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

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)(G)
4-7-09

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE EXECUTION OF THE SETTLEMENT AGREEMENT AND MUTUAL RELEASE BETWEEN MIAMI-DADE COUNTY AND FORESTVILLE CORPORATION AND TRI-S SECURITY CORPORATION IN THE AMOUNT OF $516,713.38 TO MIAMI-DADE COUNTY; AND AUTHORING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE THE AGREEMENT AND ALL OTHER DOCUMENTS NECESSARY TO IMPLEMENT THE AGREEMENT

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

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board approves the terms of and authorizes the Settlement Agreement and Mutual Release between Miami-Dade County and Forestville Corporation and Tri-S Security Corporation in the amount of $516,713.38 to Miami-Dade County, and authorize the County Mayor or County Mayor's designee to execute the agreement and all other documents necessary to implement the agreement, substantially in the form attached to this resolution.

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 7th day of April, 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.

OR

Oren Rosenthal

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Mutual Release (the "Agreement") is made, voluntarily entered into, and effective as of the _____ day of January, 2009 by and between Miami-Dade County, Florida (the "County"), a political subdivision of the State of Florida, on the one hand, and Forestville Corporation ("Forestville") and Tri-S Security Corporation ("Tri-S") (collectively the "Companies"), a Florida and Georgia corporation respectively, on the other hand, all of whom may be collectively referred to as "the Parties."

WITNESSETH

WHEREAS, the County and Forestville (a wholly owned subsidiary of Tri-S) contracted for the provision of security guard services to the County under Bid No. EM7797-2/07-OTR ("Contract"); and

WHEREAS, the County alleges that Forestville breached its contract with the County by failing to provide all of the services referenced in the Contract; and

WHEREAS, Forestville contends that it provided all invoiced services under the Contract; and

WHEREAS, the Parties to this Agreement desire to compromise and settle all disputes between them arising out of events that have been or could be asserted in regards to Forestville's performance of the services under the Contract with the exception of any unasserted third-party claims subject to indemnification;

NOW, THEREFORE, in consideration of the following covenants, obligations, payments, promises of release, the receipt, sufficiency, and adequacy of all such consideration being hereby expressly acknowledged, the Parties do hereby agree as follows:

1. **Incorporation:** The foregoing recitals of fact were made and shall be a part of

this Agreement to the same extent as if fully set forth herein.

2. **Settlement Payment:** The Companies agrees, within thirty (30) days of the date that this Agreement becomes effective, to pay the County $516,713.38 either as a credit against any outstanding County approved invoice or, should the invoiced amount be insufficient to cover the full value described herein, as a cash payment and to pay to the Public Corruption Investigation Bureau of the Miami-Dade County Police Department ("PCIB") $21,076.36 in investigative costs. The Companies further agree that they will withdraw the $17,528.49 in disputed invoices and agree that the services identified in those invoices are not compensable under the Contract. This Agreement becomes effective upon the execution of this Agreement by the County Mayor or designee *and* approval of the Board of County Commissioners of Miami-Dade County, Florida and the expiration of the requisite veto period.

3. **Mutual Release:** Upon the payment referenced in Paragraph 2 above, the County and the Companies do hereby, now and forever, fully and finally, remise, release, acquit and discharge each other, and their representatives, insurers and sureties, guarantors, attorneys, successors, assigns, employees, officers, agents, directors, members, managers, shareholders and all other persons, firms or corporations, if any, who are or may be liable in any way to the other, of and from any and all claims, counterclaims, damages, demands, actions, liabilities, responsibilities, causes of action, debts due, sums of money, accounts, liens, reckonings, bonds, bills, covenants, controversies, agreements, or promises whatsoever, in law or in equity, known or unknown, whether in tort or otherwise, against the other, arising from or relating in any way to the Contract. Notwithstanding the foregoing, this Agreement is not intended to and does not affect or discharge any indemnities in the Contract for suits or claims raised by third-parties in

relation to the performance of the Contract or any rights of the Parties outside of the Contract.

4. **Attorneys' Fees and Costs:** The Parties shall bear their own attorneys' fees and costs incurred with relation to the matters addressed in this Agreement.

5. **Binding Nature:** Each of the Parties hereto acknowledges, represents and warrants to the other Parties hereto that (i) this Agreement is final and binding upon them, regardless of the adequacy of the consideration hereof, and regardless of the extent of damages allegedly suffered by any of the Parties and (ii) the Party has not assigned any right, title or interest in or to any potential claim against any other Party hereto to any person or entity.

6. **Construction and Venue:** The Parties acknowledge that this Agreement was the product of mutual negotiation and for purposes of construing its terms, no individual Party shall be deemed to have drafted the Agreement. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Florida, without regard to such state's conflict of law decisions and law, and jurisdiction and venue to enforce the same shall exist solely in the Circuit of the 11th Judicial Circuit in and for Miami Dade County, Florida.

7. **No Admission of Liability:** This Agreement is a contractual settlement, not a mere recital, and is executed for the purpose of compromising disputed claims and avoiding future litigation. It is expressly understood and agreed by the Parties that nothing contained herein nor any action taken pursuant hereto shall ever be construed as an acknowledgment by the Party against whom any liability, claim, lien, defense, demand, charge, complaint, action, or cause of action is asserted of the validity of any such liability, claim, lien, defense, demand, charge, complaint, action, or cause of action, the validity of any such liability, claim, lien, defense, demand, charge, complaint, action, or cause of action being expressly denied by the

Party against whom such liability, claim, lien, defense, demand, charge, complaint, action, or cause of action is asserted. Nothing contained in this Agreement shall ever be construed as an admission of liability or responsibility by any Party.

8. **Headings/Titles:** The headings for each paragraph are for convenience only and shall not be utilized in construing the meaning or intent of any of the terms of this Agreement

9. **Successors:** This Agreement shall apply to and inure to the benefit of and be binding upon and enforceable against the Parties hereto, and their successors, heirs and assigns, as the case may be. However, this Agreement is not assignable by any Party hereto without the express written consent of all other Parties hereto.

10. **Severability:** The Parties have attempted to create an Agreement that is lawful and enforceable in all respects. The validity of this Agreement shall not be affected by any subsequent changes in either federal or state law, whether through legislation or judicial interpretation, which create, eliminate or change the rights and obligations of the Parties. However, if any provision of this Agreement is held to be invalid, void or unenforceable, the balance of the provisions shall, nevertheless, remain in full force and effect and shall in no way be affected, impaired or invalidated.

11. **Multiple Counterparts:** This Agreement may be executed in any number of separate counterparts, each of which shall together be deemed an original, but the several counterparts shall together constitute but one and the same Agreement.

12. **Capacity and Legal Consultation:** Each of the Parties represent and warrant that it is duly constituted and organized and that it is duly authorized to enter into this Agreement on its own behalf. It is hereby expressly understood and agreed, and the Parties hereby

represent, covenant, and warrant, that each signature hereafter appearing is authorized, genuine, and freely, voluntarily, knowingly, and willfully affixed hereon only after having had the opportunity to have the consequences of the terms of this Agreement explained to each of the Parties by counsel of their choosing. It is agreed that this Agreement is effective only upon the execution by the County pursuant to any required approval of the Board of County Commissioners of Miami-Dade County, Florida and the expiration of the requisite veto period.

13. **Further Action:** Each of the Parties hereto agrees to execute and deliver all documents, provide all information and take or forbear from all such action as may be reasonable necessary or appropriate to achieve the purposes of this Agreement.

14. **Merger and Modification:** The Parties acknowledge that there has been no influence to enter into this Agreement in any manner, nor has any Party relied upon any verbal warranties or representations not set forth in this Agreement. This Agreement constitutes the sole and entire agreement between the Parties and no modification hereof shall be binding unless attached hereto and signed by all parties to this Agreement. All prior and contemporaneous conversation, negotiations, possible and alleged agreements, representations, covenants and warranties concerning the subject matter hereof are merged herein.

EXECUTION

IN WITNESS WHEREOF, the Parties hereto have executed and sealed this Agreement on the date stated above.

FORESTVILLE CORPORATION
a Florida corporation,

Sworn to and subscribed before me
this 12 day of January, 2009.

Notary Public
My Commission expires on 11/15/11

DENA SPAGNUOLO
MY COMMISSION EXPIRES
NOTARY PUBLIC
NOV. 15TH, 2011
FORSYTH COUNTY, GA

R. J. Farrell

By: R J. FARRELL

Title: Pres. chairman/CEO.

TRI-S SECURITY CORPORATION
a Georgia corporation,

Sworn to and subscribed before me
this 12 day of January, 2009.

Notary Public
My Commission expires on 11/15/11

DENA SPAGNUOLO
MY COMMISSION EXPIRES
NOTARY PUBLIC
NOV. 15TH, 2011
FORSYTH COUNTY, GA

R. J. Farrell

By: R J. FARRELL

Title: chairman. CEO.

MIAMI-DADE COUNTY, FLORIDA,
a political subdivision of the State of Florida,

Sworn to and subscribed before me
this ____ day of January, 2009.

Notary Public
My Commission expires on _____

By: County Mayor or designee

518190.1

11