

Memorandum



Date: September 1, 2009

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

From: George M. Burgess
County Manager

R. A. Cuevas, Jr.
County Attorney

Subject: Settlement Agreement with Economy Party and Tent Rental, Inc.

Agenda Item No. 12(A)(2)

Recommendation

It is recommended that the Board approve the attached settlement agreement in the amount of \$37,500 between Miami-Dade County and Economy Party and Tent Rental, Inc (Economy) to settle a pre-suit breach of contract claim against the County in regards to a tent rental contract.

Scope

This settlement will be countywide in nature, but will not impact individual commission districts.

Fiscal Impact/Funding Source

The fiscal impact is \$37,500 and will be borne by the departments that incorrectly utilized the secondary vendor. This settlement is recommended to avoid the potential cost of litigation and the potential award for damages that could ensue should the suit be found in favor of the plaintiff.

Track Record/Monitor

Each department has been informed of the correct vendor selection procedure and staff has been counseled accordingly.

Background

On 7/8/2007, Contract 8341-4/12 was awarded to Economy as primary vendor for tent rentals. Tents were inadvertently rented from a secondary vendor to the exclusion of Economy. As a result, Economy asserted that it had lost revenues and profits that should have rightfully been directed toward their company. In evaluating the settlement amount, staff reviewed and audited 88 invoices for other tent vendors issued to nine departments from August 2007 through October 2008. The breakdown by department is as follows:

Corrections and Rehabilitation Department	\$ 792.52
Department of Environmental Resources Management	\$ 7,091.24
Fire-Rescue Department	\$ 3,977.77
Human Resources Department	\$ 3,944.87
Park and Recreation Department	\$17,911.96
Port of Miami	\$ 1,410.15
Miami-Dade Public Library	\$ 135.73
Miami-Dade Transit	\$ 1,916.39
Vizcaya Museum and Gardens	\$ 319.37
Total	\$37,500.00

Attachments


Alex Muñoz Assistant County Manager



MEMORANDUM

(Revised)

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

DATE: September 1, 2009

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

SUBJECT: Agenda Item No. 12(A)(2)

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. 12(A)(2)
9-1-09

RESOLUTION NO. _____

RESOLUTION AUTHORIZING SETTLEMENT WITH ECONOMY PARTY AND TENT RENTAL, INC. IN THE AMOUNT OF \$37,500 TO SETTLE A PRE-SUIT BREACH OF CONTRACT CLAIM IN REGARDS TO A TENT RENTAL CONTRACT; AND AUTHORIZING THE COUNTY MAYOR OR MAYOR'S DESIGNEE TO EXERCISE ANY AND ALL OTHER RIGHTS CONFERRED THEREIN

WHEREAS, his Board desires to accomplish the purpose 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 settlement between Miami-Dade County and Economy Party and Tent Rental, Inc. in the amount of \$37,500 to settle a pre-breach of contract claim in regards to a tent rental 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
Dorin D. Rolle	Natacha Seijas
Katy Sorenson	Rebeca Sosa
Sen. Javier D. Souto	

The Chairperson thereupon declared the resolution duly passed and adopted this 1st day of September, 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

SETTLEMENT AGREEMENT

ECONOMY PARTY & TENT RENTAL, INC., a Florida corporation with an FEIN of 650985817 ("Economy"), and MIAMI-DADE COUNTY, a political subdivision of the State of Florida (the "County"), by and through their undersigned representatives, hereby agree to the following terms:

RECITALS

WHEREAS, the Economy claims that Miami-Dade County breached Contract No. 8341-4/12 "Equipment Rental (Entertainment and Special Events) for various Miami-Dade County Departments" by failing to properly assign work to Economy in accordance with the terms of the agreement ("Claim");

WHEREAS, Economy and the County desire to settle the Claim and the entire subject matter at issue; including any and all claims and controversies that have arisen, been brought and that could have been brought pertaining to the subject matter of the claims set forth in the preceding paragraph; and

WHEREAS, Economy and the County desire to reduce their settlement agreement (hereinafter "the agreement") to writing so that it is binding upon them, their successors and assignees.

TERMS OF SETTLEMENT

NOW THEREFORE, in consideration of the mutual covenants and promises stated herein and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, Economy and the County agree as follows:

1. The recitals as set forth above are true and correct and incorporated herein by reference.

2. The County shall pay to Economy the total sum of THIRTY SEVEN THOUSAND FIVE HUNDRED DOLLARS AND NO CENTS (\$37,500.00) which shall be made payable to Economy.

3. Payment will be made within 30 days after the date the Commission approves this Settlement Agreement but in no event prior to the County's receipt of the release described below.

4. Economy shall execute a release in the form attached hereto as Exhibit A and made a part hereof within 15 days of approval of this Settlement by the board of County Commissioners.

5. Each party shall bear their own attorney's fees and costs connected and/or arising from the instant action.

6. If any litigation arises in connection with any legal action arising out of this Settlement Agreement, the prevailing party shall be entitled to any and all attorneys' fees, including any attorneys' fees and costs on appeal, incurred by or on behalf of the non-prevailing party, heirs, executors, administrators, representatives, agents, attorneys, employees, officers, directors, predecessors, affiliates, successors and/or assigns.

7. This agreement together with all documents required to be executed hereunder constitute the entire agreement and understanding between the parties to this agreement and may not be modified except as may be set forth in writing and executed by the parties hereto.

8. This settlement shall be fully binding and shall constitute a complete and final settlement for all claims and damages, including any claims for attorney's fees and costs.

9. The parties represent and agree that they have participated equally in the negotiation of the terms and provisions set forth in the Stipulation for Settlement and that no presumptions or inference shall apply against any party hereto to its construction.

10. The parties further affirmatively state that no representation, promise or agreement not expressed in the Stipulation for Settlement and the Releases has been made to any party and that this Agreement contains all the terms.

11. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, representatives, agents, attorneys, employees, officers, directors, predecessors, affiliates, successors or assigns in connection with any legal action arising out of the agreement.

12. By executing this Agreement the representatives of the parties represent and warrant that they have been granted full authority and authorization by their respective clients to enter into this Settlement and resolve the controversy for the terms herein stated.

IN ACCEPTANCE WHEREOF, the parties have set their respective hands and seals to the date and year appearing by their respective signatures.

Economy Party and tent Rental, Inc.

Miami-Dade County

By: Isabel Nielson
Isabel Nielson
Title: President

By: _____
[]
Title:

Dated: August 11th, 2009.

Dated: _____, 2009.