

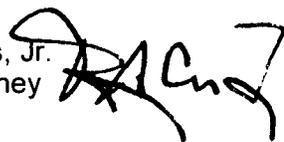
Memorandum



Date: March 16, 2010
To: Honorable Chairman Dennis C. Moss
and Members, Board of County Commissioners

Agenda Item No. 12(A)(2)

From: 
George M. Burgess
County Manager

R. A. Cuevas, Jr. 
County Attorney

Subject: Resolution approving the settlement of the lawsuit of *Unifirst Corporation v. Miami-Dade County* 07-05149 CA 20 ("Lawsuit").

Recommendation

It is recommended that the Board of County Commissioners (the Board) approve the attached Settlement Agreement ("Settlement") between Miami-Dade County, Florida and Unifirst Corporation. In the attached proposed Settlement, Unifirst Corporation ("Unifirst"), resolves all claims between the parties for work performed in connection with the delivery and laundering of uniforms for employees of Miami-Dade Transit and the Seaport as provided in Contract #5398-4/11: Uniform Rental or Purchase with Laundry Services. The Settlement releases all claims Unifirst has against the County and all claims the County has against Unifirst on those matters in exchange for the County paying \$15,000 to Unifirst.

Scope

Settlement of the lawsuit between Unifirst Corporation and the County for the mutual releases set forth in the Settlement Agreement in substantially the form attached hereto.

Fiscal Impact/Funding Source

The fiscal impact to the County of this settlement is \$15,000 and is funded from Seaport and Miami-Dade Transit Operating funds.

Background

On or about September 1, 2006, the County contracted with Unifirst for the rental and laundering of uniforms for Miami-Dade Transit and the Seaport. The total contract value was \$425,000. Shortly after the inception of the contract, Miami-Dade Transit (MDT) and Department of Procurement Management (DPM) personnel informed Unifirst of numerous recurring problems including, employees not receiving the full allotment of uniforms, uniforms being returned to employees stained and/or soiled, employees receiving uniforms with the wrong shirt and/or pants size, inaccurate invoicing, and inconsistent delivery and pick ups of uniforms. During the months of December, 2006 through February, 2007, the County notified Unifirst both in meetings and in writing of its continued dissatisfaction with Unifirst's performance. On or about February 13, 2007, DPM notified Unifirst that the portion of Contract No. 5398-4/11 involving MDT is terminated, effective February 26, 2007. The portion of the contract involving the Seaport was not terminated and remained in effect until August 31, 2007, when said contract expired on its own terms.

On or about February 21, 2007, Unifirst filed suit against the County alleging the County wrongfully terminated the Transit portion of the contract, failed to provide adequate notice of the County's termination, failed to pay outstanding invoices, and failed to return all of the uniforms provided. On or about March 19, 2008, Unifirst amended its complaint to include allegations that the County wrongfully terminated the Seaport component of the contract, failed to pay outstanding invoices involving the Seaport, and failed to return the uniforms provided to Seaport employees. The County filed a counterclaim to Unifirst's lawsuit alleging that Unifirst failed to comply with the terms of the contract.

The terms of the contract did require that upon expiration or termination of the contract, Unifirst was entitled to payment for any outstanding invoices for services provided. Moreover, the contract required that upon expiration or termination, the County would return the uniforms provided by Unifirst. The County does not dispute that some outstanding invoices remain and that not all of the uniforms provided were returned. Some uniforms could not be located because the individuals provided the uniforms are no longer employed with the County. The parties disagree as to the total value of outstanding invoices and unreturned uniforms. Unifirst maintains that the value of the uniforms not returned alone greatly exceeds \$15,000. The County and Unifirst attended Court mandated mediation and continued settlement talks until reaching an amicable settlement. The County would pay Unifirst \$15,000 to settle all claims, including any outstanding invoices and any charges related to the return of uniforms. Both sides would take a voluntary dismissal and release one another of all actual or potential claims arising from this lawsuit or the contract in question. Each side would bear their own attorney's costs and fees.


Assistant County Manager



MEMORANDUM

(Revised)

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

DATE: March 16, 2010

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

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

Please note any items checked.

- "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
- Ordinance creating a new board requires detailed County Manager's report for public hearing
- No committee review
- Applicable legislation requires more than a majority vote (i.e., 2/3's ____, 3/5's ____, unanimous ____) to approve
- Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved _____ Mayor

Agenda Item No. 12(A)(2)

Veto _____

3-16-10

Override _____

RESOLUTION NO. _____

**RESOLUTION APPROVING SETTLEMENT AGREEMENT
IN THE AMOUNT OF \$15,000 BETWEEN UNIFIRST
CORPORATION AND MIAMI-DADE COUNTY TO
RESOLVE OUTSTANDING LITIGATION AND PROVIDING
FOR MUTUAL RELEASES OF ALL CLAIMS**

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 settlement of the lawsuit between Unifirst Corporation and the County in the amount of \$15,000 to resolve outstanding litigation and provide for the mutual releases set forth in the Settlement Agreement and authorizes the execution by the County Mayor or the Mayor’s Designee of the Settlement Agreement in substantially the form attached hereto.

The foregoing 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
Carlos A. Gimenez
Barbara J. Jordan
Dorrin D. Rolle
Katy Sorenson
Sen. Javier D. Souto

Audrey M. Edmonson
Sally A. Heyman
Joe A. Martinez
Natacha Seijas
Rebeca Sosa

The Chairperson thereupon declared the resolution duly passed and adopted this 16th day of March, 2010. This resolution shall become effective as follows: (1) 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, and (2) either i) the Citizens' Independent Transportation Trust (CITT) has approved same, or ii) in response to the CITT's disapproval, the County Commission re-affirms its award by two-thirds (2/3) vote of the Commission's membership and such reaffirmation becomes final.

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

HARVEY RUVIN, CLERK

Approved by County Attorney as
to form and legal sufficiency.

Bruce Libhaber



By: _____
Deputy Clerk

SETTLEMENT AGREEMENT

UNIFIRST CORPORATION, (“UniFirst”), 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, UniFirst claims that Miami-Dade County breached Contract No. 5398-4/11-OTR “Uniforms Rental or Purchasing with Laundry Service” by failing to pay certain invoices, failing to provide adequate notice prior to termination of the contract, failure to return certain uniforms which are the property of UniFirst in accordance with the terms of the agreement (“Claim”);

WHEREAS, Miami-Dade County claims that UniFirst breached Contract No. 5398-4/11-OTR “Uniforms Rental or Purchasing with Laundry Service” by failing to timely provide uniforms, failing to measure all of the necessary County employees for uniforms, failing to adequately invoice the County, failing to adequately clean said uniforms in accordance with the terms of the agreement (“Counterclaim”);

WHEREAS, UniFirst and the County desire to settle the Claim and the Counterclaim 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, UniFirst 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, UniFirst 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 UniFirst the total sum of FIFTEEN THOUSAND DOLLARS AND NO CENTS (\$15,000.00) which shall be made payable to UniFirst.

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. UniFirst 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.

UniFirst Corporation

Miami-Dade County

By:  _____

By: _____

Title: *GENERAL MANAGER*

Title:

Dated: *September 15*, 2009.

Dated: _____, 2009.

