

MEMORANDUM

Agenda Item No. 13(A)(1)

TO: Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners

DATE: September 20, 2011

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

SUBJECT: Resolution approving Settlement
agreement between Miami-Dade
County, and Johnson Controls, Inc.
to resolve outstanding litigation for
mutual releases of all claims and a
payment to the County of \$4,000,000

The accompanying resolution was prepared and placed on the agenda at the request of County Attorney.



R. A. Cuevas, Jr.
County Attorney

RAC/cp

Date: September 20, 2011

To: Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners

From: Honorable Carlos A. Gimenez
Mayor

R. A. Cuevas, Jr.
County Attorney


Subject: Resolution Approving Settlement Agreement Between Miami-Dade County and Johnson Controls, Inc.

Recommendation

It is recommended that the Board of County Commissioners approve the attached resolution approving the settlement agreement between Miami-Dade County (the "County") and Johnson Controls, Inc. ("JCI"). The attached proposed settlement resolves all claims between the parties. The proposed settlement releases all claims between and among the parties, with JCI agreeing to pay \$4.0 million to the County.

Scope

Settlement of the actions described above between and among the County and JCI for the mutual releases set forth in the proposed settlement agreement in substantially the form attached hereto.

Fiscal Impact

The County will receive \$4 million from JCI as part of this settlement.

Background

The E-Satellite APM System Contract

This lawsuit involves a maintenance contract between the County and JCI for maintenance to an elevated two-track, automated people mover train system ("APM" or "APM System") at the Miami International Airport. The APM serves Terminal E shuttling passengers between Lower E and E-Satellite.

The APM System comprises two trains on separate tracks: the North Train and South Train. Both travel from MIA Central Terminal to E-Satellite. The trains are remotely driven, and are not normally operated by an on-board conductor. There are multiple redundant safety programs built into the E-Satellite APM System to ensure: (i) the trains do not stop or start suddenly; (ii) the doors remain closed during transit; (iii) the trains do not reach unsafe speeds; and critically, (iv) the trains stop.

The County relies on third parties to operate and maintain the E-Satellite APM System. These third-party operation and maintenance services are procured via contract. In 2007, the County put out an invitation to bid to provide E-Satellite APM System operations and maintenance services through 2010 (the "Contract").

On January 22, 2008, the Board of County Commissioners (the "Board") approved Resolution No. R-80-08 awarding the Contract to JCI. The Contract provided a three-year term along with a fourth year option. The Contract required JCI to maintain the trains. In the event that JCI damaged the train, the Contract made JCI responsible for repairing, rebuilding, restoring, or making good on such damage, all at JCI's sole cost and expense.

The Crash

During the week prior to the crash, the south train's emergency brakes engaged randomly and for no apparent reason while transporting passengers. JCI employees attempted to trouble-shoot the train while it was servicing passengers. JCI technicians placed a jumper cable on a circuit board of the train. The cable bypassed the train's automatic train protection (ATP) safety circuits that supervise and oversee all automatic train operations, such as train speed, door operation, train presence detection, and other related safety circuits. While the jumper cable was in place, and with the ATP safety circuits therefore bypassed, the Program Stop Module, which is responsible for controlling the train's deceleration profile into the end stations and stopping accuracy of the train in the station, failed. Since the jumper cable was in place, the ATP fail-safe features were bypassed and could not function. The train never decelerated and hit the wall without any braking action.

On November 30, 2009, the County demanded that JCI pay \$60 million in compensation. After JCI failed to do so, JCI was terminated on December 10, 2009.

On March 1, 2010, the County filed a one-count breach of contract complaint in state court. JCI removed the case to federal court. On March 6, 2010, the County gave JCI notice of its proposed debarment action. After a week of testimony, the panel unanimously voted not to debar JCI.

JCI asserts that its obligations under the Contract were discharged due to a breach of the Contract by the County. JCI contends the County failed to assure that JCI received the minimum maintenance hours set forth in the Contract, thus interfering with JCI's ability to meet its contractual maintenance obligations. The County conceded that it never provided JCI the total number of maintenance hours under the Contract due to scheduling requirements of American Airlines.

JCI also asserts that the County made material misrepresentations concerning the condition, fitness, safety, and expected life of the E-Satellite trains. The E-Satellite APM System was approximately 27 years old at the time of the crash. In addition, documents exist that suggest that the APM had already exceeded its design life, and that in 2007, the Aviation Department paid for improvements to extend its useful life another five years.

Damages

The Court rejected the County's theory on the amount of its damages, and determined that the damages recoverable by the County are limited to the difference between the position the County would have been in if Johnson Controls had completed performance of the Contract, and the position the County is in now. Thus, the County's damages would be the difference between the present value of the discounted cash flow of E-Satellite had the South Train not been destroyed, and the present value of the actual cash flow generated by E-Satellite without the South train. This Court's construct significantly limited the amount of damages the County can recover in the case.

To date, the County has expended approximately \$1 million for crash clean-up; structural repairs to E terminal; and costs and expenses associated with transporting passengers to and from E Satellite. JCI served a proposal for settlement in the amount of \$1 million in April 2011. If the case were tried, and the County recovered \$750,000 or less, the County would be liable for JCI's attorney's fees, which stand currently at \$1.5 million, as well as all costs associated with trial.

Conclusion

Under the terms of the settlement, JCI would pay a total of \$4.0 million to the County. This settlement avoids the risks and costs associated with trial, and provides a fair and reasonable recovery to the County under the facts and circumstances of this case.



MEMORANDUM

(Revised)

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

DATE: September 20, 2010

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

SUBJECT: Agenda Item No. 13(A)(1)

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
Veto _____
Override _____

Agenda Item No. 13(A)(1)
9-20-11

RESOLUTION NO. _____

RESOLUTION APPROVING SETTLEMENT AGREEMENT
BETWEEN MIAMI-DADE COUNTY, AND JOHNSON
CONTROLS, INC. TO RESOLVE OUTSTANDING LITIGATION
FOR MUTUAL RELEASES OF ALL CLAIMS AND A PAYMENT
TO THE COUNTY OF \$4,000,000

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 lawsuits as forth in the Settlement Agreement and authorizes the execution by the County Mayor or 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:

Joe A. Martinez, Chairman
Audrey M. Edmonson, Vice Chairwoman

Bruno A. Barreiro
Esteban L. Bovo, Jr.
Sally A. Heyman
Jean Monestime
Rebeca Sosa
Xavier L. Suarez

Lynda Bell
Jose "Pepe" Diaz
Barbara J. Jordan
Dennis C. Moss
Sen. Javier D. Souto

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The Chairperson thereupon declared the resolution duly passed and adopted this 20th day of September, 2011. 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.



David Stephen Hope