

MEMORANDUM

Substitute
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: Settlement 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

This substitute differs from the original item in that the Settlement Agreement referenced in this item was inadvertently not attached. This substitute provides this document and corrects scrivener's errors in title.

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



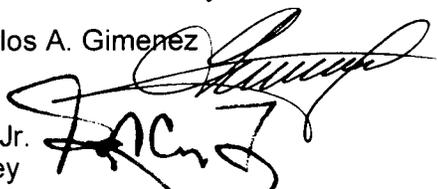
R. A. Cuevas, Jr.
County Attorney

RAC/jls

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 troubleshoot 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: Substitute
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 _____

Substitute
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

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.

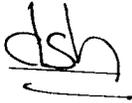
MIAMI-DADE COUNTY, FLORIDA

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

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Mutual Release (the "Agreement") dated _____, 2011, is executed by and between Miami-Dade County, a political subdivision of the State of Florida (the "County"), and Johnson Controls, Inc., a Wisconsin corporation ("JCI") (collectively the "Parties").

RECITALS

WHEREAS, the County asserts claims for property damage in connection with an accident that occurred on the South train of the automated people mover located at Satellite E in the Miami International Airport ("E-Satellite APM") on November 28, 2008 ("the Accident");

WHEREAS, at the time of the Accident, the County and JCI were parties to Contract ITB No. MDAD 01-07 wherein JCI had agreed to provide certain maintenance services relating to the E-Satellite APM;

WHEREAS, on or about March 1, 2010, the County filed suit against JCI for breach of contract in the matter styled *Miami-Dade County v. Johnson Controls, Inc.*, No. 2010-13397, in the Circuit Court for the 11th Judicial Circuit in and for Miami Dade County, Florida, which case was thereafter removed to the United States District Court for the Southern District of Florida and assigned Case No. 10-20881-Civ-Altonaga/Simonton (hereinafter the "Federal Case");

WHEREAS, JCI denied the allegations contained in the County's Complaint in the Federal Case and raised numerous affirmative defenses; and

WHEREAS, the Parties now agree that it is in their best interest to settle this matter and avoid further litigation, including a federal jury trial;

NOW THEREFORE, in consideration of the foregoing recitals and following premises, promises, covenants, conditions, and other good and valuable consideration, the receipt, adequacy, and sufficiency of which is acknowledged, the County and JCI agree as follows:

TERMS

1. The above recitals are incorporated by reference and are a part of this Agreement.
2. Subject to the terms and conditions of this Agreement and approval of the settlement by the Court, it is understood that the terms of this Agreement, the payment of any moneys, or any other action taken pursuant to this Agreement in no way constitutes an admission of liability or acknowledgement of the validity of any allegation, finding, or conclusion by the County or JCI, but rather are made as a contractual settlement and not a mere recital by way of compromise to avoid the expense and uncertainty of further litigation.
3. The County shall file a Stipulation of Dismissal with Prejudice dismissing its claim in the Federal Case. The Stipulation of Dismissal with

Prejudice shall provide that the Parties shall bear their own attorneys' fees and costs in the Federal Case, unless otherwise provided in this Settlement Agreement.

4. The Stipulation of Dismissal with Prejudice shall be filed within ten (10) business days after receipt of the settlement payment identified in Paragraph 5.

5. As a material inducement to and in consideration for the Parties entering into this Agreement, and subject to the terms and conditions of this Agreement, the Parties agree to a settlement amount of Four Million Dollars and No Cents (\$4,000,000.00), which shall be paid by JCI to the County (the "Settlement Funds").

6. JCI shall pay the total sum of the Settlement Funds within thirty (30) business days after the County provides JCI with a fully executed copy of this Agreement.

7. Any payment provided for in this Settlement Agreement not made by JCI to the County in compliance with Paragraph 6 above shall begin to bear interest ten days later, at the rate set forth in Section 55.03 (1) of the Florida Statutes.

8. For the consideration and promises made herein, the County releases and forever discharges JCI from any and all civil claims, causes of action, demands, disputes and rights of whatever nature and kind, known or unknown, past

or future, related to the Federal Case, with the exception of the certain indemnification claims by and between the County and JCI pursuant to Contract ITB No. MDAD-01-07 relating to certain personal injury actions arising out of the Accident and currently pending in Florida state court, specifically: *Wagenblass v. JCI*, Case No. 09-43285 CA 31; *Kierschke v. JCI*, Case No. 09-54733 CA 10; *Barnett v. JCI*, Case No. 09-54729 CA 10; and *Lozano v. JCI*, Case No. 09-53182 CA 20 (collectively the "Personal Injury Actions"). Such release and discharge is made by County in its respective rights and for its successors, executors, agents, employees, assigns, Commissioners, Mayors, Deputy Mayors, and any and all other persons, firms, corporations, or other entities who may claim by or through the County. The County agrees that it will not, and that its legal representatives and assigns shall not, hereafter file in any court any action relating to the Federal Case, with the exception of any action to enforce this Agreement; and that to any action not excepted above which nevertheless may hereafter be brought, this Agreement shall be a complete and conclusive defense.

9. For the consideration and promises made herein, JCI releases and forever discharges the County from any and all claims, causes of action, demands, disputes and rights of whatever nature and kind, known or unknown, past or future, related in any way to the Federal Case, with the exception of certain indemnification claims by and between the County and JCI pursuant to Contract

ITB No. MDAD-01-07 relating to the Personal Injury Actions as defined in Paragraph 8 above. Such release and discharge is made by JCI in its respective right and for its successors, executors, agents, employees, assigns, subcontractors, sureties, suppliers, and any and all other persons, firms, corporations, or other entities who may claim by or through JCI. JCI agrees that it will not, and that its legal representatives and assigns shall not, hereafter file in any court any action relating to the Federal Case, with the exception of any action to enforce this Agreement or in connection with the indemnification claims by and between the County and JCI with regard to the Personal Injury Actions, and that to any such action not excepted above which nevertheless may hereafter be brought, this Agreement shall be a complete and conclusive defense.

10. Except as otherwise provided in this Agreement, each party shall bear its own attorneys' fees and costs relating to or arising from the Federal Case.

11. Neither the County nor JCI shall issue a press release to the media regarding this Agreement or any of the matters described herein without advance written approval of the other party. For these purposes, a "press release" shall not include any statement made by an elected official in the conduct of his or her official duties.

12. The Parties agree that each of them will not disparage, denigrate, slander, and/or defame the other party or its principals to any non-Parties to this

Agreement, or otherwise speak to non-parties in terms that attack the character or conduct (whether in written form or otherwise) of the other party.

13. The Parties further agree that the terms of Paragraphs 11 and 12 shall not apply to: (i) communications made to attorneys for the purpose of securing legal advice; (ii) testimony or other communications made in the context of formal discovery or formal proceedings in a judicial or quasi-judicial proceeding; (iii) communications otherwise required by law; (iv) communications made for the purpose of approving this Agreement; and (v) communications made for the purpose of enforcing this Agreement.

14. It is understood and agreed that although the fact that the Federal Case has settled is not confidential, the terms and conditions of the settlement are confidential. Except upon written permission by the other party, the Parties shall not disclose the terms and conditions of this Agreement to any person other than: (a) employees, agents and representatives, including auditors, accountants, attorneys, lenders, insurers, or insurance brokers, only as may be required in the performance of their duties; (b) the Internal Revenue Service, if required; (c) in a deposition or other Court proceeding, if subject to an appropriate confidentiality and/or protective order, or otherwise legally mandated; and/or (d) as required by law, including the Florida Public Records Act and Sunshine Laws. In the event a request to disclose the terms of this settlement is received by the County or its

employees, officers, agents, successors and assigns, attorneys, or otherwise pursuant to the Florida Public Records Act or Sunshine Laws, it shall as soon as practicable, but no later than ten (10) business days, notify JCI of the existence, nature and scope of the request (the "Notice"). Written Notice shall be given to Christopher E. Knight, Esq., Fowler White Burnett, P.A., Espirito Santo Plaza, 1395 Brickell Avenue, 14th Floor, Miami, Florida 33131 via Certified U.S. Mail, Return Receipt Requested, or, in the event the County is unable to give Notice to Mr. Knight within the specified time frame through no fault of its own, then to JCI's registered agent in the State of Florida.

15. It shall be the sole responsibility of JCI to challenge or legally contest any public records request received by the County pertaining to information related to this Agreement. Nevertheless, the County agrees that it will not disclose this Agreement or the terms and conditions contained herein unless and until: 1) the County receives written consent from JCI; 2) a Court with jurisdiction orders the County to disclose the Agreement or related information over and above JCI's objection; or 3) JCI fails to notify the County of its written objection to the disclosure within thirty (30) days of its receipt of Notice by the County as set forth in Paragraph 14 above.

16. This Agreement shall be construed under the laws of the State of Florida. The parties agree that the Court in the Federal Case should retain jurisdiction to review any disputes arising under this Agreement.

17. This Agreement together with all documents required to be executed hereunder constitutes the entire agreement and understanding between the Parties to this Agreement. No supplement, modification, or amendment of this Agreement shall be binding unless it is executed in writing by the Parties.

18. As between the County and JCI, the terms and conditions of this Agreement are fully set forth in this document and no other material terms exist outside this document. As between the County and JCI, this Agreement supersedes all prior and contemporaneous agreements and understandings.

19. The Parties represent and agree that they have participated equally in the negotiation of the terms and provisions set forth in this Agreement and that no presumptions or inference shall apply against any party hereto to its construction.

20. The Parties declare that they have completely read the terms of this Agreement, that they have discussed the terms of the Agreement with legal counsel of their choice, and that they fully understand and voluntarily accept the terms for the purpose of making a full and final compromise, adjustment, and settlement of claims.

21. 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.

22. By executing this Agreement the undersigned warrant and represent that they are authorized to enter into this Agreement and empowered to bind their respective Parties to its terms. Further, the Parties represent that they have not assigned their rights or claims subject to this Agreement to any third party.

23. The County further represents and warrants that the County has not sold, assigned, transferred, conveyed or otherwise disposed of or caused any other person or entity to possess a subrogated interest in any of the claims, charges, demands, judgments, damages, expenses, costs, losses of income, controversies, causes of action, liabilities, or settlement proceeds referred to in this Agreement or otherwise arising out of the Accident.

24. 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 federal, state, or county 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.

IN ACCEPTANCE WHEREOF, the Parties have set their respective hands as of the date and year appearing by their respective signatures.

Miami-Dade County

Johnson Controls, Inc.

By: _____
[]

By: Michael J. Dranos
[Michael J. Dranos]

Title:

Title: ATTORNEY FOR JOHNSON CONTROLS, INC.

Dated: _____, 2011.

Dated: September 12, 2011.