MEMORANDUM

Agenda Item No. 8(F)(4)

TO:	Honorable Chairwoman Rebeca Sosa and Members, Board of County Commissioners	**DATE:**	January 22, 2014
FROM:	R. A. Cuevas, Jr. County Attorney	**SUBJECT:**	Resolution approving the Settlement Agreement and Mutual Release between Miami-Dade County and 50 State Security Service, Inc., in the amount of $360,000.00

The accompanying resolution was prepared by Internal Services Department and placed on the agenda at the request of Prime Sponsor Chairwoman Rebeca Sosa.

R. A. Cuevas, Jr.
County Attorney

RAC/jls

Memorandum

MIAMI-DADE COUNTY

Date: January 22, 2014

To: Honorable Chairwoman Rebeca Sosa
and Members, Board of County Commissioners

From: Carlos A. Gimenez
Mayor

Robert A. Cuevas, Jr.
County Attorney

Subject: Approval of Settlement Agreement with 50 State Security Service, Inc. and Mutual Release in Exchange for Payment to Miami-Dade County of $360,000

Recommendation
It is recommended that the Board of County Commissioners (Board) approve the attached resolution authorizing the County Mayor or County Mayor's designee to execute the Settlement Agreement and Mutual Release (Attachment A) with 50 State Security Service, Inc. (50 State).

The Settlement Agreement and Mutual Release will result in a payment to the County of $360,000 and will settle a lawsuit, *Miami-Dade County v. 50 State Security Service, Inc.*, currently pending in the Circuit Court of the Eleventh Judicial Circuit, in and for Miami-Dade County, Case No. 13-21379-CA-01 (Lawsuit).

Scope
User Access Program and Inspector General fees are utilized for countywide procurement activities and Inspector General services, respectively.

Fiscal Impact/Funding Source
The County will receive a payment of $360,000 with approval of this settlement agreement.

Track Record/Monitor
The Internal Services Department will oversee the collection and deposit into a County account of the $360,000 settlement payment from 50 State.

Background
50 State is a security guard services firm that has been contracted to provides security guard services in the County's special taxing districts. Under 50 State's contract with the County, 50 State is required to pay a "User Access Fee" under the County's User Access Program (UAP), County Code § 2-8.10. Under the UAP, the County collects and retains two percent from each invoice it receives to defray to cost of procurement activities. The contract between 50 State and the County also requires 50 State to pay a fee for inspector general services, which fee is equal to one-quarter of one percent of the total contract amount.

A lawsuit was filed in an effort to collect past due UAP and Inspector General fees, which the County inadvertently failed to deduct when paying 50 State's invoices. The County's Finance Department corrected this method of payment as soon as the problem was identified. Controls have also been implemented to ensure that this does not occur again with this contract. Staff from the Internal Services Department has reviewed other contracts in place to ensure there are no other similar instances. The $360,000 settlement amount represents a mutually agreeable compromise of a disputed claim, which settlement amount 50 State will pay in $10,000 monthly installment payments over a period of 36

months. 50 State began its installment payments in August 2013. Upon this Board's approval of the Settlement Agreement and Mutual Release, the parties will file a joint stipulation of dismissal, concluding the Lawsuit and resolving all claims between the parties. Approving this settlement agreement is in the best interest of the County.

Edward Marquez
Deputy Mayor

Attachments

MEMORANDUM
(Revised)

TO: Honorable Chairwoman Rebeca Sosa
and Members, Board of County Commissioners

DATE: January 22, 2014

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

SUBJECT: Agenda Item No. 8(F)(4)

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 Mayor'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. 8(F)(4)
1-22-14

RESOLUTION NO. _____

RESOLUTION APPROVING THE SETTLEMENT AGREEMENT AND MUTUTAL RELEASE BETWEEN MIAMI-DADE COUNTY AND 50 STATE SECURITY SERVICE, INC., IN THE AMOUNT OF $360,000.00; AUTHORIZING THE MAYOR OR MAYOR'S DESIGNEE TO EXECUTE SAME AND TO ENFORCE ALL TERMS THEREIN

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 lawsuits as set forth in the Settlement Agreement and authorizes execution by the County Mayor or Mayor's designee of the Settlement Agreement, in substantially the form attached hereto, and enforce all terms herein on behalf of Miami-Dade County.

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:

Rebeca Sosa, Chairwoman
Lynda Bell, Vice Chair

Bruno A. Barreiro	Esteban Bovo, Jr.
Jose "Pepe" Diaz	Audrey M. Edmonson
Sally A. Heyman	Barbara J. Jordan
Jean Monestime	Dennis C. Moss
Sen. Javier D. Souto	Xavier L. Suarez
Juan C. Zapata	

The Chairperson thereupon declared the resolution duly passed and adopted this 22nd day of January, 2014. 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. MAG

Miguel A. Gonzalez

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Mutual Release ("Agreement") dated October 23, 2013, is entered by and between 50 State Security Service, Inc. ("50 State") and Miami-Dade County, Florida (the "County").

RECITALS

WHEREAS, the County and 50 State are parties to that certain County contract known as Contract No.: 437a, under which 50 State agreed to provide security guard services for special taxing districts (the "Contract"); and

WHEREAS, under the terms of the Contract, 50 State was required to pay User Access Program and Inspector General fees (the "UAP and IG Fees"), but the County claims that 50 State did not pay the UAP and IG Fees due under the Contract (the "County's Claim"); and

WHEREAS, to recover the County's Claim, the County has filed a lawsuit against 50 State, which is styled *Miami-Dade County v. 50 State Security Service, Inc.*, Case No.: 13-21379-CA-01 in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida (the "Lawsuit"); and

WHEREAS, 50 State denies all liability on the claims that the County has asserted in the Lawsuit, but desires solely for the purpose of economic considerations, to avoid further litigation, and without the admission of liability, fault, or responsibility, to settle the Lawsuit on amicable terms;

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, 50 State and the County agree as follows:

TERMS AND CONDITIONS

1. **Incorporation of Recitals.** The above recitals are incorporated by reference and are a part of this Agreement.

2. **Agreement to Settle; No Admission of Liability.** Subject to the terms and conditions of this Agreement, 50 State and the County hereby agree to compromise and settle the County's Claim. 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 50 State or the County, 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. **Approval of Board of County Commissioners.** 50 State acknowledges that before the County may settle the County's Claim on the terms and conditions set forth in this Agreement, the County must obtain the approval of the Board of County Commissioners ("BCC Approval").

a. **BCC Approval Window.** 50 State acknowledges that BCC Resolution 130-06 requires that all non-County parties must execute the Agreement before the Agreement may be placed on the BCC's agenda. Accordingly, 50 State agrees to execute this Agreement before the County ("50 State Execution") and as a precondition to the presentation of this Agreement to the County Mayor or County's Mayor's Designee or to the BCC. From the date of 50 State Execution, the County shall have 180 days in which to obtain BCC Approval (the "BCC Approval Window"). During the BCC Approval Window, 50 State agrees that it shall be bound by the Agreement as if fully executed by all parties to it.

b. **County's Obligations Before BCC Approval.** The County shall not be required to file any document compromising its claim(s) in the Lawsuit (e.g., a Stipulation of Dismissal) and shall not have released 50 State until obtaining BCC Approval and until the County Mayor's veto period expires, until the County Mayor declines to exercise his veto power, or until the BCC overrides the County Mayor's veto, should the County Mayor decide to veto the BCC's approval of this Agreement.

4. **Filing of Joint Stipulations of Dismissal.** Within thirty (30) days after obtaining BCC Approval, the Parties shall file Joint Stipulations of Dismissal with Prejudice dismissing all claims in the Lawsuit. The Joint Stipulations of Dismissal with Prejudice shall provide that each party shall bear its own attorneys' fees and costs unless otherwise provided in this Agreement.

5. **Determination of Responsibility.** The County deems 50 State an eligible and responsible vendor, contractor, bidder, or responder for purposes of maintaining existing contracts or obtaining new contracts with the County insofar as that responsibility determination is premised solely on the matters discussed herein. Also, the County shall not consider this Agreement or the claims and controversies relating to the County's Claim in evaluating or awarding any future County contracts or in any other matters (regulatory or otherwise) that may come before the BCC or in any way preclude or exclude 50 State from being awarded contracts by the County, whether competitively, on a sole-source basis, through a waiver of the

competitive bid process, or otherwise, as a direct or indirect result of, or for reasons or issues related to any and all claims and controversies relating to the County's Claim or by virtue of 50 State having entered into litigation with the County, or having had or settled any claim and controversy with the County.

6. **Payment Terms.** 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 Three Hundred Sixty Thousand Dollars and No Cents ($360,000.00) (the "Settlement Funds"), which 50 State shall pay to the County as follows:

a. **Installments.** 50 State agrees to pay the Settlement Funds to the County in thirty-six (36) monthly installments of Ten Thousand Dollars and No Cents ($10,000.00) each (the "Installment Payments").

b. **Commencement; Due Date; Directions for Payment.** 50 State's obligation to pay the Installment Payments shall commence on August 1, 2013. Thereafter, the due date of subsequent installment payments shall be the first business day of the month. 50 State shall pay by check made out to the Board of County Commissioners, and payment shall be delivered to the attention of Joan Chin Nuke at the Stephen P. Clark Center, 111 Northwest 1st Street, Suite 2100, Miami, Florida 33128 by any means, including hand-delivery, U.S. Mail, courier, or other private delivery service.

c. **Failure to Obtain BCC Approval.** 50 State shall be required to make Installment Payments before BCC Approval. If, however, the BCC fails to approve the Agreement or if the County Mayor vetoes the BCC's approval of the Agreement and said veto is not overridden, then the County shall return to 50 State any payments made under this Agreement. The County shall return any such payments within thirty (30) days of the failure to obtain BCC Approval.

d. **Untimely Payment.** Any payments provided for in this Agreement not timely made to the appropriate party shall bear an interest rate as set forth in Section 55.03(1) of the Laws of the State of Florida.

e. **Default; Acceleration; Waiver of Statute of Limitations Defense.** The County may consider 50 State to be in default of this Agreement, without the necessity of any form of prior notice, if it fails to make an Installment Payment on or before the fifth (5th) business day of the month in which said Installment Payment is due. Upon default, the

remaining balance of Settlement Funds may become immediately due and payable to the County at its sole discretion, and the County may be additionally entitled to payment of all unpaid UAP and IG Fees under the Contract at its sole discretion even though an action to recover such unpaid UAP and IG Fees might have been barred by the applicable statute of limitations upon commencement of the Lawsuit.

7. **50 State's Release of the County.** For the consideration and promises made herein, 50 State 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 County's Claim that 50 State has or claims to have against County, and its employees, officers, agents, successors and assigns, attorneys, or otherwise, with the exception of claims and obligations arising out of this Agreement. Such release and discharge is made by 50 State 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 50 State. 50 State agrees that it will not, and that its legal representatives and assigns shall not, hereafter file in any court any action relating to the County's Claim, with the exception of any action to enforce this Agreement, and that to any such action (other than an action to enforce this Agreement) which nevertheless may hereafter be brought, this Agreement shall be a complete and conclusive defense.

8. **The County's Release of 50 State.** For the consideration and promises made herein, the County releases and forever discharges 50 State 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 County's Claim that the County has or claims to have against 50 State, and its employees, officers, agents, successors and assigns, attorneys, or otherwise, with the exception of claims and obligations arising out of this Agreement. Such release and discharge is made by the County 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 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 County's Claim, with the exception of any action to enforce this Agreement, and that to any such action (other than an action to enforce this Agreement) which nevertheless may hereafter be brought, this Agreement shall be a complete and conclusive

defense.

9. **Each Party to Bear its Own Costs and Fees.** Except as otherwise provided in this agreement, each Party shall bear their own attorneys' fees and costs relating to or arising from the Lawsuit.

10. **Florida Law Applies.** This Agreement shall be construed under the laws of the State of Florida.

11. **Entire Agreement; Modification.** 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.

12. **Rule of Construction; Opportunity to Review.** 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. 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.

13. **Successors and Assigns.** 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.

14. **Authority to Execute.** 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 of this Agreement to any third party.

15. **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 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.

50 State Security Service, Inc.

By: John M. Williams

Print: John M. Williams

Title: President

Dated: October 23, 2013.

Miami-Dade County, Florida

By: _____

Print: _____

Title: _____

Dated: _____, 2013.

By: _____
Assistant County Attorney
As to Form and Legal Sufficiency