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CLERK OF THE BOARD
OF COUNTY COMMISSIONERS
MIAMI-DADE COUNTY, FLORIDA

Memorandum

MIAMI-DADE COUNTY

Date: May 6, 2008

To: Honorable Chairman Bruno A. Barreiro
and Members, Board of County Commissioners

From: George M. Burgess
County Manager

R. A. Cuevas, Jr.
County Attorney

Agenda Item No. 12(A)(2)

Resolution No. R-560-08

Subject: Settlement Agreement and Mutual Release Between Miami-Dade County and Williams Scotsman, Inc.

Recommendation

It is recommended that the Board approve the attached Settlement Agreement and Mutual Release between Miami-Dade County and Williams Scotsman, Inc., Circuit Court Case No. 04-26925 CA 13, in the amount of $75,000 to Miami-Dade County and authorize the Mayor or his designee to execute the agreement and all other documents necessary to implement the agreement.

Scope

This Settlement Agreement and Mutual Release between Miami-Dade County and Williams Scotsman, Inc. is for claims filed in association with the provision of two (2) trailers at the African Heritage Cultural Arts Center located at 2166 NW 62 Street, in Commission District 3.

Fiscal Impact/Funding Source

The agreement provides for Williams Scotsman, Inc. to pay Miami-Dade County $75,000.

Track Record/Monitor

The County Attorney's Office will facilitate and monitor the execution of the Settlement Agreement between Miami-Dade County and Williams Scotsman, Inc. to ensure that Williams Scotsman, Inc. pays Miami-Dade County the $75,000.

Background

The Park and Recreation Department advertised and received quotes for the delivery and installation of two (2) trailers that met State Requirements for Educational Facilities (SREF), to expand the classroom capacity at the African Heritage Cultural Arts Center. The trailers delivered were improperly installed and did not have the appropriate certifications for their intended use.

Miami-Dade County filed a lawsuit and complaint against Williams Scotsman, Inc. in the Eleventh Judicial Circuit Court alleging breach of contract due to Williams Scotsman, Inc.'s failure to deliver and install two SREF trailers at the African Heritage Cultural Arts Center. The County Attorney's Office negotiated and recommends the attached settlement agreement and mutual release to settle all complaints, claims and disputes arising out of the events asserted in the lawsuit or relating to the purchase of the trailers.

Attachments

Alex Muñoz,
Assistant County Manager

MEMORANDUM
(Revised)

TO: Honorable Chairman Bruno A. Barreiro and Members, Board of County Commissioners

DATE: May 6, 2008

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 Manager'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)
5-6-08

RESOLUTION NO. **R-560-08**

RESOLUTION APPROVING THE SETTLEMENT AGREEMENT AND MUTUAL RELEASE BETWEEN MIAMI-DADE COUNTY AND WILLIAMS SCOTSMAN, INC., CIRCUIT COURT CASE NO. 04-26925 CA 13, IN THE AMOUNT OF $75,000 TO MIAMI-DADE COUNTY AND AUTHORIZING MAYOR OR DESIGNEE TO EXECUTE THE AGREEMENT AND ALL OTHER DOCUMENTS NECESSARY TO IMPLEMENT THE AGREEMENT

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 attached Settlement Agreement and Mutual Release (the "Agreement") in the amount of $75,000.00 to Miami-Dade County; and authorizes the County Mayor or designee to execute the Agreement in substantially the form attached hereto, and to execute all other documents necessary to implement the Agreement, subject to the approval of the County Attorney as to legal sufficiency.

The foregoing resolution was offered by Commissioner **Carlos A. Gimenez**, who moved its adoption. The motion was seconded by Commissioner **Jose "Pepe" Diaz** and upon being put to a vote, the vote was as follows:

Bruno A. Barreiro, Chairman **aye**
Barbara J. Jordan, Vice-Chairwoman **aye**

Jose "Pepe" Diaz	**aye**	Audrey M. Edmonson	**aye**
Carlos A. Gimenez	**aye**	Sally A. Heyman	**aye**
Joe A. Martinez	**aye**	Dennis C. Moss	**aye**
Dorrin D. Rolle	**aye**	Natacha Seijas	**aye**
Katy Sorenson	**aye**	Rebeca Sosa	**aye**
Sen. Javier D. Souto	**absent**		

The Chairperson thereupon declared the resolution duly passed and adopted this 6th day of May, 2008. 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: **Kay Sullivan**
Deputy Clerk

Approved by County Attorney as to form and legal sufficiency. EWG

Eduardo W. Gonzalez

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Mutual Release (the "Agreement") is made, voluntarily entered into, and effective as of the ___ day of _____, 2008 by and between Miami-Dade County, Florida (the "County"), a political subdivision of the State of Florida, and Williams Scotsman, Inc. ("Williams Scotsman"), a Maryland corporation, both of whom may be collectively referred to as "the Parties."

WITNESSETH

WHEREAS, the County alleges it contracted with Williams Scotsman to purchase two (2) 40 x 24 SREF classroom trailers which trailers William Scotsman would deliver and install (the "Contract" or "Purchase"); and

WHEREAS, the County alleges that Williams Scotsman breached its contract with the County by failing to deliver and install deliver two (2) SREF classroom trailers; and

WHEREAS, based on the above allegations the County filed a lawsuit and complaint against Williams Scotsman that is currently pending in the Circuit Court of the Eleventh Judicial Circuit, in and for Miami-Dade County, Florida, and is styled Miami-Dade County v. Williams Scotsman, Inc., Case No. 04-26925 CA 13 (the "Lawsuit"); and

WHEREAS, Williams Scotsman is contesting the Lawsuit, has denied liability to the County and has asserted good faith defenses to the claims in the Lawsuit; and

WHEREAS, the Parties to this Agreement desire to compromise and settle all complaints, counterclaims, cross-claims, disputes, and claims between them arising out of events that have been or could be asserted in the Lawsuit or relating to the Purchase rather than to incur the expense and uncertainty of the result of the litigation of said Lawsuit; and

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NOW, THEREFORE, in consideration of the following covenants, obligations, payments, promises of release, and dismissal, the receipt, sufficiency, and adequacy of all such consideration being hereby expressly acknowledged, the Parties do hereby agree as follows:

1. **Incorporation:** The foregoing recitals of fact were made and shall be a part of this Agreement to the same extent as if fully set forth herein.

2. **Settlement Payment:** Williams Scotsman agrees to pay the County $75,000.00 within thirty (30) days of the date that this Agreement becomes effective. This Agreement becomes effective upon the execution of this Agreement by the County Mayor or designee *and* approval of the Board of County Commissioners of Miami-Dade County, Florida and the expiration of the requisite veto period.

3. **Mutual Release:** Upon the payment referenced in Paragraph 2 above, the County and Williams Scotsman do hereby, now and forever, fully and finally, remise, release, acquit and discharge each other, and their representatives, insurers and sureties, guarantors, attorneys, successors, assigns, employees, officers, agents, directors, members, managers, shareholders and all other persons, firms or corporations, if any, who are or may be liable in any way to the other, of and from any and all claims, counterclaims, damages, demands, actions, liabilities, responsibilities, causes of action, debts due, sums of money, accounts, liens, reckonings, bonds, bills, covenants, controversies, agreements, or promises whatsoever, in law or in equity, known or unknown, whether in tort or otherwise, against the other, arising from or relating in any way to matters raised in this lawsuit or arising out of or related to the Purchase, the Contract, the Lawsuit, and/or the purchase, sale and/or installation of the trailers involved in the Lawsuit and Purchase. This Agreement is not intended to and does not affect any other contracts or agreements between the Parties not involving the Purchase and installation at issue in the

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Lawsuit.

4. **Dismissal of Claims:** Within five (5) business days of receipt of a properly executed original of this Agreement and the payment referenced in Paragraph 2 above, the County and Williams Scotsman shall file in the Lawsuit a dismissal with prejudice of all claims asserted in the Lawsuit, each party to bear its own costs and fees, in a form approved by the Parties' counsel of record.

5. **Attorneys' Fees and Costs:** The Parties shall bear their own attorneys' fees and costs incurred with relation to the matters addressed in this Agreement.

6. **Binding Nature:** Each of the Parties hereto acknowledges, represents and warrants to the other Parties hereto that (i) this Agreement is final and binding upon them, regardless of the adequacy of the consideration hereof, and regardless of the extent of damages allegedly suffered by any of the Parties and (ii) the Party has not assigned any right, title or interest in or to any potential claim against any other Party hereto to any person or entity.

7. **Construction and Venue:** The Parties acknowledge that this Agreement was the product of mutual negotiation and for purposes of construing its terms, no individual Party shall be deemed to have drafted the Agreement. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Florida, without regard to such state's conflict of law decisions and law, and jurisdiction and venue to enforce the same shall exist solely in the Circuit of the 11th Judicial Circuit in and for Miami Dade County, Florida.

8. **No Admission of Liability:** This Agreement is a contractual settlement, not a mere recital, and is executed for the purpose of compromising disputed claims and avoiding future litigation. It is expressly understood and agreed by the Parties that nothing contained herein nor any action taken pursuant hereto shall ever be construed as an acknowledgment by the

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Party against whom any liability, claim, lien, defense, demand, charge, complaint, action, or cause of action is asserted of the validity of any such liability, claim, lien, defense, demand, charge, complaint, action, or cause of action, the validity of any such liability, claim, lien, defense, demand, charge, complaint, action, or cause of action being expressly denied by the Party against whom such liability, claim, lien, defense, demand, charge, complaint, action, or cause of action is asserted. Nothing contained in this Agreement shall ever be construed as an admission of liability or responsibility by any Party.

9. **Headings/Titles:** The headings for each paragraph are for convenience only and shall not be utilized in construing the meaning or intent of any of the terms of this Agreement

10. **Successors:** This Agreement shall apply to and inure to the benefit of and be binding upon and enforceable against the Parties hereto, and their successors, heirs and assigns, as the case may be.. However, this Agreement is not assignable by any Party hereto without the express written consent of all other Parties hereto.

11. **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 either federal or state 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.

12. **Multiple Counterparts:** This Agreement may be executed in any number of separate counterparts, each of which shall together be deemed an original, but the several counterparts shall together constitute but one and the same Agreement.

13. Capacity and Legal Consultation: Each of the Parties represent and warrant that it is duly constituted and organized and that it is duly authorized to enter into this Agreement on its own behalf. It is hereby expressly understood and agreed, and the Parties hereby represent, covenant, and warrant, that each signature hereafter appearing is authorized, genuine, and freely, voluntarily, knowingly, and willfully affixed hereon only after having had the opportunity to have the consequences of the terms of this Agreement explained to each of the Parties by counsel of their choosing. It is agreed that this Agreement is effective only upon the execution by the County pursuant to any required approval of the Board of County Commissioners of Miami-Dade County, Florida and the expiration of the requisite veto period.

14. Further Action: Each of the Parties hereto agrees to execute and deliver all documents, provide all information and take or forbear from all such action as may be reasonable necessary or appropriate to achieve the purposes of this Agreement.

15. Merger and Modification: The Parties acknowledge that there has been no influence to enter into this Agreement in any manner, nor has any Party relied upon any verbal warranties or representations not set forth in this Agreement. This Agreement constitutes the sole and entire agreement between the Parties and no modification hereof shall be binding unless attached hereto and signed by all parties to this Agreement. All prior and contemporaneous conversation, negotiations, possible and alleged agreements, representations, covenants and warranties concerning the subject matter hereof are merged herein.

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EXECUTION

IN WITNESS WHEREOF, the Parties hereto have executed and sealed this Agreement on the date stated above.

WILLIAMS SCOTSMAN, INC.,
a Maryland corporation,

Sworn to and subscribed before me
this 20th day of March, 2008.

Caroline L Battista

Notary Public

My Commission expires on 10/1/10

CAROLINE L. BATTISTA NOTARY PUBLIC HARFORD COUNTY, MD

Samantha Bishop

By: Samantha Bishop

Title: assistant Corporate Secretary

MIAMI-DADE COUNTY, FLORIDA,
a political subdivision of the State of Florida,

Sworn to and subscribed before me
this ____ day of March, 2008.

_____

Notary Public
My Commission expires on _____

_____

By: County Mayor or designee