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

Memorandum

MIAMI-DADE COUNTY

Date: October 20, 2009

Agenda Item No. 12(A)(1)

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

Resolution No. R-1219-09

From:

Honorable Carlos Alvarez
County Mayor

George M. Burgess
County Manager

R. A. Cuevas, Jr.
County Attorney

Subject: Resolution approving the settlement of the lawsuit: *Miami-Dade County v. Fisher Scientific Company LLC d/b/a Fisher Safety, and Tyco Fire & Security LLC, d/b/a Scott Health and Safety,* Circuit Court Case No.07-45211 CA 40 ("Lawsuit") and authorizing rejection of bids for RFP 677.

Recommendation

It is recommended that the Board approve the Settlement Agreement ("Settlement") between Miami-Dade County (the "County"), Fisher Safety ("Fisher") and Scott Health and Safety ("Scott") resolving claims and counterclaims made in the Lawsuit in the amount of $653,080.15. The Lawsuit arose out of a dispute between the County and Scott and Fisher pertaining to defects discovered in Self-Contained Breathing Apparatus ("SCBA") equipment delivered and received by the County in 2006. Approval of the Settlement is recommended because the Settlement will give the County full credit for the value of the previously delivered SCBA equipment, provide the County with needed equipment compliant with current regulatory standards at a cost comparable to that of other vendors, and would eliminate the risks and costs inherent in continued litigation of the Lawsuit.

Background

In December 2005, the County entered into a contract to purchase approximately 800 SCBAs from Scott and Fisher for use by the Miami-Dade Fire Rescue Department (the "Department") to replace the Department's existing SCBAs manufactured by Draeger. The total cost of the equipment was approximately $4.1 million. The equipment was received by the Department in the Spring of 2006 but its initial deployment was delayed due to issues concerning potential susceptibility to radio frequency interference (RFI). Those issues were resolved, and Scott and the County took delivery of the SCBAs and conducted the necessary fit testing of the masks during the Fall of 2006. The actual deployment of the equipment began during the Spring of 2007. When the Department began to deploy the equipment, several defects and problems were discovered. The Department contacted Scott to address the issues with the equipment, but Scott's proposed solutions were inadequate and unsatisfactory to the Department. Numerous efforts were made to resolve the issues with Scott but no acceptable resolution

was reached. The parties continued to negotiate through the Summer of 2007 in an attempt to reach an amicable solution. In the Fall of 2007, when it was clear that no acceptable solution would be reached, the County brought the Lawsuit against Scott and Fisher for breach of contract, revocation of acceptance, breach of express and implied warranties, and rescission. Fisher filed a counterclaim against the County for breach of contract, unjust enrichment, account stated and open account because the County had not paid an outstanding invoice in the amount of $238,385.85.

The parties engaged in early mediation which did not result in a settlement. The parties then began conducting discovery. Because litigation continued, and because of the Department's continuing need to replace the existing equipment, the Department decided to re-procure SCBA equipment, and Request for Proposal 677 was issued on April 3, 2009. Proposals were received and initial evaluations have been concluded. However, the procurement process has not been completed and no vendor has been recommended for award.

Settlement

Recently, the parties resumed settlement negotiations and were able to reach an agreement. As part of the agreement, Scott will replace the originally purchased equipment with a new model of SCBA equipment that complies with more recently issued regulatory standards and addresses the defects and problems encountered with the originally delivered equipment. During the settlement negotiations, the Department tested the new equipment extensively to ensure that the equipment addresses the defects and problems experienced with the originally delivered equipment. The County will receive a full credit from Scott for all of the originally delivered equipment that is returned against the value of the new equipment. Because the value of the new equipment meets current regulatory standards and exceeds that of the originally delivered equipment, and because the County is purchasing additional units of equipment and obtaining extended warranties which were not part of the original purchase, the County will pay Scott an additional negotiated amount of $414,694.30. The County will also pay to Fisher the outstanding unpaid invoice in the amount of $238,385.85 for a total settlement of $653,080.15. Scott will also make personnel available to assist the County in the required fit testing of the new equipment in order to expedite its deployment and Scott will provide to the County substantially discounted pricing in the event the County elects to purchase additional equipment in the future.

To implement this settlement, the recommended resolution waives competitive bidding requirements pursuant to Section 2-8.1 of the Code of Miami-Dade County and Section 5.03(D) of the Home Rule Charter. The recommended resolution also rejects the proposals received in connection with RFP 677 and waives bid protest procedures. In our view, the proposed settlement minimizes the uncertainty attendant with the matter in dispute, eliminates the costs of litigation and provides the Department with equipment that meets the needs of the Department.

Scope

This settlement impacts the Miami-Dade Fire Rescue District.

Fiscal Impact/Funding Source

The funding source for this settlement is the Miami-Dade Fire Rescue Department District Operating Budget. Funds are available from within the Logistics Division operating budget, index code FRELOG022008, sub object 95030. The FY 2009-10 approved budget will have $850,000 available.

Track Record/Monitor

The Miami-Dade Fire Rescue Department will monitor this item.

Assistant County Manager

MEMORANDUM
(Revised)

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

DATE: October 20, 2009

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

SUBJECT: Agenda Item No. 12(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. 12(A)(1)

10-20-09

RESOLUTION NO. **R-1219-09**

RESOLUTION (1) WAIVING COMPETITIVE BIDDING REQUIREMENTS PURSUANT TO SECTION 2-8.1 OF THE CODE OF MIAMI-DADE COUNTY AND SECTION 5.03(D) OF THE HOME RULE CHARTER, APPROVING AND AUTHORIZING THE EXECUTION BY THE COUNTY MAYOR OR THE MAYOR'S DESIGNEE OF THE SETTLEMENT AGREEMENT BETWEEN MIAMI-DADE COUNTY AND FISHER SCIENTIFIC COMPANY LLC, TYCO FIRE & SECURITY LLC, AND SCOTT TECHNOLOGIES INC., IN THE AMOUNT OF $653,080.15; AND (2) REJECTING ALL PROPOSALS RECEIVED IN RESPONSE TO REQUEST FOR PROPOSALS (RFP) NO. 677 TO OBTAIN SELF-CONTAINED BREATHING APPARATUSES (SCBAS), AND WAIVING BID PROTEST PROCEDURES IN CONNECTION THEREWITH

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:

Section 1. This Board, by a two-thirds (2/3) vote of the members present, hereby waives competitive bidding requirements pursuant to Section 2-8.1 of the Code of Miami-Dade County and Section 5.03(D) and of the Home Rule Charter and hereby approves and authorizes the execution by the County Mayor or the Mayor's Designee of the Settlement Agreement ("Settlement Agreement") of the lawsuit between Miami-Dade County and Fisher Scientific Company, LLC, d/b/a Fisher Safety, Tyco Fire & Security, LLC, and Scott Technologies Inc., d/b/a Scott Health and Safety, Circuit Court Case No. 07-45211 CA 40, in the total amount of $653,080.15 in substantially the form attached hereto.

Section 2. This Board hereby rejects all proposals received in response to Request for Proposals (RFP) No. 677, and by a two-thirds (2/3) vote of the members present waives bid protest procedures in connection therewith.

Section 3. This Board hereby finds that it is in the best interest of the County to waive the aforementioned competitive bidding and bid protest procedures.

The foregoing resolution was offered by Commissioner **Dorrin D. Rolle**, who moved its adoption. The motion was seconded by Commissioner **Dennis C. Moss** and upon being put to a vote, the vote was as follows:

Dennis C. Moss, Chairman **aye**
Jose "Pepe" Diaz, Vice-Chairman **aye**

Bruno A. Barreiro	**aye**	Audrey M. Edmonson	**absent**
Carlos A. Gimenez	**nay**	Sally A. Heyman	**aye**
Barbara J. Jordan	**aye**	Joe A. Martinez	**nay**
Dorrin D. Rolle	**aye**	Natacha Seijas	**aye**
Katy Sorenson	**aye**	Rebeca Sosa	**aye**
Sen. Javier D. Souto	**aye**		

The Chairperson thereupon declared the resolution duly passed and adopted this 20th day of October, 2009. 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: **DIANE COLLINS**
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

Richard Seavey
Daniel Frastai

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Mutual Release (the "Agreement") is made and entered into as of the Effective Date of this Agreement as defined below by and among Miami-Dade County, Florida, a political subdivision of the State of Florida (the "County"), Fisher Scientific Company L.L.C., d/b/a Fisher Safety ("Fisher") (a Delaware limited liability company), Tyco Fire & Security LLC (a Nevada limited liability company) and Scott Technologies, Inc., d/b/a Scott Health and Safety (collectively, "Scott") (collectively, the "Parties").

BACKGROUND

WHEREAS, in or about December 2005, the County entered into a contract to purchase approximately 800 self-contained breathing apparatuses ("SCBA") and associated equipment (collectively, the "Equipment") from Fisher and Scott for use by Miami-Dade County Fire Rescue Department ("MDFR"). Scott manufactured the Equipment and Fisher distributed the Equipment.

WHEREAS, in or about January and February 2006, MDFR began receiving the Equipment.

WHEREAS, in or about April 2007, a dispute arose between the Parties regarding several warranty-related issues for a number of the SCBA which were purchased and received and being utilized by MDFR.

WHEREAS, on or about December 19, 2007, the County filed a Complaint styled *Miami-Dade County, Florida, a political subdivision of the State of Florida v. Fisher Scientific Company L.L.C., d/b/a Fisher Safety, and Tyco Fire & Security LLC, d/b/a Scott Health and Safety* in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida, Case No. 07-45211 CA 40 (the "Lawsuit"), in which the County asserted claims against Fisher and Scott for revocation of acceptance, breach of express and implied warranties, breach of contract, and rescission.

WHEREAS, on or about January 30, 2008, Fisher filed a Counterclaim in the Lawsuit, in which Fisher asserted claims against the County for breach of contract, unjust enrichment, account stated, and open account.

WHEREAS, Fisher and Scott deny that they have breached any express or implied warranties or have breached any contract, and deny all claims of liability to the County.

WHEREAS, the County denies that it breached any contract or has been unjustly enriched, and denies all claims of liability to Fisher.

WHEREFORE, the Parties desire to enter into this Agreement in order to effect a full, complete, and final settlement of all claims or disputes between them which existed or could have existed as of the Effective Date hereof, including all claims which were asserted, or which could have been asserted, in the Lawsuit.

AGREEMENT

NOW, therefore, in consideration of the mutual promises contained herein and intending to be legally bound, the Parties agree as follows:

1. **Effective Date:** This Agreement becomes effective and binding on all Parties when the Board of County Commissioners of Miami-Dade County, Florida (the "BCC") approves this Agreement and either (1) the time period for veto by the Mayor of the County expires without the exercise of that veto, or, if exercised, (2) the BCC overrides any such veto by the Mayor of the County.

2. **Scott's Provision of 2007 National Fire Protection Association ("NFPA") Compliant Equipment and the County's Return of Previously Purchased 2002 NFPA Compliant Equipment:**

a. As set forth more fully in Exhibit "A" to this Agreement (which is incorporated herein, hereat, and verbatim by reference):

(1) Within thirty (30) days of the Effective Date, the County will return to Scott all of the itemized NFPA 2002 compliant SCBA units and related equipment the County previously purchased and received from Fisher and Scott described in, and in accord with, Exhibit "A" ("2002 Equipment") to a specific location to be directed by Scott in writing on or before the Effective Date for the return of the 2002 Equipment, and Scott will pay for the associated shipping costs. The County acknowledges and agrees that it will not ship the 2002 Equipment to any location other than that designated by Scott pursuant to this Paragraph. The County further acknowledges and agrees that it will not receive a refund credit for any of the SCBA units, components of such units, or related equipment described in, and in accord with, Exhibit "A" that are (i) not returned to Scott within the time period set forth above or (ii) units which have been used or deployed by the County and are returned to Scott but, through no fault of Scott, Fisher, or any of their respective employees, agents, subcontractors, or representatives, have been damaged above and beyond normal wear and tear, are not functional, and it is not possible for Scott to repair, upgrade, or retrofit them for a reasonable cost to make them functional again. The refund credit will be reduced consistent with the per unit pricing described in Exhibit "A" for any 2002 Equipment that is not returned or that is damaged and not functional as described above. To the extent that there is any differential in the quantities of 2002 Equipment described in Exhibit A and the quantities actually returned to Scott by the County or that are returned but are damaged and not functional as described above, Scott will send an Invoice to the County within thirty (30) days of receipt of the returned 2002 Equipment for the difference based on the number of items not returned, or returned but damaged and not functional as described above, and the price for each unit, and such Invoice will be payable upon thirty (30) days of receipt. The County agrees and acknowledges that any amount owed due to a differential in the quantities of 2002 Equipment returned by the County to Scott or returned but damaged and not functional as described above as compared to the quantities described in Exhibit "A" are in addition to any other amounts the County has agreed to pay in this Agreement.

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(2) Within forty-five (45) days of the Effective Date, Scott shall deliver the 2007 NFPA compliant SCBA units and related equipment described in, and in accord with, Exhibit "A" ("2007 Equipment") for the payment by the County to Scott of Four Hundred and Fourteen Thousand, Six Hundred Ninety-Four and 30/100 Dollars ($414,694.30), subject to the deductions provided by Paragraphs 12 and 13 of this Agreement, payable upon thirty (30) days of receipt of the 2007 Equipment and an Invoice from Scott for that Equipment. Scott shall provide for facepiece fit-testing pursuant to the following parameters: (1) Scott will send three of its employees (one to each of MDFR's three locations within the County) for three consecutive days for a maximum of twelve hours per day to conduct fit-testing; (2) each of Scott's three employees will bring one Portacount machine with them which they will take with them following the third day of fit-testing; and (3) the County shall be responsible for any additional personnel, Portacount machines, or equipment required to complete fit-testing for any fire fighter whose facepieces may or may not be conducted during this three-day period. Coordination and scheduling of the fit-testing shall be accomplished with and through the MDFR Research and Development Bureau, which will provide at least thirty (30) days notice to Scott for coordination and scheduling of the three-day fit-testing.

(3) Scott has already produced a training video for use with the 2007 Equipment and will provide this to the County. A video, more specific to MDFR, can be produced at negotiated pricing outside of this Agreement. Scott shall also provide Train the Trainer classes in a course consistent with training conducted by Scott to other fire departments comparable to MDFR to include:

i. Daily systems check.
ii. User maintenance and routine use.
iii. Emergency operations, failures, and by-pass.
iv. Use of down firefighter locator (Pak-Tracker).
v. Emergency rescue breathing.
vi. Pathogen cleaning/decontamination.
vii. Emergency water survival.

(4) Scott shall also provide service and repair training by knowledgeable direct employees of Scott that have been operating as trainers for Scott with a proven track record. The class will be conducted at MDFR's facility or at Scott Manufacturing Plant in Monroe, NC. It is a three (3) day all inclusive course covering complete servicing/repair of the equipment with written certification upon satisfactory course completion. This training will result in MDFR being certified as a "Scott Authorized In-House Repair Center."

(5) Scott shall also provide the following test equipment, tools, and manuals at the same time as the delivery of the 2007 Equipment.

i. Two complete sets of all specialized diagnostic test equipment and software to enable MDFR to conduct a program of preventive maintenance, timely repair, and performance documentation. Scott will not be providing any Posi-Check Machines to the County pursuant to this Paragraph or any Paragraph of this Agreement.

ii. Four complete sets of tools shall be provided to effect all repairs and overhauls of the 2007 Equipment.

iii. Nine complete sets of training and user manuals, a repair manual, and a parts manual.

b. Scott warrants the 2007 compliant SCBA units to be free from defects in workmanship and materials for a period of ten (10) years from the date of original manufacture by Scott. Scott warrants the Pressure Reducer Assemblies to be free from defects in workmanship and materials for a period of fifteen (15) years from the date of original manufacture by Scott. Scott warrants all electrically operated devices supplied with the 2007 Equipment to be free from defects in workmanship and materials for a period of five (5) years from the date of original manufacture by Scott. Scott further warrants all communications devices, unused consumable supplies, and carrying cases supplied with the 2007 Equipment to be free from defects in workmanship and materials for one (1) year from the date of original manufacture by Scott. The warranty for the cylinders previously purchased by the County from Scott with the 2002 Equipment remains ten (10) years retroactive to the original date of their manufacture, and shall thus not be extended by this Agreement. Scott warrants that the cylinders previously purchased by the County from Scott with the 2002 Equipment will function with the 2007 Equipment during this ten (10) year retroactive time period. All of the above-referenced warranties do not apply to defects or damage caused by any repairs of or alterations to the 2007 Equipment made by MDFR or any third party unless expressly permitted by Scott product manuals or authorized in writing by Scott. Further, all warranties do not apply to any malfunction of or damage to the 2007 Equipment resulting from accident, alteration, misuse, or abuse. All warranties are made in lieu of all other warranties, expressed or implied including, but not limited to, any implied warranty of merchantability or fitness for a particular purpose. In addition, Scott expressly disclaims any liability for special, incidental, or consequential damages in any way connected with the sale or use of the 2007 Equipment, and no other firm or person is authorized to assume any such liability. The date of original manufacture of all equipment described in this paragraph, including all SCBA units, Pressure Reducer Assemblies, electrically operated devices, communications devices, unused consumable supplies, and carrying cases shall not be older than three (3) months prior to the Effective Date of this agreement.

The Parties expressly acknowledge, agree, and understand that the County has the following three options for warranty related repairs for the 2007 Equipment:

(1) As a Scott Authorized In-House Repair Center ("MDFR IRC"), MDFR may perform warranty service on the 2007 Equipment owned and used by MDFR. The County expressly acknowledges, agrees, represents, and understands the following: the certified MDFR technicians will use their best efforts to determine the validity of the warranty repair; the total reimbursement of any warranty claim submitted to Scott by MDFR is limited to parts replacement and shipping only; Scott will not reimburse MDFR for any labor charges incurred by the certified MDFR technicians; and Scott shall determine in good faith the validity of all warranty claims and of the total amount of replacement parts due to MDFR. Scott's provision, including shipping, of replacement parts is the sole means of compensation for warranty service under this option.

(2) MDFR may return the 2007 Equipment requiring warranty repair directly to Scott, with MDFR being responsible for paying the costs for shipping the equipment to Scott. If Scott performs the warranty service, the MDFR IRC will not be issued replacement parts. Scott will perform and ship all warranty related repairs within twenty-one (21) days after receipt at Scott's factory, excluding transportation time to and from Scott's factory. Scott will pay the costs for shipping the equipment back to MDFR. The County expressly acknowledges, agrees, and understands that Scott shall determine in good faith the validity of all warranty claims, and that Scott's repair of valid warranty claims is the sole means of compensation for warranty service under this option. Further, if MDFR elects to have Scott complete warranty repairs at Scott's factory under this option, MDFR will not be charged for parts or labor to repair equipment submitted as a valid warranty claim, however MDFR will be responsible for any other costs associated with the repair of equipment that is not covered by Scott's warranty policy.

(3) MDFR may elect to have warranty repairs completed by a local Scott Authorized Service Center. Scott will assist MDFR to make arrangements with the local Scott Authorized Service Center of its choice for pick-up, delivery, service turnaround times, and all items associated with warranty service performance. The local Scott Authorized Service Center will complete all warranty related repairs within fourteen (14) days after receipt of the equipment, excluding transportation time to and from the local Scott Authorized Service Center. Scott is not responsible for and will not pay the costs for shipping the equipment to and from the local Scott Authorized Service Center. The County expressly acknowledges, agrees, and understands that Scott shall determine in good faith the validity of all warranty claims, and that the local Scott Authorized Service Center's repair of valid warranty claims is the sole means of compensation for warranty service under this option. If MDFR elects to have a local Scott Authorized Service Center complete warranty repairs under this option, MDFR will not be charged for parts or labor to repair equipment submitted as a valid warranty claim, however MDFR will be responsible for any other costs associated with the repair of equipment that is beyond Scott's warranty policy.

Scott and MDFR expressly agree that if MDFR raises a product performance issue, both parties will meet to discuss such issues. Following such a meeting, Scott will fully review all product performance issues and provide MDFR with a resolution of such issues where technically capable and feasible.

c. Further, Scott acknowledges and agrees to extend contract pricing of forty-one percent (41%) off the list price for new purchases of SCBA related products and non-warranty related SCBA products by the County for one additional year from the date of delivery of the 2007 Equipment. After expiration of this one-year period, the contract pricing will be thirty-three percent (33%) off list price for new purchases of SCBA related products and non-warranty related SCBA products.

d. The County shall pay all invoices (which shall total $414,694.30 plus freight costs) issued by Scott for the 2007 Equipment ("2007 Equipment Invoice(s)"), subject to the deductions provided by Paragraphs 12 and 13 of this Agreement, provided to the County pursuant to this Agreement within thirty (30) days of receipt of such invoice(s). The failure by the County to pay any invoices within thirty (30) days shall result in the County's

forfeiture and waiver of its right to purchase SCBA related products and non-warranty related SCBA products from Scott at the discounted pricing set forth in Paragraph 2(c) of this Agreement. Nothing herein shall be construed to obligate the County to purchase any SCBA related products pursuant to Paragraph 2(c) of this Agreement, and the County shall have the right to terminate the discounted pricing of Paragraph 2(c) by providing written notice from the Director of the Fire Department.

3. **The County's Payment of Outstanding Balance to Fisher:** The County shall pay Fisher the sum of Two Hundred and Thirty-Eight Thousand Three Hundred and Eighty-Five and 85/100 Dollars ($238,385.85) ("Outstanding Invoice"), subject to the deductions provided by Paragraphs 12 and 13 of this Agreement, via wire transfer within ten (10) business days following the Effective Date.

4. **Release by the County:** In consideration of the agreements by Fisher and Scott as set forth in this Agreement, the County, on behalf of itself and all of its Commissioners, directors, officers, managers, members, employees, agencies, including but not limited to Miami-Dade County Fire Rescue Department, agents, representatives, and assigns, releases and forever discharges Fisher and Scott, and all of their respective representatives, agents, servants, employees, attorneys, officers, directors, board members, shareholders, investors, trustees, partners, parent and subsidiary corporations, administrators, assigns, predecessors, successors, insurers, sureties, and any other related entities, of and from any and all claims, demands, liabilities, actions, causes of action, damages, and costs, of every kind and nature whatsoever, which as of the Effective Date of this Agreement the County had, now has, or claims to have against Fisher and/or Scott, including, but not limited to, those claims which were asserted, or which could have been asserted, in the Lawsuit. Notwithstanding the foregoing, the County expressly excludes from the effect of this Release and does not release Fisher or Scott from the terms and conditions of this Settlement Agreement.

5. **Release by Fisher:** In consideration of the agreements by the County as set forth in this Agreement, Fisher, on behalf of itself and all of its directors, officers, members, employees, agents, representatives and assigns, releases and forever discharges the County, and all of the County's respective Commissioners, representatives, departments, including but not limited to Miami-Dade Fire Rescue Department, agents, servants, employees, attorneys, officers, directors, managers, board members, shareholders, investors, trustees, partners, parent and subsidiary corporations, administrators, assigns, predecessors, successors, insurers, sureties, and any other related entities, of and from any and all claims, demands, liabilities, actions, causes of action, damages, and costs, of every kind and nature whatsoever, which as of the Effective Date of this Agreement Fisher had, now has, or claims to have against the County, including, but not limited to, those claims which were asserted, or which could have been asserted, in the Lawsuit. Notwithstanding the foregoing, Fisher expressly excludes from the effect of this Release and does not release the County from the terms and conditions of this Settlement Agreement.

6. **Release by Scott:** In consideration of the agreements by the County as set forth in this Agreement, Scott, on behalf of itself and all of its directors, officers, shareholders, employees, partners, agents, representatives and assigns, releases and forever discharges the County, and all of the County's respective Commissioners, representatives, departments, including but not limited to Miami-Dade Fire Rescue Department, agents, servants, employees,

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attorneys, officers, directors, managers, board members, members, trustees, parent and subsidiary corporations, administrators, assigns, predecessors, successors, insurers, sureties, and any other related entities, of and from any and all claims, demands, liabilities, actions, causes of action, damages, and costs, of every kind and nature whatsoever, which as of the Effective Date of this Agreement Scott had, now has, or claims to have against the County, including, but not limited to, those claims which were asserted, or which could have been asserted, in the Lawsuit. Notwithstanding the foregoing, Scott expressly excludes from the effect of this Release and does not release the County from the terms and conditions of this Settlement Agreement.

7. **Dismissal of Lawsuit:** Within five (5) business days following the payment of the consideration described in Paragraph 3 above, the Parties shall prepare and file with the Court in the Lawsuit, in accordance with Rule 1.420 of the Florida Rules of Civil Procedure, a stipulation of dismissal with prejudice (along with a proposed Order of Dismissal With Prejudice) providing that the Lawsuit should be dismissed in its entirety with prejudice, with each side to bear its own attorneys' fees and costs, and with the Court reserving jurisdiction for the purpose of enforcing this Agreement.

8. **Costs and Fees:** The Parties agree to be responsible for their own attorneys' fees, costs, and expenses incurred in connection with their dispute, the Lawsuit, and this Agreement, except for any fees, costs, and expenses incurred in connection with seeking the enforcement or interpretation of this Agreement by the Court, which shall be governed by Paragraph 19 below.

9. **No Admission of Liability:** It is expressly understood and agreed that this Agreement constitutes a compromise of disputed claims. This Agreement is not, and shall not be construed as, an admission of guilt, fault, or liability on behalf of any party. Rather, the Parties have entered into this Agreement solely for the purpose of reaching a compromise and avoiding the expense and uncertainty of litigation and have relied on their own judgment in entering into this settlement and not on any representations of the other party.

10. **Non-Disparagement:** Subject to the requirements of Florida's "Sunshine Act," Section 119.001, *et seq.* Florida Statutes, the Parties agree that they will not disparage one another or any of their respective Commissioners, directors, officers, shareholders, managers, Chiefs and Department Heads, employees, partners, members, agents, representatives, parents, subsidiaries, or affiliates, in their future business dealings with clients, customers, the consuming public, or otherwise.

11. **Vendor Registration:** Scott represents that it is, or will be on the Effective Date of this Agreement, a registered vendor with Miami-Dade County's Department of Procurement Management. As a Registered Vendor with the County, Scott confirms knowledge of and commitment to comply with the following:

1. ***Miami-Dade County Ownership Disclosure Affidavit***
   (Section 2-8.1 of the County Code)

2. ***Miami-Dade County Employment Disclosure Affidavit***
   (Section 2.8-1(d)(2) of the County Code)

3. ***Miami-Dade Employment Drug-free Workplace Certification***
   (Section 2-8.1.2(b) of the County Code)

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4. ***Miami-Dade Disability and Nondiscrimination Affidavit***
(Section 2-8.1.5 of the County Code)

5. ***Miami-Dade County Debarment Disclosure Affidavit***
(Section 10.38 of the County Code)

6. ***Miami-Dade County Vendor Obligation to County Affidavit***
(Section 2-8.1 of the County Code)

7. ***Miami-Dade County Code of Business Ethics Affidavit***
(Section 2-8.1(i) and 2-11(b)(1) of the County Code through (6) and (9) of the County Code and Section 2-11.1(c) of the County Code)

8. ***Miami-Dade County Family Leave Affidavit***
(Article V of Chapter 11 of the County Code)

9. ***Miami-Dade County Living Wage Affidavit***
(Section 2-8.9 of the County Code)

10. ***Miami-Dade County Domestic Leave and Reporting Affidavit***
(Article 8, Section 11A-60 11A-67 of the County Code)

11. ***Subcontracting Practices***
(Ordinance 97-35)

12. ***Subcontractor /Supplier Listing***
(Section 2-8.8 of the County Code)

13. ***Environmentally Acceptable Packaging***
(Resolution R-738-92)

14. ***W-9 and 8109 Forms***
(as required by the Internal Revenue Service)

15. ***FEIN Number or Social Security Number***
In order to establish a file, the Contractor's Federal Employer Identification Number (FEIN) must be provided. If no FEIN exists, the Social Security Number of the owner or individual must be provided. This number becomes Contractor's "County Vendor Number". To comply with Section 119.071(5) of the Florida Statutes relating to the collection of an individual's Social Security Number, be aware that the County requests the Social Security Number for the following purposes:
   - Identification of individual account records
   - To make payments to individual/Contractor for goods and services provided to Miami-Dade County
   - Tax reporting purposes
   - To provide a unique identifier in the vendor database that may be used for searching and sorting departmental records

16. ***Office of the Inspector General***
(Section 2-1076 of the County Code)

17. ***Small Business Enterprises***
The County endeavors to obtain the participation of all small business enterprises pursuant to Sections 2-8.2, 2-8.2.3 and 2-8.2.4 of the County Code and Title 49 of the Code of Federal Regulations.

18. ***Antitrust Laws***
By acceptance of any contract, the Contractor agrees to comply with all antitrust laws of the United States and the State of Florida.

12. **Inspector General Reviews:** Pursuant to Section 2-1076 of the Code of Miami-Dade County, as amended by Ordinance No. 99-63, Miami-Dade County has established the Office of the Inspector General which may, on a random basis, perform audits on all County contracts, throughout the duration of said contracts, except as otherwise provided. The cost of random audits, inspections and reviews shall, be incorporated into this Agreement and shall be a deduction of one quarter (1/4) of one (1) percent from the 2007 Equipment Invoice(s), the Outstanding Invoice, and any other payment made by the County pursuant to this Agreement (hereinafter "IG contract fee"), except for an invoice sent by Scott to the County pursuant to Paragraph 2(a)(1) of this Agreement.

13. **User Access Program:** This Agreement is subject to a user access fee under the County User Access Program (UAP) in the amount of two percent (2%) ("UAP Fee"). The County shall retain the UAP Fee from the 2007 Equipment Invoice(s), the Outstanding Invoice, and any other payment made by the County pursuant to this Agreement, except for an invoice sent by Scott to the County pursuant to Paragraph 2(a)(1) of this Agreement, to help defray the cost of the procurement program.

14. **Commission Auditor:** Pursuant to Section 2-476 of the Code of Miami-Dade County, the Commissioner Auditor may perform an audit of this contract.

15. **Indemnity and Insurance:** Scott shall indemnify and hold harmless the County and its officers, employees, agents, and instrumentalities from any and all liability, losses, or damages, including attorneys' fees and costs of defense, which the County or its officers, employees, agents, or instrumentalities may incur as a result of claims, demands, suits, causes of actions, or proceedings arising out of, relating to, or resulting from the breach of any of the obligations, representations, or warranties set forth in Paragraph 2 of this Agreement, or the negligence or wrongful acts or omissions by Scott or its employees, agents, servants, partners, principals, or subcontractors. Scott shall pay all claims and losses in connection therewith and shall investigate and defend all such claims, suits, or actions in the name of the County, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorneys' fees which may issue thereon. Scott expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by Scott shall in no way limit the responsibility to indemnify, keep and save harmless, and defend the County or its officers, employees, agents, and instrumentalities as herein provided.

Upon County's request, Scott shall furnish to the Department of Procurement Management, Certificates of Insurance that indicate that insurance coverage has been obtained, which meets the requirements as outlined below:

1. Worker's Compensation Insurance for all employees of the Scott as required by Florida Statute 440.

2. Public Liability Insurance on a comprehensive basis in an amount not less than $300,000 combined single limit per occurrence for bodily injury and property damage. Miami-Dade County must be shown as an additional insured with respect to this coverage. The mailing address of Miami-Dade County 111 N.W. 1st Street, Suite 1300, Miami, Florida 33128-1974, as the certificate holder, must appear on the certificate of insurance.

3. Automobile Liability Insurance covering all owned, non-owned, and hired vehicles used in connection with the Services, in an amount not less than $300,000 combined single limit per occurrence for bodily injury and property damage.

All insurance policies required above shall be issued by companies authorized to do business under the laws of the State of Florida with the following qualifications: The company must be rated no less than "B" as to management, and no less than "Class V" as to financial strength, according to the latest edition of Best's Insurance Guide published by A.M. Best Company,

Oldwick, New Jersey, or its equivalent, subject to the approval of the County Risk Management Division.

OR

The company must hold a valid Florida Certificate of Authority as shown in the latest "List of All Insurance Companies Authorized or Approved to Do Business in Florida", issued by the State of Florida Department of Insurance and are members of the Florida Guaranty Fund. Certificates of Insurance must indicate that for any cancellation of coverage before the expiration date, the issuing insurance carrier will endeavor to mail thirty (30) day written advance notice to the certificate holder. In addition, Scott hereby agrees not to modify the insurance coverage without thirty (30) days written advance notice to the County.

Compliance with the foregoing requirements shall not relieve Scott of the indemnification obligation under this paragraph.

Scott shall be responsible for assuring that the insurance certificates required in conjunction with this paragraph remain in force for the duration of the contractual period of the Contract, including any and all option years or extension periods that may be granted by the County. If insurance certificates are scheduled to expire during the contractual period, Scott shall be responsible for submitting new or renewed insurance certificates to the County at a minimum of thirty (30) calendar days in advance of such expiration.

16. **Authority; No Prior Assignment:** The County warrants and represents that the County is fully entitled and duly authorized to give the releases contained herein, and that the County has not assigned any of the rights or causes of action released herein, and that the County has not relied upon any representation, promise, or statement made by anyone which is not recited, contained or embodied in this Agreement. Similarly, Fisher warrants and represents that Fisher is fully entitled and duly authorized to give the releases contained herein, and that Fisher has not assigned any of the rights or causes of action released herein, and that Fisher has not relied upon any representation, promise, or statement made by anyone which is not recited, contained or embodied in this Agreement. Moreover, Scott warrants and represents that Scott is fully entitled and duly authorized to give the releases contained herein, and that Scott has not assigned any of the rights or causes of action released herein, and that Scott has not relied upon any representation, promise, or statement made by anyone which is not recited, contained or embodied in this Agreement. Each of the signatories hereto represents and warrants that he or she is duly authorized to execute this Agreement on behalf of such party.

17. **Representation of Comprehension of Document:** In entering into this Agreement, the Parties represent that they have relied upon the legal advice of their attorneys, who are the attorneys of their own choice, and that the terms of this Agreement have been completely read and explained to them by their attorneys and these terms are fully understood and voluntarily accepted by them. Notwithstanding the identity of the drafters of this Agreement, the Parties agree that there will be no presumption against any Party arising out of or relating to the identity of such draftspeople.

18. **Notices:** All notices, demands, requests, offers or responses permitted or required to be given under this Agreement shall be deemed sufficient if mailed by registered or certified mail, postage prepaid, addressed to:

a. If to the County, to:

Director
Miami-Dade Fire Department
9300 NW 41st Street
Doral, Florida 33178

With a copy to:

Office of the County Attorney
c/o Richard C. Seavey, Esquire
Assistant County Attorney
111 N.W. 1st Street, Suite 2800
Miami, FL 33128

b. If to Fisher, to:

Joan E. Marshall
Vice President and General Counsel
Fisher Scientific Company L.L.C., Safety Market Division
2000 Park Lane
Pittsburgh, PA 15275

With a copy to:

Joseph H. Serota, Esquire
Weiss Serota Helfman Pastoriza Cole & Boniske, P.L.
2525 Ponce de Leon Boulevard, Suite 700
Coral Gables, FL 33134

c. If to Scott, to:

Trent Smith
VP-Sales/Americas
Scott Health & Safety
4320 Goldmine Road
Monroe, NC 28110

With a copy to:

Charles S. Marion, Esquire
Pepper Hamilton LLP
3000 Two Logan Square

Eighteenth and Arch Streets
Philadelphia, PA 19103-4567

19. **Governing Law and Venue:** This Agreement shall be enforceable and construed according to the laws of the State of Florida without regard to its conflict of laws provisions. The Parties agree that any action to enforce this Agreement shall be brought in the Court in the Lawsuit.

20. **Complete Agreement:** This Agreement constitutes the complete and entire Agreement between the Parties relating to the Lawsuit. All prior agreements, negotiations, correspondence, proposals, prior documents, and any verbal understandings regarding the Lawsuit are merged into this Agreement, which shall supersede any provision of any agreement inconsistent with the terms of the Agreement. The terms of this Agreement may not be modified, supplemented, or waived except by a writing signed by the Parties.

21. **Severability:** If any term or provision of this Agreement, other than Paragraphs 2, 3, 4, 5, 6 and/or 7 of this Agreement, shall be deemed or declared by a court of competent jurisdiction to be invalid or unenforceable, in whole or in part, it shall be severed herefrom, and the remaining provisions of this Agreement shall remain in effect and enforceable.

22. **Binding Effect:** This Agreement shall be binding upon and inure to the benefit of the Parties, their affiliates, representatives, agents, shareholders, members, licensees, employees, investors, trustees, parent and subsidiary corporations or related entities, successors in interest and/or assigns, and any and all others acting by or through them or under their direction and control, including but not limited to all persons or entities that may attempt to make a claim through the Parties.

23. **Enforcement Costs and Fees:** In the event one of the Parties brings suit to enforce or interpret any provisions of this Agreement, or is required to defend any action or proceeding, the defense of which is based upon any provision of this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs incurred in connection with any such action or proceeding.

24. **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.

25. **Counterparts:** This Agreement may be executed in separate counterpart originals, and facsimile, photocopy, or PDF signatures shall be considered as original signatures for all purposes.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Parties have duly authorized and caused this Agreement to be executed effective as of the Effective Date.

MIAMI-DADE COUNTY, FLORIDA

By: _____

Title: _____

Date: _____

Attest: _____
Clerk of the Board

Approved as to Legal Form and Sufficiency

_____
Assistant County Attorney

FISHER SCIENTIFIC COMPANY L.L.C., d/b/a FISHER SAFETY

By: _____

Title: PRESIDENT, SAFETY MARKET DIVISION

Date: 10/9/09

APPROVED AS TO FORM
Fisher Scientific
Legal Department
10/8/09

Attest: _____
Asst ~~Corporate~~ Secretary/Notary Public

Corporate Seal/Notary Seal

COMMONWEALTH OF PENNSYLVANIA)
COUNTY OF ALLEGHENY)

On this 9th day of October 2009, before me, Donna B. Lorenz, the undersigned officers, appeared Rodney Smith and Alan M. Doernberg known to me to be the persons whose names are subscribed to the within instrument, and executed the same for the purposes therein contained.

In witness whereof, I hereunto set my hand and official seals.

Notary Public

COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Donna B. Lorenz, Notary Public
North Fayette Twp., Allegheny County
My Commission Expires July 9, 2011
Member, Pennsylvania Association of Notaries

TYCO FIRE & SECURITY LLC

By: _____

Title: VICE PRESIDENT

Date: 10.9.09

Attest: Kimberly M. Griffith
Corporate Secretary/Notary Public

Corporate Seal/Notary Seal

KIMBERLY M. GRIFFITH
NOTARY PUBLIC OF NEW JERSEY
Commission Expires 9/28/2011

SCOTT TECHNOLOGIES, INC., d/b/a SCOTT HEALTH AND SAFETY

By: _____

Title: _____

Date: _____

Attest: _____
Corporate Secretary/Notary Public

Corporate Seal/Notary Seal

TYCO FIRE & SECURITY LLC

By: _____

Title: _____

Date: _____

Attest: _____
Corporate Secretary/Notary Public

Corporate Seal/Notary Seal

SCOTT TECHNOLOGIES, INC., d/b/a SCOTT HEALTH AND SAFETY

By: M.W. Ryan
Mike Ryan

Title: Vice President & General Manager

Date: October 9, 2009

Attest: Patricia A Edwards
Notary Public

Corporate Seal

PATRICIA A. EDWARDS NOTARY PUBLIC UNION COUNTY, N.C.

State of NC, County of Union
Signed before me, on this 8th day
of Oct, 2009 by Mike Ryan
Notary Public: Patricia A Edwards

My Commission Expires
February 26, 2012

tyco
SCOTT
HEALTH & SAFETY

Product Quote

Scott Health & Safety
P.O. Box 569
Monroe, NC 28111

Tel: 704-291-8300
Fax: 704-291-8330

Date: 7/20/2009

Prepared By: Trent Smith
VP-Sales/Americas
Scott Health & Safety

To: Chief Herminio Lorenzo
6401 SW 87th Ave
9300 N.W. 41st Street
Doral, Florida 33178-2414

Submit Orders To: Scott Health & Safety

Qty	Part No.	Description	List	Disc.	Net	Total
800	AP2140204200302	4.5 AP75, CBRN/QD/PAK-TRACKER/DUAL EBSS	$5,871.00	43%	$3,346.47	$2,677,176.00
800	804335-14	HOSE & SOCKET ASSEMBLY	$238.70	43%	$136.06	$108,848.00
800	10008531	CAP, DUST	$8.04	43%	$4.58	$3,666.24
800	804530-01	STRAP ASSY, FASTENER	$32.90	43%	$18.75	$15,002.40
2310	804191-08	AV2000 '07 Kevlar Harness CS	$237.00	43%	$135.09	$312,057.90
		Total Cost for '07 Equipment				**$3,116,750.54**
		Credit for below Items purchased & returned to Scott H/S				
800	804935-0603	4.5 AP50, CBRN W/EBSS	$3,316.00	43%	1,890.12	$1,512,096.00
800	200170-02	DUAL,EBSS kit w/pouch	$499.00	43%	284.43	$227,544.00
800	805796-02	PAK-ALERT SE+ factory installed	$696.00	43%	396.72	$317,376.00
800	NA	Pak Tracker upgrade charge	$117.00	0%	117.00	$93,600.00
2310	805775-XX	AV3000 FePc, Rubber Harness	$183.00	43%	104.31	$240,956.10
		Total Credit Subtracted from Cost of '07 Equipment				**$2,391,572.10**
		Total Difference Due for New '07 Equipment After Return Credit of '02 Equipment			Sub-Total:	$725,178.44
		Cylinder Life -- 3 years @ $71,120.80 / yr cost to MDFR				($213,362.40)
		Special Discount				($97,121.74)
					Total	**$414,694.30**

Special Notes:

1) Estimated delivery is 45 days
2) All orders shipped F.O.B Monroe, NC. Freight will be Pre-Pay and added to your invoice
3) Payment Terms - Net 30 days
4) This quotation reflects a special discount

EXHIBIT A 21