

MEMORANDUM

Agenda Item No.8(H)(1)

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

DATE: July 17, 2012

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

SUBJECT: Resolution approving
settlement agreement between
Miami-Dade County and
Manuel Diaz Farms, Inc.
representing a value of
\$85,000.00

Resolution No. R-637-12

The accompanying resolution was prepared by the Parks, Recreation and Open Spaces Department and placed on the agenda at the request of Prime Sponsor Senator Javier D. Souto.

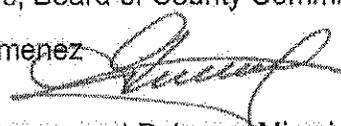


R. A. Cuevas, Jr.
County Attorney

RAC/jls

Date: July 17, 2012

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

From: Carlos A. Gimenez 
Mayor

Subject: Settlement Agreement Between Miami Dade County and Manuel Diaz Farms, Inc.

Recommendation

It is recommended that the Board of County Commissioners (Board) approve the attached Settlement Agreement between Manuel Diaz Farms, Inc. (MDF) and Miami-Dade County, and remove MDF from the Miami-Dade County's (County) Registry of Delinquent Contractors.

Scope

This Settlement Agreement stems from tree plantings in various County parks and County right-of-ways, therefore it is Countywide in nature.

Fiscal Impact/Funding Source

The fiscal impact to the County from this settlement agreement is the receipt of trees from MDF representing a value of \$85,800.

Track Record/Monitor

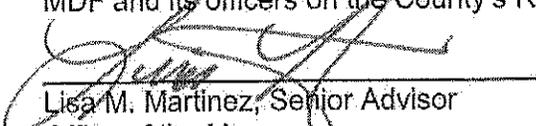
The Parks, Recreation and Open Spaces Department's (PROS) Landscape and Tree Care Management Division's Arborist David Cardenas will monitor the tree plantings for compliance with the Settlement Agreement.

Background

In 1998 and 1999 MDF planted trees at various County locations under the existing tree bid at that time, 5066-3/00-OTR-CW. The County asserts that the trees died within the one-year guarantee period specified in the contract. After unsuccessful attempts to meet with representatives of MDF, the company was placed on the Registry of Delinquent Contractors (Registry) in accordance with Section 2-8.1(h) of the County Code and Administrative Order 3-29.

The Registry is a centralized listing of contractors or vendors who are in arrears to the County, without an approved payment plan, in excess of \$25,000 for more than 180 days. Persons and firms appearing on this list may not obtain new county contracts, extensions of contracts, or new purchase orders, until such time as the arrearage has been paid in full or the County has agreed in writing to an approved payment plan.

The amount in dispute is the value of trees in the amount of \$95,281. The County and MDF desire to amicably compromise, finally resolve, and settle all issues pending between them relative to the tree plantings that occurred from 1998-99. Under the terms of the Settlement Agreement, MDF will plant trees at Rockway Park, Tropical Park, Tamiami Park and the Deering Estate's Powers Property. Upon execution of this settlement Agreement, MDF and its officers will be removed from the County's Registry of Delinquent Contractors. Failure by MDF to comply with any of the terms or provisions of the Settlement Agreement shall be deemed a breach of all other contracts MDF has with the County and those agreements shall be subject to immediate termination by the County. Additionally, failure by MDF to comply with the terms of the Settlement Agreement shall result in the County immediately placing MDF and its officers on the County's Registry of Delinquent Contractors.


Lisa M. Martinez, Senior Advisor
Office of the Mayor



MEMORANDUM
(Revised)

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

DATE: July 17, 2012

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

SUBJECT: Agenda Item No. 8(H)(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

Agenda Item No. 8(H)(1)

Veto _____

7-17-12

Override _____

RESOLUTION NO. R-637-12

RESOLUTION APPROVING SETTLEMENT AGREEMENT
BETWEEN MIAMI-DADE COUNTY AND MANUEL DIAZ
FARMS, INC. REPRESENTING A VALUE OF \$85,800.00

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 approves and authorizes the County Mayor or Mayor's designee to execute the settlement agreement between Miami-Dade County and Manuel Diaz Farms, Inc. representing a value of \$85,800 in substantially the form attached to this resolution.

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

	Joe A. Martinez, Chairman	aye
	Audrey M. Edmonson, Vice Chairwoman	aye
Bruno A. Barreiro	aye	Lynda Bell aye
Esteban L. Bovo, Jr.	aye	Jose "Pepe" Diaz aye
Sally A. Heyman	aye	Barbara J. Jordan aye
Jean Monestime	aye	Dennis C. Moss aye
Rebeca Sosa	aye	Sen. Javier D. Souto aye
Xavier L. Suarez	aye	

The Chairperson thereupon declared the resolution duly passed and adopted this 17th day of July, 2012. 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

Approved by County Attorney as
to form and legal sufficiency.

A handwritten signature in black ink, appearing to be "MR", written over a horizontal line.

Monica Rizo

By: **Christopher Agrippa**
Deputy Clerk

A handwritten mark consisting of a single, curved, horizontal stroke, possibly a checkmark or a signature flourish, located at the bottom center of the page.

SETTLEMENT AGREEMENT

This SETTLEMENT AGREEMENT (the "Agreement") is entered into as of this _____ day of _____ 2012 (the "Effective Date") by Manuel Diaz Farms, Inc. ("MDF") and Miami-Dade County (the "County") collectively (the "Parties").

RECITALS

WHEREAS, MDF planted trees at various County locations under the existing County tree contract in effect at that time, 5066-3/00-0TR-CW; and

WHEREAS, The County asserts that the trees died within the one-year guarantee period specified in the contract; and

WHEREAS, MDF was placed on the Registry of Delinquent Contractors by the County in accordance with Administrative Order 3-29; and

WHEREAS, The amount owed of \$95,281 is the disputed amount, and MDF maintains the County failed to water the trees while the County maintains the trees were under guarantee; and

WHEREAS, MDF and the County each desire to amicably compromise and settle,

NOW THEREFORE, in consideration of the mutual promises set forth herein and other good and valuable consideration, the Parties agree to as follows:

1. MDF shall plant a total of 214 trees in select County parks. All trees must be planted on or before September 30, 2012.
2. The following are the parks where the trees will be planted and the number and type of tree to be planted at each such park:

Rockway Park

15 Peltophorum dubium (Yellow Poinciana)

Deering Estate @ Powers Property

50 Bursera simaruba (Gumbo limbo)

34 Thriax radiata (Florida thatch palm)

Tropical Park

40 Thriax radiata (Florida thatch palm)

25 Peltophorum dubium (Yellow Poinciana)

Tamiami Park

30 Thriax radiata (Florida thatch palm)

20 Peltophorum dubium (Yellow Poinciana)

The following chart indicates the type of trees to be planted, the total quantities of trees that will be planted at the aforementioned parks and the approximate unit cost per tree:

Tree/Palm	Qty.	Unit cost	Total
Yellow poinciana.	60	\$660	\$ 39,600
Gumbo limbo	50	\$300	\$ 15,000
Florida thatch palm	104	\$300	\$ 31,200
TOTAL	214		\$ 85,800

3. All trees and palms provided shall be Florida #1 in quality. The trees and palms shall meet the following conditions: (a) *Peltophorum dubium* trees shall be 14' -16' height x 4'-6' spread, 65 gallon container, 2.5" in caliper; (b) *Bursera simaruba* trees shall be 18' -20' height x 6' spread, 2.5" in caliper (or if field grown, root pruned using stand nursery industry standard not less than 6 weeks or more than 6 months prior to planting); (c) *Thrinax radiata* shall be 6-7'ht. MDF shall provide all staking/guying, soil saucers, and mulch rings for all of the trees and palms.
4. Root pruning - all trees must be root pruned using standard nursery industry practice, not less than six (6) weeks or more than six (6) months prior to planting. No plants will be accepted when the root ball has been cracked, broken, or damaged in any fashion. Plants are to be protected by MDF during transport to avoid windburn, dehydration of the root ball or other damage. Once the tree is removed from the ground at the nursery, it must be planted by MDF within 48 hours.
5. Planting - The planting pit shall be a minimum of 24" wider than the diameter of the root ball unless otherwise directed by the County representative(s). The depth of the pit shall be adjusted so that the top of the root ball will be at the same elevation as the existing ground level. All plants shall be centered in the hole. Burlap is to be untied and pulled away from the top of the ball unless otherwise specified in writing by the County representative(s). The existing material excavated from the planting pit is to be used as backfill. A planting saucer will be established the same size as the diameter of the planting pit and the rim shall be no higher than four inches.

6. MDF shall deliver the trees, palms, and plant material to the planting sites, shall dig the holes, and shall install, backfill, water-in, and stake all of the trees and palms. The Miami-Dade Parks, Recreation and Open Spaces Department shall mark the locations for the installation of the trees and palms. All of the work shall be performed with heavy equipment to avoid hand-digging and hand-carrying, and the tree and palm planting locations will be accessible for such equipment. MDF shall also provide initial watering at the time of planting, but shall not be required to provide any additional watering thereafter. MDF shall not be required to perform any underground utility clearance in order to plant the aforementioned trees.
7. MDF agrees to, and shall provide, a one (1) year warranty for all of the trees and palms. The warranty is subject and conditioned on the County properly maintaining the trees and palms during the 1 year warranty period. MDF shall not be liable under this warranty for acts of God.
8. Upon execution of this Agreement, MDF and its officers shall be removed from the County's Registry of Delinquent Contractors. The parties further agree that, as of execution herewith, MDF has no liability or obligation to the County under any past contract for the sale of trees, palms or shrubs to County.
9. MDF understands and agrees that failure by MDF to comply with any of the terms or provisions of this Agreement shall be deemed a breach of all other contracts MDF has with the County and those agreements shall be subject to immediate termination by the County. Additionally, failure by MDF to comply with the terms of this Agreement shall result in the County immediately placing MDF and its officers on the County's Registry of Delinquent Contractors.
10. In addition to the conditions set forth herein, this Agreement and the obligations hereunder are contingent upon the final approval of this Agreement by the Miami-Dade County Board of County Commission ("Board"), which approval is within the Board's sole discretion.
11. This Agreement shall be governed by, construed and interpreted in accordance with the laws of the State of Florida and any claims shall be brought in a court of competent jurisdiction within Miami-Dade County.
12. The Parties have each participated in the preparation of this Agreement, and the matters memorialized herein have been voluntarily and consensually negotiated at "arms-length" and, consequently, no rule of interpretation or construction which would result in an interpretation or construction in favor of or to the detriment of one party or another shall apply.
13. The Parties acknowledge and agree that the Agreement constitutes the entire agreement of the Parties hereto and supersedes all prior agreements, whether written or oral, between the Parties.

14. To the extent that any provision herein contained, or any portion of a provision herein contained, is deemed unlawful or unenforceable, that provision, or portion of a provision, shall be deemed severable from the remainder of the Agreement, and all other terms and provisions of the Agreement shall be given full force and effect.

15. The Agreement shall not be amended or modified except in writing and signed by all parties.

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the date above set forth.

Manuel Diaz Farms, Inc.

Miami-Dade County

By:

Name:

Title:

Date:

Attest:

By:

Name:

Title:

Date:

Attest:

Approved by County Attorney as to Form and Legal Sufficiency _____