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

MEMORANDUM Agenda Item No. 8(A)(3)

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

DATE: October 2, 2012

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

SUBJECT: Resolution approving the settlement agreement of the lawsuit between Wright Way Farms Corporation and Miami-Dade County in the amount of $225,000.00; authorizing the Mayor to execute same and to enforce all terms therein

Resolution No. R-770-12

The accompanying resolution was prepared by the Aviation Department and placed on the agenda by the County Attorney's Office.

R. A. Cuevas, Jr.
County Attorney

RAC/jls

Memorandum

MIAMI-DADE COUNTY

Date: October 2, 2012

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

From: Carlos A. Gimenez
Mayor

R. A. Cuevas, Jr.
County Attorney

Subject: Resolution Approving the settlement of the lawsuit *Wright Way Farms Corporation v. Miami-Dade County,* Case No. 06-6284 CA 10, in the amount of $225,000

RECOMMENDATION

It is recommended that the Board of County Commissioners (Board) approve the attached Memorandum of Settlement with Wright Way Farms, George Wright, and Glenda Wright, resolving claims arising from a lease agreement at Homestead General Aviation Airport in the amount of $225,000.

SCOPE

Homestead General Aviation Airport is located primarily within Commissioner Dennis Moss' District 9.

FISCAL IMPACT/FUNDING SOURCE

The fiscal impact to the County is $225,000 and shall be paid from Miami-Dade Aviation Department (MDAD) General Operating Funds.

BACKGROUND

MDAD leases acreage at Homestead General Aviation Airport for use as farmland. In 2000, MDAD solicited bids for lease of this property and, pursuant to R-1130-00, awarded the 430-acre lease to Wright Way Farms for a five-year term, with five one-year options to renew. Annual rent was approximately $74,000.

In 2002, the Office of the Inspector General issued a report on the lease, finding that Wright Way Farms sub-leased some of this acreage to another farmer in contravention of the express terms of the lease. This sub-lease was made to the prior lessee at the request of MDAD personnel to allow the prior lessee sufficient time to bring his crop to harvest. Concerns were raised that this sub-lease and certain irregularities in the procurement of the Wright Way Farms lease required its immediate termination and procurement of a new lessee.

In 2003, MDAD informed Wright Way Farms that the lease would be terminated; however, the date of that termination was held in abatement until 2005 to allow time for procurement of a new lessee. On March 3, 2005, MDAD informed Wright Way Farms that its lease would be terminated effective May 31, 2005. At the time of that letter and immediately thereafter, Wright Way Farms had been planting crops on the property. In June 2005, MDAD personnel barred Wright Way Farms from the property, and tilled the crops then in the field.

Wright Way Farms sued the County, alleging that the County had (1) breached the lease by directing Wright Way Farms to sub-lease to the prior tenant, thus depriving him of acreage under the lease, (2) breached the lease by failing to terminate in accordance with its terms, and (3) improperly used self-help to reclaim the property, among other claims. The total damages sought are in excess of $3,000,000.

The County believes the vast majority of these claims are legally and factually without merit; however, it is undisputed that the County repossessed the property without authorization of a court. Additionally, many of the MDAD witnesses to these events are no longer with the County, having either retired or otherwise left County employment.

The County mediated this matter before John Freud, Esq. At mediation, the parties agreed to resolve this litigation via payment of $225,000 from the County to Wright Way Farms in exchange for a full release of all claims associated with the lease. This amount discounts the vast majority of the damages sought and is based on the direct damages allegedly caused by the County's reclamation of the property and the sub-leasing to the prior tenant, adjusted for risk, interests, and potential costs. The County believes this settlement is fair and reasonable, given litigation risks in this case.

Jack Osterholt, Deputy Mayor

MEMORANDUM
(Revised)

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

DATE: October 2, 2012

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

SUBJECT: Agenda Item No.8(A)(3)

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.8(A)(3)
10-2-12

RESOLUTION NO. R-770-12

RESOLUTION APPROVING THE SETTLEMENT AGREEMENT OF THE LAWSUIT BETWEEN WRIGHT WAY FARMS CORPORATION AND MIAMI-DADE COUNTY IN THE AMOUNT OF $225,000.00; 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 and authorizes the County Mayor or Mayor's designee to execute the settlement agreement between Wright Way Farms Corporation and Miami-Dade County, Case No. 06-6284 CA 10, in the amount of $225,000.00 in substantially the form attached to this resolution, and to enforce all terms therein on behalf of Miami-Dade County.

The foregoing resolution was offered by Commissioner **Sally A. Heyman**, 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.	**absent**	Jose "Pepe" Diaz	**absent**
Sally A. Heyman	**aye**	Barbara J. Jordan	**aye**
Jean Monestime	**aye**	Dennis C. Moss	**absent**
Rebeca Sosa	**aye**	Sen. Javier D. Souto	**absent**
Xavier L. Suarez	**absent**		

The Chairperson thereupon declared the resolution duly passed and adopted this 2nd day of October, 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

By: Christopher Agrippa
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

David M. Murray

SETTLEMENT AGREEMENT/GENERAL RELEASE

The Parties to this Settlement Agreement/General Release (hereafter referred to collectively as "Agreement") are**Wright Way Farms Inc., George Wright, and Glenda Wright**(hereinafter referred to as "**Wright Way**") and Miami-Dade County and Miami-Dade Aviation Department, (hereinafter collectively referred to as "**the COUNTY**"), hereinafter collectively referred to as the "Parties." Except as set forth below, the Parties shall be deemed to include each and all of their respective divisions, operating units, affiliated companies, subsidiaries, parents, insurers, predecessors, successors, assignees, administrators, executors, officers, trustees, employees, former employees, agents, attorneys and other representatives.

The purpose of this Agreement is to resolve all disputes and controversies between the Parties in accordance to the terms of this Agreement, including, without limitation, all monies owed, all allegations, legal claims, and causes of action which were or could have been asserted by either party concerning Lease H90, (hereinafter the "**LEASE**") located at Homestead General Aviation Airport ("the Airport"), including but not limited to all claims contained within Wright Way Farms v. Miami Dade County, case number 06-06284 CA10, and Wright Way Farms v. Dade County Farm Bureau, case number 05-17176 CA 01, both cases currently pending in the Circuit Court for Miami-Dade County.

WHEREAS, Wright Way entered into the LEASE with THE COUNTY for the purpose of farming certain portions of the Airport; and

WHEREAS, disputes arose between THE COUNTY and Wright Way during the course of the Lease as to the necessity and/or propriety of subleasing land to other farmers; and

WHEREAS, Wright Way alleges that these disputes, as well as other actions taken by THE COUNTY, caused him to lose valuable crops and incomes; and

WHEREAS, Wright Way filed an action in the Circuit Court of Miami-Dade County,

case number 06-06284 CA10, seeking _____ as compensation for these lost crops and other alleged damages; and

WHEREAS, THE COUNTY and Wright Way have mutually agreed to resolve this litigation and all other claims as mayor could be associated with the Lease

THEREFORE, in exchange for the mutual promises made herein and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties hereby stipulate, agree, and covenant as follows:

1. **Wright WAY's** Release in Favor of Miami-Dade County.

Upon**WRIGHT WAY's** receipt of payment in full of the amount of two hundred twenty five thousand dollars ($225,000.00) (referred to herein as "the Settlement Payment"), **WRIGHT WAY** shall be deemed to have released and discharged Miami-Dade County from and against any and all claims of any kind or nature arising out of or relating to the LEASE, including but not limited to all claims asserted in Wright Way Farms v. Miami Dade County, case number 06-06284 CA10, and Wright Way Farms v. Dade County Farm Bureau, case number 05-17176 CA 01.

2. Full Satisfaction. **WRIGHT WAY's** receipt of the Settlement Payment shall constitute full accord and satisfaction of any and all claims, brought or asserted by or on behalf of **WRIGHT WAY**or any of its subcontractors or suppliers (of any tier), or which could have been brought or asserted by same, arising out of or relating to the Lease for which the Settlement Payment.

3. Additional Representations and Warranties. Each Party represents and warrants to the other Party that:

(a) It has read this Agreement and understands its terms and their effect upon its rights and duties hereby undertaken; and

(b) Prior to executing this Agreement, it has had the opportunity to consult with its

Legal counsel regarding the meaning, consequences and effects of this Agreement, and it represents and warrants that any and all questions it may have had concerning this Agreement have been fully answered; and

(c) It has full power and authority to execute, deliver, and perform this Agreement And, upon the occurrence of all conditions precedent contained herein, this Agreement will Constitute a legal, valid, and binding obligation, enforceable in accordance with the terms of this Agreement; and

(d) The person executing this Agreement on its behalf is duly authorized to execute And deliver this Agreement by and on its behalf.

4. Additional Provisions.

(a) This Agreement represents the complete understanding between the Parties Regarding the subject matter hereof. The Parties agree that, in entering into this Agreement, they Have neither relied upon nor have they been influenced by any representations other than those Set forth in this Agreement.

(b) This Agreement is the product of negotiations by Parties represented by legal Counsel and therefore shall not be construed or interpreted against either of the Parties.

(c) Should any section, subsection, or provision of this Agreement be declared or Determined finally by any court to be illegal or invalid, the validity of the remaining parts, terms Or provisions shall not be affected thereby and such illegal or invalid part, term, or provision Shall be deemed not to be a part of this Agreement.

(d) This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.

(e) No waiver of any provision of this Agreement, or the breach thereof, shall be deemed a waiver or breach of any other provision.

(f) Except as otherwise expressly provided in this Agreement, this Agreement shall

be binding upon and shall inure to the benefit of the Parties hereto and, as may be applicable, their divisions, affiliates, subsidiaries, parents, insurers, successors, predecessors, assigns, administrators, executors, heirs, officers, employees, former employees, agents, attorneys, persons in their individual capacity and other representatives.

(g) This Agreement may be executed in multiple counterparts, each of which shall constitute an original and which together shall constitute a single Agreement.

(h) This Agreement is expressly conditioned on its approval by the Board of County Commissioners. Absent such approval by the Board of County Commissioners, this settlement shall be void and of no effect.

WRIGHT WAY FARMS, INC.

Glenda Wright
Signature

GLENDA WRIGHT
Printed Name

DIRECTOR
Title

STATE OF FLORIDA)
:ss:
COUNTY OF Miami Dade)

THIS ___ day of July, 2012, Glenda Wright personally appeared before me, the undersigned authority duly authorized to administer oaths and take acknowledgments, and upon first being duly cautioned and sworn, acknowledged to and before me that he/she executed the foregoing Release, and that the same are true and correct to the best of his/her knowledge, information and belief.

TERRI STOCKWELL
Notary Public - State of Florida
My Comm. Expires Jul 24, 2014
Commission # DD 993601
Bonded Through National Notary Assn.

Terri Stockwell
NOTARY PUBLIC, State of Florida
Print Name:
My Commission Expires:

✓ Personally Known, or
___ Produced _____, as identification

Miami Dade County and
Miami Dade County Aviation Department

_____
Signature

_____
Printed Name

_____
Title

STATE OF FLORIDA)
:ss:
COUNTY OF _____)

THIS ___ day of July, 2012, _____ personally appeared before me, the undersigned authority duly authorized to administer oaths and take acknowledgments, and upon first being duly cautioned and sworn, acknowledged to and before me that he/she executed the foregoing Release, and that the same are true and correct to the best of his/her knowledge, information and belief.

_____
NOTARY PUBLIC, State of Florida
Print Name:
My Commission Expires:

____ Personally Known, or
____ Produced _____, as identification

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