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

MEMORANDUM

Agenda Item No. 8(F)(10)

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

DATE: May 6, 2014

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

SUBJECT: Resolution approving the Settlement Agreement and Mutual Release between Miami-Dade County and U.S. Security Associates, Inc., in the amount of $40,000; authorizing the Mayor to execute same and to enforce all terms therein

Resolution No. R-418-14

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

R. A. Cuevas, Jr.
County Attorney

RAC/lmp

Memorandum

MIAMI-DADE COUNTY

Date: May 6, 2014

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

From: Carlos A. Gimenez
Mayor

Robert A. Cuevas, Jr.
County Attorney

Subject: Approval of Settlement Agreement with U.S. Security Associates, Inc. and Mutual Release in Exchange for Payment to Miami-Dade County of $40,000

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

The Settlement Agreement and Mutual Release will result in a payment to the County of $40,000 and will settle a lawsuit, *Miami-Dade County v. U.S. Security Associates, Inc.*, currently pending in the Circuit Court of the Eleventh Judicial Circuit, in and for Miami-Dade County, Case No. 12-13930 CA 09 (Lawsuit). The total claim of the County against US Security Associates, following applicable rulings by the Court, is in the approximate amount of $60,000.

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

Fiscal Impact/Funding Source
The County will receive a payment of $40,000 with approval of this settlement agreement.

Track Record/Monitor
The Internal Services Department will oversee the collection and deposit into a County account of the $40,000 settlement payment from U.S. Security.

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

The County filed a lawsuit against Forestville and U.S. Security in an effort to collect past due UAP and Inspector General fees, which the County inadvertently failed to deduct when paying invoices under the contract. The suit was based on breach of contract, breach of implied duty of good faith and fair dealing, and unjust enrichment.

Department corrected this method of payment as soon as the problem was identified. Controls have also been implemented to ensure that this does not occur again with this contract. Staff from the Internal Services Department has reviewed other contracts in place to ensure there are no other similar instances. The settlement with 50 State Security Service, Inc. was approved by Board through Resolution R-33-14. This Settlement Agreement and Mutual Release did not come before earlier because it was still under negotiations.

The $40,000 settlement amount represents a mutually agreeable compromise of the disputed claim. Upon this Board's approval of the Settlement Agreement and Mutual Release, the parties will file a joint stipulation of dismissal, concluding the Lawsuit and resolving all claims between the parties. The County's claim against the initial contractor, Forestville, a dissolved Florida corporation, remains unaffected. Approving this settlement agreement is in the best interest of the County.

Edward Marquez
Deputy Mayor

Attachments

MEMORANDUM
(Revised)

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

DATE: May 6, 2014

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

SUBJECT: Agenda Item No. 8(F)(10)

Please note any items checked.

_____ **"3-Day Rule" for committees applicable if raised**

_____ **6 weeks required between first reading and public hearing**

_____ **4 weeks notification to municipal officials required prior to public hearing**

_____ **Decreases revenues or increases expenditures without balancing budget**

_____ **Budget required**

_____ **Statement of fiscal impact required**

_____ **Ordinance creating a new board requires detailed County Mayor's report for public hearing**

✓ **No committee review**

_____ **Applicable legislation requires more than a majority vote (i.e., 2/3's ____, 3/5's ____, unanimous _____) to approve**

✓ **Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required**

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 8(F)(10)
5-6-14

RESOLUTION NO. R-418-14

RESOLUTION APPROVING THE SETTLEMENT AGREEMENT AND MUTUAL RELEASE BETWEEN MIAMI-DADE COUNTY AND U.S. SECURITY ASSOCIATES, INC., IN THE AMOUNT OF $40,000; 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 approves the settlement of lawsuits as set forth in the Settlement Agreement and authorizes execution by the Mayor or Mayor's designee of the Settlement Agreement, in substantially the form attached hereto, and enforce all terms herein on behalf of Miami-Dade County.

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

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

The Chairperson thereupon declared the resolution duly passed and adopted this 6th day of May, 2014. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By: ***Christopher Agrippa***
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

Hugo Benitez

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Mutual Release ("Agreement") dated _____, 2014, by and between U.S. Security Associates, Inc.. ("U.S. Security") and Miami-Dade County, Florida (the "County").

RECITALS

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

WHEREAS, a dispute arose between the parties **with** respect to whether U.S. Security was required to pay User Access Program and Inspector General fees (the "UAP and IG Fees"), but the County claims that U.S. Security did not pay the UAP and IG Fees due under the Contract (the "County's Claim"); and

WHEREAS, to recover the County's Claim, the County has filed a lawsuit against U.S. Security and its predecessor in interest to the Contract Florida Business 3, Inc., which is styled *Miami-Dade County v. U.S. Security, Inc., et. al.*, Case No.: 12-13930 CA 09 in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida (the "Lawsuit"); and

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

NOW, THEREFORE, in consideration of the foregoing recitals and following premises, promises, covenants, conditions, and other good and valuable consideration, the receipt,

adequacy, and sufficiency of which is acknowledged, U.S. Security and the County agree as follows:

TERMS AND CONDITIONS

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

2. **Agreement to Settle; No Admission of Liability.** Subject to the terms and conditions of this Agreement, U.S. Security and the County hereby agree to compromise and settle the County's Claim. It is understood that the terms of this Agreement, the payment of any moneys, or any other action taken pursuant to this Agreement in no way constitutes an admission of liability or acknowledgement of the validity of any allegation, finding, or conclusion by U.S. Security or the County, but rather are made as a contractual settlement and not a mere recital by way of compromise to avoid the expense and uncertainty of further litigation.

3. **Approval of Board of County Commissioners.** U.S. Security acknowledges that before the County may settle the County's Claim on the terms and conditions set forth in this Agreement, the County must obtain the approval of the Board of County Commissioners ("BCC Approval").

a. **BCC Approval Window.** From the date of U.S. Security gives written approval of this Agreement, the County shall have **120** days in which to obtain BCC Approval (the "BCC Approval Window") after which U.S. Security may withdraw its signature on this Settlement Agreement if the County has not obtained BCC Approval.

b. **County's Obligations Before BCC Approval.** The County shall not be required to file any document compromising its claim(s) in the Lawsuit (e.g., a Stipulation of Dismissal) and shall not have released U.S. Security until obtaining BCC Approval and until the

County Mayor's veto period expires, until the County Mayor declines to exercise his veto power, or until the BCC overrides the County Mayor's veto, should the County Mayor decide to veto the BCC's approval of this Agreement.

4. **Filing of Joint Stipulations of Dismissal.** Within fifteen (15) days after obtaining BCC Approval, the Parties shall file Joint Stipulations of Dismissal with Prejudice dismissing all claims between U.S. Security and the County in the Lawsuit, with the Court reserving jurisdiction to enforce the terms of this settlement agreement. Such Joint Stipulation of Dismissal shall not affect the County's claims against Florida Business 3, Inc. The Joint Stipulations of Dismissal with Prejudice shall provide that each party shall bear its own attorneys' fees and costs unless otherwise provided in this Agreement.

5. **Settlement Amount and Assignment of Rights.** As a material inducement to and in consideration for the Parties entering into this Agreement, and subject to the terms and conditions of this Agreement, the parties agree to a settlement amount of Forty Thousand Dollars and No Cents ($40,000.00) (the "Settlement Funds"), which U.S. Security shall pay to the County within fifteen (15) days of BCC Approval **and following receipt by U.S. Security of an executed written Release from the County**. In the event that U.S. Security fails to timely **provide** the full Settlement Funds provided for in this Agreement **to the County's counsel** any outstanding Settlement Funds shall bear an interest rate as set forth in Section 55.03(1) of the Laws of the State of Florida commencing **after** the fifteenth day after BCC Approval **and receipt of an executed Release by U.S. Security**. Effective on the date of the Board of County Commissioners' resolution approving this settlement agreement **and receipt of an executed Release**, U.S. Security agrees to assign to the County any and all rights that U.S. Security may have against Florida Business 3, Inc. which relate to the matters raised in the County's Claims

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and the Lawsuit. In consideration for receiving said Assignment, the County agrees to defend and indemnify U.S. Security if Forestville or Florida 3 Business, Inc., if and only if Florida 3 Business brings a claim against U.S. Security, for indemnification or otherwise, relative to the matters that are the subject of the Lawsuit. U.S. Security agrees to execute any and all further documents which may reasonably be required to give effect to this assignment.

6. **The County's Release of U.S. Security.** For the consideration and promises made herein, the County releases and forever discharges U.S. Security from any and all claims, causes of action, demands, disputes and rights of whatever nature and kind, known or unknown, past or future, related in any way to the County's Claim that the County has or claims to have against U.S. Security, and its employees, officers, agents, successors and assigns, attorneys, or otherwise, with the exception of claims and obligations arising out of this Agreement. Such release and discharge is made by the County in its respective right and for its successors, executors, agents, employees, assigns, subcontractors, sureties, suppliers, and any and all other persons, firms, corporations, or other entities who may claim by or through the County. The County agrees that it will not, and that its legal representatives and assigns shall not, hereafter file in any court any action relating to the County's Claim, with the exception of any action to enforce this Agreement, and that to any such action (other than an action to enforce this Agreement) which nevertheless may hereafter be brought, this Agreement shall be a complete and conclusive defense.

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

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

9. **Entire Agreement; Modification.** This Agreement together with all documents required to be executed hereunder constitutes the entire agreement and understanding between the parties to this Agreement. No supplement, modification, or amendment of this Agreement shall be binding unless it is executed in writing by the parties.

10. **Rule of Construction; Opportunity to Review.** The Parties represent and agree that they have participated equally in the negotiation of the terms and provisions set forth in this Agreement and that no presumptions or inference shall apply against any party hereto to its construction. The Parties declare that they have completely read the terms of this Agreement, that they have discussed the terms of the Agreement with legal counsel of their choice, and that they fully understand and voluntarily accept the terms for the purpose of making a full and final compromise, adjustment and settlement of claims.

11. **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, representatives, agents, attorneys, employees, officers, directors, predecessors, affiliates, successors or assigns in connection with any legal action arising out of the agreement.

12. **Authority to Execute.** By executing this Agreement the undersigned warrant and represent that they are authorized to enter into this Agreement and empowered to bind their respective parties to its terms. Further, the parties represent that they have not assigned their rights or claims subject of this Agreement to any third party.

13. **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

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subsequent changes in federal, state, or county law, whether through legislation or judicial interpretation, which create, eliminate or change the rights and obligations of the parties. However, if any provision of this Agreement is held to be invalid, void or unenforceable, the balance of the provisions shall, nevertheless, remain in full force and effect and shall in no way be affected, impaired or invalidated.

IN ACCEPTANCE WHEREOF, the County has set their respective hands as of the date and year appearing by its signature.

U.S. SECURITY ASSOCIATES, INC.

By: _____

Print: Paul Lutz

Title: General Counsel

Dated: 2/24, 2014.

MIAMI-DADE COUNTY, FLORIDA

By: _____

Print: _____

Title: _____

Dated: _____, 2014.

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