

MEMORANDUM

Agenda Item No. 8(N)(1)

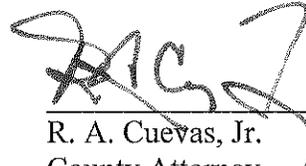
TO: Honorable Chairman Jean Monestime
and Members, Board of County Commissioners

DATE: March 17, 2015

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

SUBJECT: Resolution approving the
settlement agreement between
Miami-Dade County and Marjan
Mazza, individually and on
behalf of the United States of
America, in the aggregate
amount of \$9,952,873.95;
authorizing the County Mayor to
execute same and enforce all
terms contained therein
Resolution No. R-256-15

The accompanying resolution was prepared by Miami-Dade Transit Department and placed on the agenda at the request of Prime Sponsor County Attorney's Office.



R. A. Cuevas, Jr.
County Attorney

RAC/jls

Memorandum



Date: March 17, 2015

To: Honorable Chairman Jean Monestime
and Members, Board of County Commissioners

From: Carlos A. Gimenez
Mayor

R. A. Cuevas, Jr.
County Attorney

Subject: Resolution approving the settlement agreement between Miami-Dade County and Marjan Mazza, individually and on behalf of the United States of America, in the aggregate amount of \$9,952,873.95 and authorizing the County Mayor or County Mayor's designee to execute same and enforce all terms contained therein

RECOMMENDATION

It is recommended that the Board of County Commissioners (Board) approve the attached Settlement Agreement of the lawsuit filed by Marjan Mazza (Mazza) on behalf of the United States of America against Miami-Dade County (County) and Miami-Dade Transit (MDT), pending in the United States District Court for the Southern District of Florida, Case No. 1:10-cv-24546-Moore/McAliley (the "Lawsuit"), including claims on behalf of the United States as well as retaliation claims pled on her own behalf in the amount of \$9,952,873.95. The United States has approved this Settlement Agreement, which in addition to resolving this Lawsuit, also repays MDT's obligations to the United States in regards to the revised findings and demand letter from the Federal Transit Administration (FTA).

SCOPE

This proposed Settlement Agreement stems from actions and allegations more fully described in the background section below and relates to claims on behalf of the United States of America, by and through the Department of Justice, the FTA, and Mazza, as well as retaliation claims on Mazza's own behalf. The impact of this Settlement Agreement is countywide.

FISCAL IMPACT/FUNDING SOURCE

The fiscal impact to the County from this Settlement Agreement is \$9,952,873.95.00. Of the total amount, \$4,645,206.00, reflected in MDT's FY 2013-2014 operating fund as potential litigation exposure, will be reimbursed from operational savings to be realized in future years. The remaining \$5,307,667.95 has been reflected in the Miami-Dade County General Liability Self-Insurance Fund (FY 2013-2014) as potential litigation exposure.

TRACK RECORD/MONITOR

The execution and enforcement of this Settlement Agreement will be overseen by Ysela Llort, Miami-Dade Transit Director.

BACKGROUND

In 2009, the FTA conducted a review of the County's compliance with grant requirements. This review was followed in 2010 by other federal government reviews on County grant compliance. These reviews covered the years 2004 through 2010 and examined how the County accounted for the use of federal grant funds and entered into contracts which either did not contain required federal language (e.g., Buy America

provisions, Davis-Bacon wage provisions) or contained impermissible local requirements (e.g., local preference, inspector general fees, procurement user access fees).

In June of 2009, MDT hired Mazza as the Assistant Director of Financial Services. Mazza was responsible for overseeing fiscal and budget management, developing and implementing financial and auditing policies and procedures, performing analyses and revenue expenditure and forecasting, and directing and coordinating grants administration including compliance with state and federal requirements. Mazza reported directly to then MDT Director Harpal Kapoor. She was also responsible for communicating with federal and state auditors and assuring compliance with relevant rules. According to the federal government's filing in the Instant Lawsuit, Mazza provided the FTA auditors with material assistance in identifying contracts or expenses which may have been improperly paid for with federal funds.

In September of 2010, following preliminary results from the two successive FTA Reviews, the FTA Regional Administrator notified MDT that the department was placed on Electronic Clearing House (ECHO) restriction for grants containing any preventative maintenance activities. The restriction prevented MDT from electronically drawing down from available federal funding sources, especially in the context of preventative maintenance expenses "until such time that FTA completes a Full Scope Financial Management Oversight ("FMO") review and the findings are resolved." The ECHO restriction required that MDT provide supporting documentation for review and approval of reimbursement prior to the drawdown of funds. In addition, FTA froze MDT's access to approximately \$43 million in federal funds related to all grant activity for 2010 and prior years until sufficient safeguards were put into place and approved.

In October of 2010, the FTA ordered an FMO review of MDT. This FMO review identified weaknesses or deficiencies in ten of the thirteen areas reviewed. As a result, the FTA placed MDT on ECHO suspension for all FTA grants until MDT provided an approved corrective action plan.

In November of 2010, then MDT Director Harpal Kapoor terminated Mazza's employment. In December 20, 2010, Mazza filed a lawsuit under seal on behalf of the United States against the County in the United States District Court for the Southern District of Florida. The Lawsuit was filed under the federal False Claims Act, 31 U.S.C. §§ 3729, et. seq. (FCA) and alleged that the County submitted numerous false claims to the federal government when seeking reimbursement under various FTA grant programs. The FCA provides that any person or entity who knowingly submits false claims to the federal government is liable to the federal government for treble damages, plus a statutory penalty for each false claim. The FCA defines knowingly submitting a false claim to require: (1) actual knowledge; (2) deliberate ignorance to the truth or falsity of the information; or (3) reckless disregard of the truth or falsity of the information.

The FCA also allows a private person or "relator" to bring suit (known as a *qui tam* complaint) on behalf of the federal government and seek to enforce the provisions of the FCA against a defrauding entity. The government may either take over the lawsuit by intervening in the action or allow the action to proceed as a *qui tam* complaint. In such *qui tam* proceedings, the relator is entitled to receive up to 25 to 30 percent of the money recovered for the federal government in addition to legal fees and costs incurred by the relator in bringing the suit.

In her suit, Mazza claims that from 2004 through 2010, MDT misappropriated federal grant funds, failed to include required federal language in its procurement contracts for which the County improperly sought reimbursement, included impermissible local provisions, failed to have a Force Account in place as required for preventative maintenance reimbursement from federal funds, and then falsely certified to the United States on an annual basis that the County was in compliance with the requisite guidelines before drawing down federal grant money.

The complaint further alleges that the County knew, or should have known, that the information provided to draw down grant funds was false or at the very least, that the County acted with reckless disregard for the truth or falsity of such information and annual certifications. The complaint also alleges that from 2009 to 2010 Mazza repeatedly informed her superiors of these deficiencies and was ignored and then subsequently terminated. The Lawsuit requests damages on behalf of the federal government in excess of \$1.5 billion after the trebling of damages and inclusion of the statutory penalties.

Pursuant to the FCA, the original *qui tam* complaint was filed under seal to allow the United States to conduct an investigation and determine whether it wished to intervene in the suit. The United States declined to intervene and, on August 8, 2012, the Court entered an order unsealing this action and the County was served on August 22, 2012. The FCA complaint and Mazza's separate wrongful termination suit seeking in excess of \$3 million for front and back pay and statutory doubling of damages for retaliation were subsequently consolidated into the Lawsuit against the County. Although the United States declined to initially intervene in the FCA *qui tam* suit, the United States subsequently intervened in the Lawsuit in order to defeat the County's request to have the suit dismissed. The County filed a Motion to Dismiss arguing that Mazza was not an original source of the information underlying the federal government's claims and that she did not substantially contribute to the federal government's investigation and, as such, was precluded from being a relator in the matter. The United States Attorney's Office for the Southern District of Florida and the Department of Justice, however, intervened to oppose the County's position and declared that Mazza was an original source under the law. The United States' intervention defeated, by operation of law, the County's request for dismissal and identified Mazza as a substantial contributor to the United States of the information underlying the review and its findings.

As the allegations in the Lawsuit spanned hundreds of contracts, numerous grant drawdowns and multiple claims over a six year period, the scope of the litigation was massive. Hundreds of thousands of documents were reviewed and categorized. Over 60 current and former employees of the County were either interviewed internally or deposed by Mazza's attorneys. As part of the defense of the litigation, thousands of hours of County time were spent in document review, pre-trial conferences, pre-deposition meetings, telephone conferences, client meetings, expert meetings, legal research, and deposition defense. In addition, the County engaged in dozens of meetings with the United States Attorney's Office, the United States Department of Justice and the FTA in an effort to resolve this litigation as well as the underlying issues identified in the various reviews.

During the pendency of the lawsuit, the FTA continued its review protocols. In January of 2011, the FTA released a draft of the 2010 FMO report. The draft report identified multiple deficiencies or weaknesses in the areas of accounting methods, reconciliation of receipts to revenues and procedural safeguards. The review determined, among other findings, that federal grant monies paid for ineligible expenditures were in violation of grant requirements. MDT responded to this draft report and prepared a series of corrective actions. In March of 2011, auditors on the FTA's behalf returned for a second review at MDT.

Between March of 2011 and February of 2014, MDT worked with the FTA and their Contractors in establishing and testing corrective actions and Standard Operating Procedures. As a result of MDT's corrective actions and revised standard operating procedures, the FTA awarded additional formula and discretionary grants during this review period. MDT's federal expenditures during this period were approximately \$200 million.

On February 7, 2014, the final follow-up review report was issued. This final follow-up review re-examined and re-evaluated eight (8) areas of concern and weaknesses identified in the FMO reviews dated February 25, 2011 (FY 2010) and June 2, 2012 (FY 2011).

One (1) area was identified as a material weakness which is addressed in this Settlement Agreement. The review determined that MDT had implemented adequate corrective measures in response to the areas identified in the prior FMO reviews, with the exception of some minor areas, all of which have been addressed by subsequent corrective actions or safeguards. This report and the Demand Letter were transmitted to the Board on April 3, 2014.

The final review identified a final dollar amount that the FTA and the County agreed would be reimbursed from federal grant funds. As a result, on March 26, 2014, the FTA provided the County with a Notice of Outstanding Debt and Demand for Payment and asked the County to remit \$4,667,119.00 within 30 days, representing the amount of federal funds applied to ineligible contracts, contracts omitting mandatory clauses such as Buy America or the Davis-Bacon Act, or a combination thereof. The County and the FTA further reduced this demand to \$4,645,206.00 as reflected in the Settlement Agreement. This repayment will be made as part of the proposed Settlement Agreement. In light of MDT's corrective measures and safeguards in place, the FTA subsequently released the remaining \$43 million in previously frozen federal funding.

In addition to addressing the FTA's Notice of Outstanding Debt and Demand for Payment, the proposed Settlement Agreement also resolves the various lawsuits filed by Mazza as well as the United States' interests in those claims. Under the terms of the proposed Settlement Agreement, the County will pay a total of \$9,952,873.95. The County will pay the United States \$6,038,767.90 to resolve the FTA's Demand for Payment and the government's claim regarding the Covered Conduct (as defined in the Settlement Agreement) at issue in the FCA litigation. The United States will pay Mazza \$1,393,561.90 as the "relator" share of the FCA litigation as provided in the Act. The County will also pay Mazza \$1,664,106.05 to settle her wrongful termination claim. Finally, the County will pay Mazza's attorneys \$2,250,000.00 in attorney's fees and costs.

The proposed settlement is well below what can reasonably be expected should Mazza establish that the past practices of the County that are reported in the FMO reviews and as alleged in the Lawsuit were either the result of actual knowledge of their falsity, deliberate ignorance to their truth or falsity, or reckless disregard of their truth or falsity. Additionally, the settlement allows the County to pay the undisputed amount owed to the FTA without the application of the treble damages provision of the FCA, caps the award for the relator's attorney's fees and costs and resolves the retaliation claims without the application of double damages. Should this matter proceed to trial and liability be established, the County would be liable for treble damages, a potential jury finding of additional liability for additional false claims, statutory penalties for each false claim established, and additional relator's costs and attorney's fees.

Therefore, approval of this item is recommended in the best interests of the County as a full and fair settlement of the claims outlined herein.



Allina T. Hudak
Deputy Mayor



MEMORANDUM

(Revised)

TO: Honorable Chairman Jean Monestime
and Members, Board of County Commissioners

DATE: March 17, 2015

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

SUBJECT: Agenda Item No. 8(N)(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 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(N)(1)
3-17-15

RESOLUTION NO. R-256-15

RESOLUTION APPROVING THE SETTLEMENT AGREEMENT BETWEEN MIAMI-DADE COUNTY AND MARJAN MAZZA, INDIVIDUALLY AND ON BEHALF OF THE UNITED STATES OF AMERICA, IN THE AGGREGATE AMOUNT OF \$9,952,873.95; AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE SAME AND ENFORCE ALL TERMS CONTAINED THEREIN

WHEREAS, the Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board hereby approves the attached Settlement Agreement between Miami-Dade County and Marjan Mazza, individually and on behalf of the United States of America, in the aggregate amount of \$9,952,873.95 to resolve the litigation styled *Marjan Mazza, on behalf of the United States Of America v. Miami-Dade County and Miami-Dade Transit Department*, (Case No.: 1:10-cv-24546-MOORE/McALILEY (S.D. Fla.)) as set forth in the Settlement Agreement, authorizes the County Mayor or County Mayor's designee to execute the Settlement Agreement in substantially the form attached hereto, and authorizes the County Mayor or County Mayor's designee to enforce all terms contained therein.

The foregoing resolution was offered by Commissioner **Daniella Levine Cava**, who moved its adoption. The motion was seconded by Commissioner **Audrey M. Edmonson** and upon being put to a vote, the vote was as follows:

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

The Chairperson thereupon declared the resolution duly passed and adopted this 17th day of March, 2015. This resolution shall become effective upon the earlier of (1) 10 days after the date of its adoption unless vetoed by the County Mayor, and if vetoed, shall become effective only upon an override by this Board, or (2) approval by the County Mayor of this Resolution and the filing of this approval with the Clerk of the 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.

Oren Rosenthal

SETTLEMENT AGREEMENT

This Settlement Agreement (hereinafter the "Agreement") is entered into among Miami-Dade County, Florida, and Miami-Dade Transit (hereinafter collectively "Miami-Dade County") and Marjan Mazza (hereinafter "Marjan Mazza" or "Relator") (hereafter collectively referred to as "the Parties") with respect to: (1) such *qui tam* claims as Relator has pled on behalf of the United States of America against Miami-Dade County in the matter entitled *Marjan Mazza, on behalf of the United States Of America, Plaintiff/Relator v. Miami-Dade County, Miami-Dade Transit Department, Defendants*, Case No.: 1:10-cv-24546-MOORE/McALILEY (S.D. Fla.) (hereinafter the "Civil Action"); and (2) such retaliation claims she has pled, on her own behalf, in the same matter. The parties expressly agree and understand that the provisions of this agreement and the obligations contained herein are conditioned upon the written consent of the United States to the dismissal of the Covered Conduct, with prejudice as to the United States, as set forth in paragraph 14 below.

RECITALS

- A. Miami-Dade Transit is the fifteenth-largest public transit system in the United States and the largest system in the State of Florida. Miami-Dade Transit is one of the largest departments in Miami-Dade Government with over 3,200 fulltime employees and is responsible for planning and providing all public transit services in Miami-Dade County. This integrated transportation system consists of four major components: the Metrobus fleet, Metrorail, Metromover, and Special Transportation Services. Miami-Dade Transit provides over 335,000 weekday boardings on Metrobus, Metrorail,

Metromover, and Special Transportation Services. In order to provide and maintain these services Miami-Dade County relies heavily on the United States for grant funding.

B. On December 10, 2010, Marjan Mazza filed the Civil Action pursuant to the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3730(b) and pursuant to 31 U.S.C. § 3730(h) alleging that from 2004 through 2010, Miami-Dade County misappropriated federal grant funds, failed to have federally required language in its procurement contracts as required for federal reimbursement, included prohibited language in its procurement contracts for which Miami-Dade County improperly sought reimbursement, failed to have a Force Account in place as required for preventative maintenance reimbursement from federal funds, and falsely certified to the United States that it was in compliance with the requisite guidelines before drawing down federal grant money. Marjan Mazza further alleges that Miami-Dade County wrongfully terminated her employment in retaliation for her involvement as a whistleblower. Miami-Dade County denies the Relator's allegations in the Civil Action.

C. Covered Conduct: The Covered Conduct is defined as follows:

- a. During the time period January 1, 2004 through December 31, 2010, Miami-Dade County improperly drew-down and applied grants funds received from the Federal Transit Administration (FTA) to contracts for goods and/or services that were ineligible to receive FTA funding

because they did not comply with the requirements of the Buy America Act and/or the Davis-Bacon Act.

b. During the time period January 1, 2004 through December 31, 2010, Miami-Dade County incorrectly drew-down and applied grants funds received from the Federal Transit Administration (FTA) to contracts for goods and/or services that were ineligible to receive FTA funding due to an improper index code switch either independently or in combination with the conduct identified in subsection a above.

c. During the time period January 1, 2004 through December 31, 2010, Miami-Dade County improperly applied User Access Program/Inspector General Fees to contracts that were paid for with FTA grant funds in violation of FTA regulations.

D. Relator claims entitlement under 31 U.S.C. § 3730(d) to a share of the proceeds of the amounts payable to the United States government under this Settlement Agreement and to Relator's reasonable expenses, attorneys' fees and costs.

E. Relator also claims damages as well as interest and her reasonable attorney's fees and litigation costs for the discharge of Relator from Miami-Dade County employment which Relator claims to be retaliatory in nature and in violation of 31 U.S.C. § 3730(h).

F. This Settlement Agreement is neither an admission of liability by Miami-Dade County nor a concession by Relator that the claims are not well founded.

To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the above claims, and in consideration of the mutual promises and obligations of this Agreement, the Parties agree and covenant as follows:

TERMS AND CONDITIONS

1. No later than thirty (30) days after the Effective Date of this Agreement, Miami-Dade County shall pay to the United States **\$6,038,767.90** ("Settlement Amount") by electronic funds transfer pursuant to written instructions to be provided by the Office of the United States Attorney for the Southern District of Florida.
2. Conditioned upon the United States receiving the Settlement Amount from Miami-Dade County and as soon as feasible after receipt, the United States shall pay \$1,393,561.90 to Relator by electronic funds transfer.
3. No later than five (5) days after the Effective Date of this Agreement, the Relator is to provide Miami-Dade County with an executed W-9 Form and the information for payment to the Trust Account of Relator's Attorney. No later than thirty (30) days from the receipt of the executed W-9 Form and the Trust Account information, Miami-Dade County shall pay the Trust Account of Relator's Attorney for Relator's expenses, and attorney's fees and costs, and for the Relator's wrongful termination claims under subsection 3730(h) as follows. Any such payments to Relator will be made subject to such MICA, FICA and federal withholding as is required by law.
 - a. Miami-Dade County shall pay Marjan Mazza \$650,000.00 in back pay and an additional \$750,000.00 in future pay (the "Future Pay")

as part of the settlement of her wrongful termination claim. Miami-Dade County shall pay Marjan Mazza an additional sum of \$264,106.05 as part of the settlement for her wrongful termination claim, representing compensation for pain and suffering resulting therefrom.

b. Miami-Dade County shall pay to Marjan Mazza's counsel a total of \$2,250,000.00 in attorneys' costs, fees, and expenses.

c. In addition to the monetary terms set forth in this paragraph, Miami-Dade shall modify the personnel file of Marjan Mazza so as to clearly indicate that Miami-Dade County has offered her an executive position, and would rehire her, but that Marjan Mazza has decided not to seek re-employment with Miami-Dade County. Should Marjan Mazza decide to seek re-employment with Miami-Dade County in the future, the terms of that employment to be negotiated would include the amount, if any, of her Future Pay to be returned to Miami-Dade County to avoid any duplicate compensation during the new employment.

4. The Relator, in her individual capacity, further agrees for herself and for her heirs, successors, attorneys, agents, and assigns, to release, acquit and forever discharge Miami-Dade County, and its agents, servants, employees, successors, heirs, executors, administrators and all other persons, firms, corporation, associations or partnerships of and from any and all claims, actions, causes of action, demands, rights, damages, costs, loss of service,

expenses and compensation whatsoever, which the undersigned now has or which may hereafter accrue as a result of the specifically described allegations contained in the Amended Complaint the Civil Action and for any and all acts or omissions of Miami-Dade County which occurred or which the Relator may claim to have occurred prior to the execution of this agreement, including but not limited to, any violation of 31 U.S.C. § 3729-3733, Title VII of the Civil Rights Act of 1866, 1870, 1871, 1964, and 1991, the Americans with Disabilities Act (ADA), the Age Discrimination in Employment Act (ADEA), the Family Medical Leave Act (FMLA), the Florida Civil Rights Act (FCRA), and any other rights under Federal, State, or local laws prohibiting any form of false claim, fraud, harassment, intimidation, discrimination or bias, retaliation or bias, or any violation of civil rights, wrongful discharge or termination, or any other type of claims arising out of, allegedly arising out of, or in any way related to, the employment relationship between Relator and Miami-Dade County.

5. The waiver in paragraph 4 includes, but is not limited to, any rights under the Miami-Dade County Code, Personnel Rules, Administrative Orders or any union contract; any rights to insurance coverage (or cash payments in lieu of such coverage) under any Miami-Dade County program; and any rights Relator may have against Miami-Dade County for violation of her rights as an employee of Miami-Dade County through the date of this settlement agreement. The waiver in paragraph 4 specifically does not include any

waiver of retirement or pension benefits to which Marjan Mazza might otherwise be entitled to by law or County rule of policies.

6. Relator agrees not to bring any suit, claim, demand, action, or litigation in any forum or court, whether administrative, judicial, or quasi-judicial, State or Federal, on any issue or matter or cause arising or allegedly arising out of her employment claim with Miami-Dade County. The term "arising out of" as used in this Agreement shall mean cause by, originating from, having its origin in, growing out of, flowing from, incident to, related to, or having a connection with.
7. Miami-Dade County's right to assert as a defense in a later action brought by the Relator the waiver of claims and other rights in paragraphs 4 through 7 of this Agreement shall not be subject to waiver or any other equitable defenses.
8. Relator and her heirs, successors, attorneys, agents, and assigns shall not object to this Agreement but agree and confirm that this Agreement is fair, adequate, and reasonable under all the circumstances, pursuant to 31 U.S.C. § 3730(c)(2)(B). Relator and the United States shall execute the Relator's Share Agreement attached hereto at Attachment A. Conditioned upon the execution of that agreement and Relator's receipt of the payment described in Paragraph 2, Relator and her heirs, successors, attorneys, agents, and assigns fully and finally release, waive, and forever discharge the United States, its agencies, officers, agents, employees, and servants, from asserting any claims arising from the filing of the Civil Action or under 31 U.S.C. § 3730, and from any claim to of the proceeds of this Agreement and/or the Civil Action.

9. Relator, for herself, and for her heirs, successors, attorneys, agents, and assigns, releases Miami-Dade County, and its officials, officers, agents, and employees, from any liability to Relator arising from the filing of the Civil Action, or under 31 U.S.C. § 3730(d) for expenses or attorney's fees and costs. These releases, as well as the waivers and covenants not to sue set forth in paragraphs 4-6 above, shall become effective once Miami-Dade County has made the payment required in paragraph 1 to the United States and the payments required in paragraph 3 to Marjan Mazza and her attorney's respectively.
10. Miami-Dade County waives and shall not assert any defenses Miami-Dade County may have to any criminal prosecution relating to the Covered Conduct that may be based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the Constitution, this Agreement bars a remedy sought in such criminal prosecution. Nothing in this paragraph or any other provision of this Agreement constitutes an agreement by the United States concerning the characterization of the Settlement Amount for purposes of the Internal Revenue laws, Title 26 of the United States Code.
11. Miami-Dade County fully and finally releases the United States, its agencies, officers, agents, employees, and servants, from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that Miami-Dade County has asserted, could have asserted, or may assert in

the future against the United States, its agencies, officers, agents, employees, and servants, related to the Covered Conduct and the United States' investigation thereof.

12. For the purposes of this agreement, the term "Unallowable Costs" has the following meaning:

a. Unallowable Costs Defined: All costs (as defined in the Federal Acquisition Regulation, 48 C.F.R. § 31.205-47) incurred by or on behalf of Miami-Dade County, and its present or former officers, directors, employees, shareholders, and agents in connection with:

- (1) the matters covered by this Agreement;
- (2) the United States' audits and civil and any criminal investigations of the matters covered by this Agreement;
- (3) Miami-Dade County's investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and civil and any criminal investigations in connection with the matters covered by this Agreement (including attorney's fees);
- (4) the negotiation and performance of this Agreement;
- (5) the payment Miami-Dade County makes to the United States pursuant to this Agreement and any payments that Miami-Dade County may make to Relator, including costs and attorneys' fees, are unallowable costs for government contracting purposes (hereinafter referred to as Unallowable Costs).

- b. Future Treatment of Unallowable Costs: Unallowable Costs will be separately determined and accounted for by Miami-Dade County, and Miami-Dade County shall not charge such Unallowable Costs directly or indirectly to any contract with the United States.

Treatment of Unallowable Costs Previously Submitted for Payment: Within 90 days of the Effective Date of this Agreement, Miami-Dade County shall identify and repay by adjustment to future claims for payment or otherwise any Unallowable Costs included in payments previously sought by Miami-Dade County or any of its subsidiaries or affiliates from the United States. Miami-Dade County agrees that the United States, at a minimum, shall be entitled to recoup from Miami-Dade County any overpayment plus applicable interest and penalties as a result of the inclusion of such Unallowable Costs on previously-submitted requests for payment. The United States reserves its rights to disagree with any calculations submitted by Miami Dade County or any of its subsidiaries or affiliates on the effect of inclusion of Unallowable Costs (as defined in this Paragraph) on Miami Dade County or any of its subsidiaries or affiliates' cost reports, cost statements, or information reports. Nothing in this Agreement shall constitute a waiver of the rights of the United States to audit, examine, or re-examine Miami Dade County's books and records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this Paragraph.

13. This Agreement is intended to be for the benefit of the Parties and the United States, and no other persons.

14. Upon receipt of the payment described in Paragraph 1 and 3 above, Miami-Dade County and Relator shall promptly sign and file in the Civil Action a Joint Stipulation of Dismissal of the Civil Action pursuant to Federal Rule of Civil Procedure 41(a)(1). The Proposed Order accompanying the Joint Stipulation of Dismissal should provide that dismissal against the United States is with prejudice as to the Covered Conduct, described above, and without prejudice as to all other claims asserted by relator. The Joint Stipulation of Dismissal should provide that dismissal against the relator is with prejudice. The United States will contemporaneously file a Notice of Consent to the Voluntary Dismissal of the Covered Conduct with Prejudice as to the United States.
15. Except as stated above, each Party shall bear its own legal and other costs incurred in connection with this matter, including those incurred in connection with the preparation and performance of this Agreement.
16. Each party and signatory to this Agreement represents that it freely and voluntarily enters in to this Agreement without any degree of duress or compulsion, and with the benefit of advice and representation of counsel.
17. This Agreement is governed by the laws of the United States. The exclusive jurisdiction and venue for any dispute relating to this Agreement is the United States District Court for the Southern District of Florida. For purposes of construing this Agreement, this Agreement shall be deemed to have been drafted by all Parties to this Agreement and shall not, therefore, be construed against any Party for that reason in any subsequent dispute.

18. This Agreement constitutes the complete agreement between the Parties as to the subjects addressed herein. This Agreement may not be amended except by written consent of the Parties.
19. The undersigned counsel represent and warrant that they are fully authorized to execute this Agreement on behalf of the persons and entities indicated below.
20. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Agreement.
21. This Agreement is binding on Miami-Dade County's successors, transferees, heirs, and assigns.
22. This Agreement is binding on Relator's successors, transferees, heirs, and assigns.
23. All parties consent to the United States' disclosure of this Agreement, and information about this Agreement, to the public.
24. All parties consent to Miami-Dade County's disclosure of this Agreement, and information about this Agreement, to the public.
25. This Agreement is effective on the date of signature of the last signatory to the Agreement (Effective Date of this Agreement). Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

MIAMI-DADE COUNTY and MIAMI-DADE TRANSIT

DATED: _____

BY: _____
Carlos A. Gimenez
Mayor

Miami-Dade County

Approved as to form and legal sufficiency:

BY: _____
Hugo Benitez
Email: heb2@miamidade.gov

BY: _____
Oren Rosenthal
Email: orosent@miamidade.gov

BY: _____
Christopher A. Angell
Email: Angellc@miamidade.gov
Assistant County Attorneys
Fla. Bar No. 463965, 86320, 563307
111 N.W. 1st Street, Suite 2810
Miami, Florida 33128
Telephone: 305.375.5151
Facsimile: 305.375.5634

MARJAN MAZZA

DATED: _____ BY: _____
Marjan Mazza

DATED: _____ BY: _____
Michael R. Josephs
Fla. Bar Number: 119242
Email: mrj@florida-attorneys.com

BY: _____
Adam. C. Josephs
Fla. Bar Number: 050895
Email: acj@florida-attorneys.com
THE JOSEPHS LAW FIRM
255 Alhambra Circle, Suite 700
Coral Gables, FL 33134
Telephone: 305.445.3800
Fax: 305.448.5800

James D. McCarthy
Email:
jmccarthy@diamondmccarthy.com
Arley D. (Trip'') Finley, III
Email: tfinley@diamondmccarthy.com
DIAMOND MCCARTHY, LLP
1201 Elm Street
34th Floor
Dallas, TX 75270
Telephone: 214.389.5300
Fax: 214.389.5399

Robert Sadowski
Email: rsadowski@sflawgroup.com
Raphael Katz
Email: rkatz@sflawgroup.com
SADOWSKI FISCHER PLLC
39 Broadway, Suite 1540
New York, NY 10006
Telephone: 212.913.9678
Fax: 646.502.5357

**Attorneys for Plaintiff/Relator,
Marjan Mazza**

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 10-24546-CIV-MOORE/McALILEY

MARJAN MAZZA, on behalf of herself and the
UNITED STATES OF AMERICA,

Plaintiff,

vs.

MIAMI-DADE COUNTY and
MIAMI-DADE TRANSIT DEPARTMENT,

Defendants.

JOINT STIPULATION OF DISMISSAL

Pursuant to FED. R. CIV. P. 41(a)(1)(A), relator Marjan Mazza (the "Relator") and defendants Miami Dade County and Miami Dade Transit (collectively "MDC") hereby file this voluntary stipulation of dismissal, subject to the following terms and conditions:

1. Relator Marjan Mazza and MDC have executed a written settlement agreement ("Agreement") in compromise and settlement of the Relator's claims against MDC. A copy of the Agreement is attached hereto as Exhibit A. This Joint Stipulation of Dismissal is consistent with the terms of the Agreement.
2. The Relator voluntarily dismisses, with prejudice, the claims asserted by Relator in this action on behalf of the United States and against MDC for the Covered Conduct, as defined in the Agreement.
3. Relator voluntarily dismisses, with prejudice, all other False Claims Act claims against MDC as described in the Agreement, provided, however, that such dismissal shall be without prejudice as to the United States.

4. Relator voluntarily dismisses, with prejudice, all other claims against MDC as described in the Agreement.

5. The Court will retain jurisdiction over the parties to the extent necessary to enforce the terms and conditions of the Agreement.

6. A proposed Order accompanies this Joint Stipulation of Dismissal.

Respectfully submitted,

RELATOR

BY: _____
Michael R. Josephs
Adam Charles Josephs
The Josephs Law Firm
255 Alhambra Circle, Suite 700
Coral Gables, Florida 33134
Counsel for Plaintiff Marjan Mazza
mrj@florida-attorneys.com
tjn@florida-attorneys.com

Raphael Katz
Robert Sadowski
James D. McCarthy
Diamond McCarthy LLP
620 8th Avenue
39th Floor
New York Times Building
New York, New York 10018
RKatz@diamondmccarthy.com

DEFENDANTS

R. A. Cuevas, Jr.
MIAMI-DADE COUNTY ATTORNEY

By: s/ Oren Rosenthal
Oren Rosenthal
Hugo Benitez
Christopher A. Angell
Assistant County Attorneys

Florida Bar No. 86320, 0129607, 0563307
Miami-Dade County Attorney's Office
111 N.W. 1st Street, Suite 2810
Miami, Florida 33128
Telephone: (305) 375-5151
Facsimile: (305) 375-5634
Email: orosent@miamidade.gov

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 10-24546-CIV-MOORE/McALILEY

MARJAN MAZZA, on behalf of the
UNITED STATES OF AMERICA,

Plaintiff,

vs.

MIAMI-DADE COUNTY,
MIAMI-DADE TRANSIT DEPARTMENT,

Defendants.

UNITED STATES' CONSENT TO DISMISSAL

The United States of America, through the undersigned, hereby states as follows:

1. Relator Marjan Mazza and defendants Miami Dade County and Miami Dade Transit (collectively, "MDC") have executed a written settlement agreement ("Agreement") in compromise and settlement of the Relator's claims against MDC. Contemporaneously herewith, Relator and MDC are filing a Joint Notice of Dismissal of Relator's claims against MDC in the action.

2. The United States hereby consents to the dismissal, with prejudice, as to the United States, of the claims asserted by Relator in this action on behalf of the United States and against MDC for the Covered Conduct as described in the Agreement.

3. Pursuant to 31 U.S.C. § 3730(b)(1), the United States hereby consents to Relator's voluntary dismissal of all other False Claims Act claims against MDC, provided such dismissal is without prejudice to the United States.

Respectfully submitted,

JOYCE R. BRANDA
ACTING ASSISTANT ATTORNEY GENERAL

DATED: _____

BY: _____

Michael D. Granston
Jamie A. Yavelberg
Melissa R. Handrigan
Email: Melissa.R.Handrigan@usdoj.gov
Commercial Litigation Branch
Civil Division
United States Department of Justice
601 D. Street, NW
Washington, DC 20004
Telephone: 202.305.3083

WILFREDO FERRER
UNITED STATES ATTORNEY

DATED: _____

BY: _____

James A. Weinkle
Assistant United States Attorney
Email: James.Weinkle@usdoj.gov
Office of the United States Attorney
for the Southern District of Florida
99 N.E. 4th Street, 3rd Floor
Miami, Florida 33132
Telephone: 305.961.9290
Fax: 305.530.7139