OFFICIAL FILE COPY
CLERK OF THE BOARD
OF COUNTY COMMISSIONERS
MIAMI-DADE COUNTY, FLORIDA

MEMORANDUM

Agenda Item No. 15(A)(1)

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

DATE: January 20, 2016

FROM: Honorable Harvey Ruvin, Clerk
Circuit and County Courts

Christopher Agrippa, Director
Clerk of the Board Division

SUBJECT: Resolution approving Terms of and Authorizing Execution by the County Mayor of a Settlement Agreement between Miami-Dade County, the Miami-Dade County Office of the Property Appraiser, and the Miami-Dade County School Board in the amount of $4,400,000 to be paid by Miami-Dade County to the School Board

Resolution No. R-89-16

Ordinance 08-62 adopted by the Miami-Dade County Board of County Commissioners provides that the Property Appraiser may submit resolutions, ordinances, or reports related to his duties to the Clerk of the Board Division for placement on the next available agenda of the Miami-Dade County Board of County Commissioners.

Attached for placement on the January 20, 2016 Board of County Commissioners' agenda, is a proposed resolution submitted by the Property Appraiser approving terms of and authorizing execution by the County Mayor of a settlement agreement between Miami-Dade County, the Miami-Dade County Office of the Property Appraiser, and the Miami-Dade County School Board in the amount of $4,400,000 to be paid by Miami-Dade County to the Miami-Dade County School Board.

CA/sm
Attachment

Memorandum

MIAMI-DADE COUNTY

Date: Jaunary 20, 2016

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

From: Pedro J. Garcia, Property Appraiser

Subject: Resolution Approving Terms of and Authorizing Execution by the County Mayor of a Settlement Agreement Between Miami-Dade County, the Miami-Dade County Office of the Property Appraiser, and the Miami-Dade County School Board in the Amount of $4,400,000 to be paid by Miami-Dade County to the Miami-Dade County School Board

---

It is recommended that the Board of County Commissioners approve the attached settlement agreement ("Settlement Agreement") between Miami-Dade County (the "County"), the Miami-Dade County Office of the Property Appraiser ("Property Appraiser"), and the Miami-Dade County School Board ("School Board") to refund payments made by the School Board to the County to fund operation of the Property Appraiser before the Value Adjustment Board ("VAB"). Under the Settlement Agreement, the County will return $4,400,000 to the School Board over the next four years.

On October 23, 2015, the School Board notified the Office of the Property Appraiser, pursuant to §768.28(6) of the Florida Statutes, of its "intent to pursue a claim for damages against the [Property Appraiser]" for the "unauthorized invoices that were sent to the School Board for the Property Appraiser's [VAB] related expenses." The notice indicated that the School Board intended to seek damages in excess of $7,000,000 against the Property Appraiser for the prior payments made to fund operation of the Property Appraiser before the VAB. Pursuant to Florida law, the County is responsible for funding the Property Appraiser's budget.

Since at least 1971, the Property Appraiser has billed the School Board for a portion of the Property Appraiser's Value Adjustment Board ("VAB") related expenses. Pursuant to Florida law, the School Board is responsible for two-fifths of the expenses of the VAB, and, until 1991, the VAB was known as the Miami-Dade County Property Appraisal Adjustment Board, and was thus, in prior years, part of the Property Appraiser. Notwithstanding the separation of the VAB from the Property Appraiser, these bills for the Property Appraiser's VAB expenses continued to be sent in good faith by the Property Appraiser to the School Board and the School Board continued to pay the bills on an annual basis.

A recent School Board audit revealed that the School Board was no longer required under Florida law to pay for the Property Appraiser's VAB expenses. The County administration, on behalf of the Property Appraiser, and the School Board met on November 12, 2015 in an effort to resolve this issue.

The parties agreed that to avoid the expenditure of public monies in unnecessary litigation, and to resolve this matter amicably with no admission of liability by any of the parties the County would reimburse the School Board $4,400,000 as follows: the County shall pay the School Board the sum of four million four hundred thousand dollars ($4,400,000) in the following installments: one million dollars ($1,000,000) payable on or before February 1, 2016; one million one hundred thousand dollars ($1,100,000) payable on or before October 15, 2016; one million one hundred and fifty thousand dollars ($1,150,000) payable on or before October 15, 2017; and, one million one hundred and fifty thousand

dollars ($1,150,000) payable on or before October 15, 2018. In addition, the Property Appraiser agrees to cease invoicing the Property Appraiser's VAB expenses to the School Board. As part of the Settlement Agreement, all parties also would be releasing each other from any further liability with regard to this billing, and each party would pay for its own attorneys' fees and costs.

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered as of the date set forth below and made effective as of February 1, 2016 ("Effective Date"), by and between the School Board of Miami-Dade County, Florida ("School Board"), the Miami-Dade County Property Appraiser ("Property Appraiser"), and Miami-Dade County ("County") (the School Board, Property Appraiser, and County are collectively referred to as the "Parties").

RECITALS

WHEREAS, since at least 1971, the Property Appraiser has billed the School Board for a portion of the Property Appraiser's Value Adjustment Board ("VAB") related expenses; and

WHEREAS, until 1991, the Miami-Dade County Value Adjustment Board ("VAB") was known as the Miami-Dade County Property Appraisal Adjustment Board ("PAAB"), and was, in prior years, part of the Property Appraiser; and

WHEREAS, pursuant to Florida law, the School Board is responsible for two-fifths of the expenses of the VAB; and

WHEREAS, notwithstanding the separation of the VAB from the Property Appraiser, these bills for the Property Appraiser's VAB expenses continued to be sent in good faith by the Property Appraiser to the School Board and the School Board continued to pay the bills on an annual basis; and

WHEREAS, a recent School Board audit revealed that the School Board was no longer required under Florida law to pay for the Property Appraiser's VAB expenses; and

WHEREAS, the School Board recently mailed a letter pursuant to §768.28(6) of the Florida Statutes providing "notice of its intent to pursue a claim for damages against the [Property Appraiser]" for the "unauthorized invoices that were sent to the School Board for the Property Appraiser's [VAB] related expenses" (the "Claim"); and

WHEREAS, to avoid the expenditure of public monies in unnecessary litigation, and to resolve this matter amicably with no admission of liability by any of the parties; and

WHEREAS, the Property Appraiser agrees not to invoice the Property Appraiser's VAB expenses in the future; and

WHEREAS, the County agrees to reimburse the School Board as provided below,

NOW, THEREFORE, in consideration of the promises, the performance of the covenants and agreements contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties to this Agreement hereby represent, warrant, consent and agree as follows:

AGREEMENT

1. **ADOPTION OF RECITALS.** The Parties hereto adopt the foregoing recitals as being true and correct, and those Recitals are incorporated herein as material parts of this Agreement.

2. **SETTLEMENT FUNDS.** Without admitting liability for any of the activities that served as the basis of the Claim, the County shall pay the School Board the sum of four million four hundred thousand dollars ($4,400,000) in the following installments: one million dollars ($1,000,000) payable on or before February 1, 2016; one million one hundred thousand dollars ($1,100,000) payable on or before October 15, 2016; one million one hundred and fifty thousand dollars ($1,150,000) payable on or before October 15, 2017; and one million one hundred and fifty thousand dollars ($1,150,000) payable on or before October 15, 2018 (the **"Settlement Funds"**). Settlement Funds shall be made payable to The School Board of Miami-Dade County, Florida and transmitted to the School Board at 1450 NE 2 Avenue, Room 615, Miami Florida 33132. In the event the Settlement Funds are not paid to the School Board, all obligations and releases under this Agreement are void and shall not bind the Parties in any respect, except the Parties shall have the ability to take action, legal or otherwise, for enforcement of the Agreement.

3. **RELEASES BY THE SCHOOL BOARD.**

The School Board fully and finally releases the Property Appraiser, the County, and their agencies, officers, agents, employees, and servants, from any claims, debts, liabilities, breaches of contract, compensation, claims for profits, claims for expenses, demands, damages, actions, causes of action, or suits of any kind or nature whatsoever (including attorney's fees, costs, and expenses of every kind and however denominated) that the School Board has asserted, could have asserted, or may assert in the future against the Property Appraiser, the County, and their agencies, officers, agents, employees, and servants, related to the Claim and the Property Appraiser's billing of the School Board for a portion of its VAB related expenses.

4. **RELEASES BY THE PROPERTY APPRAISER AND THE COUNTY.**

(a) The County fully and finally releases the School Board, its agencies, officers, agents, employees, and servants, from any claims, debts, liabilities, breaches of contract, compensation, claims for profits, claims for expenses, demands, damages, actions, causes of action, or suits of any kind or nature whatsoever (including attorney's fees, costs, and expenses of every kind and however denominated) that the County has asserted, could have asserted, or may assert in the future against the School Board, its agencies, officers, agents, employees, and servants, related to the Claim and the Property Appraiser's billing of the School Board for a portion of its VAB related expenses.

(b) The Property Appraiser fully and finally releases the School Board, its agencies, officers, agents, employees, and servants, from any claims, debts, liabilities, breaches of contract, compensation, claims for profits, claims for expenses, demands, damages, actions, causes of action, or suits of any kind or nature

whatsoever (including attorney's fees, costs, and expenses of every kind and however denominated) that the Property Appraiser has asserted, could have asserted, or may assert in the future against the School Board, its agencies, officers, agents, employees, and servants, related to the Claim and the Property Appraiser's billing of the School Board for a portion of its VAB related expenses including, but not limited to, the 2015 invoice for payment in the sum of one million six hundred and fifty seven thousand three hundred and three dollars ($1,657,303).

5. **NO FURTHER BILLING BY THE PROPERTY APPRAISER.** The Property Appraiser hereby acknowledges and agrees that it shall not submit any further bills or invoices to the School Board, of any kind, for payments related the Property Appraiser's activities before the VAB, unless subsequently required by applicable Florida law.

6. **COSTS AND FEES.** Each Party shall bear its own costs and fees, if any, in relation to the Claim and Settlement Agreement.

7. **ACKNOWLEDGEMENT OF CONSIDERATION.** The Parties each acknowledge and agree that the payment of the Settlement Funds, the giving of the Releases, and other covenants and promises that are set forth in this Agreement are being exchanged as consideration for each of the Parties executing this Agreement, and that, but for the agreements made hereunder, they have no entitlement to the consideration exchanged pursuant to this Agreement.

8. **KNOWING AND VOLUNTARY WAIVER.** The Parties hereto each acknowledge and agree that the waiver of each of the Parties claims that are provided herein is knowing and voluntary, and that this waiver is a part of this Agreement, which has been written in a manner calculated to be, and which is, understood by each of the Parties.

9. **NON-ADMISSION.** Nothing in this Agreement, including the payment of the Settlement Funds or the giving of any of the Releases, is to be construed as an admission of wrongdoing or of any liability by the Property Appraiser, the County, or the School Board or as an admission of the validity of any claim or defense which another Party has asserted or may assert. The Parties acknowledge and agree that this Agreement merely represents a settlement and compromise reached between the Parties.

10. **COOPERATION.** The Parties agree to execute and deliver any and all additional documents that may be necessary to effectuate the terms agreed to herein.

11. **PLAIN MEANING.** This Agreement shall be interpreted in accordance with the plain meaning of its stated terms.

12. **HEADERS.** The headers included in this Agreement that describe the contents of the provisions are simply for identification purposes and shall not be construed as a substantive part of the provision.

13. **AGREEMENT THE PRODUCT OF NEGOTIATION.** This Agreement is the product of negotiation between the Parties. In the event of a dispute concerning the interpretation of this Agreement or of any of its terms or provisions, the Agreement shall be deemed to

have been drafted jointly by the Parties, and shall not be more strictly construed against any one of the Parties than as against any one other of the Parties.

14. **WAIVER**. No waiver of a breach of any provision of this Agreement shall constitute a waiver of a breach of any other provision of this Agreement or of a prior or subsequent breach of the same provision. No extension of time of performance of an act or obligation under this Agreement shall constitute an extension of time of performance of any other act or obligation.

15. **NO ASSIGNMENT**. The Parties represent and warrant that no other entity had or has any interest in the matters released or dismissed in this Agreement, that each of the Parties has the sole right and exclusive authority to execute this Agreement on its behalf, and that the Parties have not sold, assigned, transferred, conveyed, or otherwise disposed of any claim, demand or legal right that is the subject of this Agreement.

16. **GOVERNING LAW AND JURISDICTION**. This Agreement shall be deemed to be made and entered into in the State of Florida, and shall in all respects be interpreted, enforced and governed under the laws of Florida, without giving effect to the conflict of laws principles of Florida law. The Parties expressly consent to the jurisdiction and venue of the state and federal courts in Miami-Dade County, Florida for any action brought by any of the Parties arising out of, or in connection with, this Agreement.

17. **OPPORTUNITY TO CONSULT WITH COUNSEL.** The Parties hereby represent and acknowledge that they have been provided with the opportunity to discuss and review the terms of this Agreement with their respective attorneys before signing it and that they are freely and voluntarily signing this document in exchange for the benefits provided herein. The Parties further represent and acknowledge that they have been provided a reasonable period of time within which to review the terms of this Agreement.

18. **PREVAILING PARTY**. In the event that it shall be necessary for any of the Parties to this Agreement to institute legal action to enforce any of the terms and conditions or provisions contained herein, or for any breach thereof, the prevailing party shall be entitled to costs and reasonable attorney's fees.

19. **ENTIRE AGREEMENT**. This Agreement is the entire agreement between the Parties relating to the subject matter of this Agreement, and fully supersedes any and all prior agreements and understandings, both written and oral, between any of the Parties. The Parties acknowledge that no one has made any representations or promises to them, other than those contained in or referred to in this Agreement, and that they are not relying on any representations or promises not set forth herein in executing this Agreement.

20. **MODIFICATION OR AMENDMENT**. No amendment, change or modification of this Agreement, or waiver of any provision of this Agreement, shall be valid unless it is in writing, signed by each of the Parties or by their respective successors and/or assigns. The Parties agree not to make any claim at any time or place that this Agreement has been orally modified in any respect whatsoever.

21. **SEVERABILITY**. Should any provision of this Agreement be declared or determined by any court of competent jurisdiction to be unenforceable, illegal, or otherwise invalid, the validity of the remaining parts, terms or provisions shall not be affected thereby and said unenforceable, illegal, or otherwise invalid part, term or provision shall be deemed not to be a part of this Agreement and all other enforceable provisions shall survive and continue to bind the Parties.

22. **COUNTERPARTS**. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute the same agreement.

IN WITNESS WHEREOF, each of the Parties having so agreed to the terms stated herein, has set their hands the date and year below so written.

MIAMI-DADE COUNTY

_____

Name:_____

Title:_____

Dated:

THE SCHOOL BOARD OF MIAMI-DADE COUNTY , FLORIDA

_____

Name: _____

Title:_____

Dated:

MIAMI-DADE COUNTY PROPERTY APPRAISER

_____

Name:_____

Dated:

Approved as to Form and Legal Sufficiency:

_____

Name:_____

Approved as to Form and Legal Sufficiency:

_____

Name:_____

MEMORANDUM
(Revised)

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

DATE: January 20, 2016

FROM: Abigail Price-Williams
County Attorney

SUBJECT: Agenda Item No. 15(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**

_____ **Statement of social equity 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. 15(A)(1)
1-20-16

RESOLUTION NO. R-89-16

RESOLUTION APPROVING TERMS OF AND AUTHORIZING EXECUTION BY THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE OF A SETTLEMENT AGREEMENT BETWEEN MIAMI-DADE COUNTY, THE MIAMI-DADE COUNTY OFFICE OF THE PROPERTY APPRAISER, AND THE MIAMI-DADE COUNTY SCHOOL BOARD IN THE AMOUNT OF $4,400,000.00 TO BE PAID BY MIAMI-DADE COUNTY TO THE MIAMI-DADE COUNTY SCHOOL BOARD

WHEREAS, this Board wishes 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 Settlement Agreement, in substantially the form attached hereto as Exhibit A, between Miami-Dade County, the Miami-Dade County Office of the Property Appraiser, and the Miami-Dade County School Board, in the amount of $4,400,000.00, to be paid to the Miami-Dade County School Board to resolve any and all claim between the parties arising out of the billing of the Miami-Dade County Property Appraiser's VAB expenses; and authorizes the County Mayor or County Mayor's designee to execute the Settlement Agreement for and on behalf of Miami-Dade County.

The foregoing resolution was offered by Commissioner **José "Pepe" Diaz**, who moved its adoption. The motion was seconded by Commissioner **Sally A. Heyman** 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	**aye**
Jose "Pepe" Diaz	**aye**	Audrey M. Edmonson	**aye**
Sally A. Heyman	**aye**	Barbara J. Jordan	**aye**
Dennis C. Moss	**aye**	Rebeca Sosa	**aye**
Sen. Javier D. Souto	**absent**	Xavier L. Suarez	**absent**
Juan C. Zapata	**aye**		

The Chairperson thereupon declared the resolution duly passed and adopted this 20th day of January, 2016. 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.

Jorge Martinez-Esteve
Oren Rosenthal

11