

MEMORANDUM

Agenda Item No. 8(K)(1)

TO: Honorable Chairman Jose "Pepe" Diaz
and Members, Board of County Commissioners

DATE: November 16, 2021

FROM: Geri Bonzon-Keenan
County Attorney

SUBJECT: Resolution approving of and authorizing the County Mayor to execute the settlement agreement between PackPlus Inc. dba Josmar Medical Staffing (PackPlus), and Miami-Dade County in the amount of \$500,000.00 (settlement payment) to resolve a dispute arising from contract employee services Contract No. FB-00361 related to United States Department of Housing and Urban Development (HUD) maintenance wage rates; authorizing the County Mayor, if required, to (1) amend the settlement agreement to add J&D Financial (West Coast Corp.) (J&D) as an additional party; (2) execute the amended settlement agreement, and (3) deposit the settlement payment into the court registry, subject to the entry of an order by the court directing the County to do so in the case of J&D Financial (West Coast Corp.) v. PackPlus, Inc. et al, Case No. 2021-004329-CA-240, HUD's approval, if required, and the execution of the amended settlement agreement and releases by PackPlus and J&D; authorizing the County Mayor to take any and all enforcement actions to enforce the settlement agreement; and waiving Resolution No. R-130-06

Resolution No. R-1103-21

The accompanying resolution was prepared by the Public Housing and Community Development Department and placed on the agenda at the request of Prime Sponsor Commissioner Jean Monestime.


Geri Bonzon-Keenan
County Attorney

GBK/uw

Memorandum



Date: November 16, 2021

To: Honorable Chairman Jose "Pepe" Diaz
and Members, Board of County Commissioners

From: Daniella Levine Cava
Mayor

A handwritten signature in blue ink that reads "Daniella Levine Cava".

Subject: Resolution Approving Settlement Agreement between Miami Dade County and PackPlus, Inc. dba Josmar Medical Staffing and J&D Financial (West Coast) Corporation

Background

The ISD awarded the contract to PackPlus, Inc. dba Josmar Medical Staffing ("PackPlus") with an effective date of July 1, 2017. The purpose of the contract was to support Miami-Dade County ("County") departments on an as needed basis by providing contracted employees to fulfill specified job descriptions identified in the referenced contract. Approximately two weeks after award of the contract, Public Housing and Community Development ("PHCD") realized that the federally mandated maintenance wages had not been included in the contract. The County, as a public housing agency, is federally funded by United States Department of Housing and Urban Development ("HUD") and, therefore, it is required to comply with all applicable federal laws and regulations which included compensating contracted employees the correct prevailing wage rates. In this case, the correct wage rate was the maintenance wage rates established by the federal government. Upon discovery of the omission in the contract, PHCD advised Internal Services Department ("ISD") that maintenance wages were applicable to the maintenance repairer position. Thereafter, ISD contacted PackPlus to consult with the firm's principals to determine if PackPlus was willing and able to accommodate the increase in pay to its employees associated with the omission of the applicable maintenance wage provision, which should have been included in the contract. The principals agreed to absorb the additional cost and further agreed to pay their employees the maintenance wages for the maintenance repairer position. After further investigation and review of the facts surrounding this dispute, the County agreed, subject to the approval of HUD and the Board, to compensate PackPlus the appropriate Federal wages. The PHCD as well as the County's Small Business Development reviewed the hours reported by PackPlus for concurrence with the contracted employees services for the maintenance repairer position timesheets for the duration that PackPlus was awarded the maintenance repairer position (July 1, 2017 – March 29, 2019) utilizing the correct contracted wage rates.

As required by HUD, prior to the settlement of a dispute, the County, as a public housing agency, must seek HUD's concurrence of the settlement agreement, which was submitted by the County to HUD on July 1, 2020. On September 16, 2020, HUD approved the settlement agreement, which such approval is attached hereto as Attachment 1.

Following HUD's approval, the County received notification on September 28, 2020 from J&D Financial (West Coast) Corporation ("J&D") informing the County that the proceeds from the settlement should be paid to J&D, as PackPlus's factoring company, instead of PackPlus. Unable

to resolve its dispute with PackPlus, J&D filed a lawsuit in circuit court against PackPlus, PackPlus’ attorney and the County. The complaint alleges, in part, that PackPlus breached its factoring agreement with J&D, which J&D subsequently terminated. J&D does not dispute the terms of the settlement agreement between the County and PackPlus but has joined the County in the lawsuit for the sole purpose of having the court determine to whom the settlement payment should be paid. J&D has also agreed that it will execute a release absolving the County of any liability related to the settlement or any other claims arising from J&D’s claims raised in the lawsuit. The County, J&D and PackPlus will request the Court to direct the County to deposit the settlement payment into the court registry. Once the settlement payment is deposited, J&D will dismiss the County from the lawsuit, and J&D and PackPlus will release the County from any further liability. Although J&D is not presently a party to the settlement agreement, J&D has represented to the County that it is also willing to add its name to the settlement agreement and execute same. To add J&D, the County may need further approval to add J&D as a party to the settlement agreement.

Recommendation

It is recommended that the Board of County Commissioners (“Board”) approve of and authorize the County Mayor or the County Mayor’s designee to execute the settlement agreement (settlement agreement) between Miami Dade County (“County”) and PackPlus, Inc. dba Josmar Medical Staffing (“PackPlus”) in the amount of \$500,000.00 (“settlement payment”) to resolve a dispute arising from Contract Employee Services Contract No. FB-00361 related to HUD maintenance wage rates. The payment of the settlement payment will be subject to a resolution of the litigation filed by PackPlus’ factoring company, J&D Financial (West Coast) Corporation (“J&D”), against PackPlus, PackPlus’ former attorney and the County. Additionally, it is recommended that the Board authorize the County Mayor or the County Mayor’s designee, if required, to amend the settlement agreement to add J&D as an additional party and to make any additional changes to the settlement agreement that are consistent with the resolution, to execute the amended settlement agreement, and to deposit the settlement payment into the court registry, subject to the court entering an order directing the County to do so in the case of J & D Financial (West Coast Corp.) v. PackPlus, Inc. et al, Case No. 2021-004329-CA-240, HUD approval, if required, and the execution of the amended settlement agreement and releases by PackPlus and J&D. It is also recommended that the Board authorize the County Mayor or the County Mayor’s designee to exercise all provisions contained in the settlement agreement or amended settlement agreement, including, but not limited to, enforcement of the agreement. Finally, it is recommended that the Board waive the requirements of Resolution No. R-130-06, which requires that contracts to be executed by non-County parties prior to being placed on a Board agenda, to provide the County Mayor or the County Mayor’s designee additional time to negotiate with J&D, which has expressed its willingness to be added as an additional party to the settlement agreement.

Scope

The settlement agreement relates exclusively to the aforementioned contract awarded to PackPlus on July 1, 2017 by the Miami-Dade County Internal Services Department (ISD), through its Procurement Management Division. The services provided by PackPlus for Miami-Dade Public Housing and Community Development (PHCD) under the contract were countywide.

Fiscal Impact/Funding Source

Under the terms of the settlement agreement, Miami Dade County agrees to pay PackPlus \$500,000.00 as full and final settlement of all disputes regarding outstanding charges between the County and PackPlus. As authorized by HUD, the County will use its funds, which are federal funds, to cover the cost of the settlement.

Delegation of Authority

Upon approval of the resolution, the County Mayor or the County Mayor's designee will be authorized to: (1) execute the settlement agreement attached to the resolution as Exhibit A; (2) amend the settlement agreement to add J&D as an additional party and to make any additional amendments to the settlement agreement that are consistent with the resolution; (3) execute the amended settlement agreement and to deposit the settlement payment into the court registry, subject to the court entering an order directing the County to do so, HUD approval, if required, and the execution of the amended settlement agreement and releases by PackPlus and J&D; and (4) exercise all provisions contained in the settlement agreement or amended settlement agreement.

Track Record/Monitor

Michael Liu, Director of the PHCD will monitor the implementation of the Settlement Agreement.



Morris Copeland
Chief Community Services Officer



U.S. Department of Housing and Urban Development

Region IV, Miami Field Office
Brickell Plaza Federal Building
909 SE First Avenue, Rm. 500
Miami, FL 33131-3042

September 16, 2020

Mr. Michael Liu
Executive Director
Miami-Dade Public Housing and
Community Development
701 NW 1st Court, 16th Floor
Miami, FL 33136-3914

Dear Mr. Liu:

RE: *Proposed Pre-suit Settlement Agreement:
PackPlus Inc. dba Josmar Medical Staffing v. Miami-Dade County*

Our office reviewed the proposed Settlement Agreement ("Settlement Agreement") between PackPlus Inc. d/b/a Josmar Medical Staffing ("PackPlus") and Miami-Dade County (the "County") with regard to maintenance-related services PackPlus provided to the County's Public Housing and Community Development ("PHCD") department. PHCD is a federally funded County department required to comply with regulations promulgated by the U.S. Department of Housing and Urban Development ("HUD"), including compensating contracted employees the correct prevailing wage rates.

The Settlement Agreement relates to an employee services contract (the "Contract") that the County's Internal Services Department ("ISD") awarded through its Procurement Management Division covering the period of July 1, 2017 through June 30, 2020. The Contract was between PackPlus and the County for the purpose of providing contracted employees to PHCD. Approximately two (2) weeks after the award of the Contract, PHCD realized that the specified wages for the contracted employees were too low, and thus, violative of federal law.

ISD contacted PackPlus to determine if it would be willing and able to accommodate the increase in pay to the contracted employees. Initially, PackPlus agreed to absorb the additional cost. However, in February 2019, PackPlus asked ISD to vacate the Contract because it was suffering significant losses. ISD agreed to vacate the Contract.

PackPlus now seeks compensation from the County for the loss in revenue under the Contract. To resolve this matter without costly litigation, the County has agreed to pay PackPlus the amount of \$500,000. According to PHCD, the loss of revenue to PackPlus is approximately \$555,000. The County requests the use of federal funds from PHCD's Public Housing Operating Fund to pay the proposed settlement amount.

As required by *HUD Litigation Handbook* 1530.1, REV-5, Hud's Regional Counsel office's approval is required to permit any public housing authority's entrance into a settlement agreement. Based upon the materials submitted by PHCD and your office's approval, we hereby concur in the County's entry into the Settlement Agreement, as it is in the interest of PHCD, not contrary to Departmental policy, and appears to be cost-beneficial.

*HUD's mission is to increase homeownership, support community
development and increase access to affordable housing free from discrimination*

The PHCD is advised that the U.S. Department of Housing and Urban Development's approval of the County's entrance into the Settlement Agreement does not authorize any additional use of federal funds to pay any expense or costs related to any litigation; nor does HUD's approval constitute or guarantee the availability or approval of any federal funds for PHCD's or the County's participation in the resolution or any litigation of this matter.

Should you have any questions or concerns, please contact me at 305-520-5068, or via email at victor.b.atkins@hud.gov.

Victor B. Atkins

A handwritten signature in blue ink, consisting of a stylized 'V' followed by a horizontal line and a flourish.

Division Director
Office of Public Housing



MEMORANDUM

(Revised)

TO: Honorable Chairman Jose "Pepe" Diaz
and Members, Board of County Commissioners

DATE: November 16, 2021

FROM: 
Gen Bonzon-Keenan
County Attorney

SUBJECT: Agenda Item No. 8(K)(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 present ____, 2/3 membership ____, 3/5's ____, unanimous ____, CDMP 7 vote requirement per 2-116.1(3)(h) or (4)(c) ____, CDMP 2/3 vote requirement per 2-116.1(3)(h) or (4)(c) ____, or CDMP 9 vote requirement per 2-116.1(4)(c)(2) ____ 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(K)(1)
11-16-21

RESOLUTION NO. R-1103-21

RESOLUTION APPROVING OF AND AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE THE SETTLEMENT AGREEMENT BETWEEN PACKPLUS INC. DBA JOSMAR MEDICAL STAFFING (PACKPLUS), AND MIAMI-DADE COUNTY IN THE AMOUNT OF \$500,000.00 (SETTLEMENT PAYMENT) TO RESOLVE A DISPUTE ARISING FROM CONTRACT EMPLOYEE SERVICES CONTRACT NO. FB-00361 RELATED TO UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (HUD) MAINTENANCE WAGE RATES; AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE, IF REQUIRED, TO (1) AMEND THE SETTLEMENT AGREEMENT TO ADD J&D FINANCIAL (WEST COAST CORP.) (J&D) AS AN ADDITIONAL PARTY; (2) EXECUTE THE AMENDED SETTLEMENT AGREEMENT, AND (3) DEPOSIT THE SETTLEMENT PAYMENT INTO THE COURT REGISTRY, SUBJECT TO THE ENTRY OF AN ORDER BY THE COURT DIRECTING THE COUNTY TO DO SO IN THE CASE OF J&D FINANCIAL (WEST COAST CORP.) V. PACKPLUS, INC. ET AL, CASE NO. 2021-004329-CA-240, HUD'S APPROVAL, IF REQUIRED, AND THE EXECUTION OF THE AMENDED SETTLEMENT AGREEMENT AND RELEASES BY PACKPLUS AND J&D; AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO TAKE ANY AND ALL ENFORCEMENT ACTIONS TO ENFORCE THE SETTLEMENT AGREEMENT; AND WAIVING RESOLUTION NO. R-130-06

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

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that:

Section 1. The foregoing recital and accompanying memorandum are incorporated herein by reference.

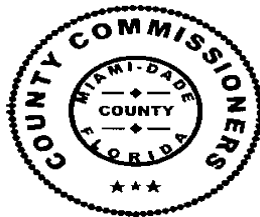
Section 2. This Board approves of and authorizes the County Mayor or County Mayor's designee to execute the settlement agreement ("settlement agreement") between Miami-Dade County ("County") and PackPlus, Inc. dba Josmar Medical Staffing ("PackPlus"), in substantially the form attached hereto as Exhibit A and incorporated herein by reference, in the amount of \$500,000.00 ("settlement payment") to resolve a dispute arising from Contract Employee Services Contract No. FB-00361 related to United States Department of Housing and Urban Development ("HUD") maintenance wage rates. The payment of the settlement payment is subject to a resolution of the litigation filed by PackPlus' factoring company, J&D Financial (West Coast) Corporation ("J&D"). against PackPlus, PackPlus' former attorney and the County. Additionally, this Board authorizes the County Mayor or County Mayor's designee, if required, to (1) amend the settlement agreement to add J&D as an additional party and to make any additional changes to the settlement agreement that are consistent with this resolution: (2) to execute the amended settlement agreement; and (3) to deposit the settlement payment into the court registry, subject to the court entering an order directing the County to do so in the case of J & D Financial (West Coast Corp.) v. PackPlus, Inc. et al, Case No. 2021-004329-CA-240, HUD's approval, if required, and the execution of the amended settlement agreement and releases by PackPlus and J&D. This Board further authorizes the County Mayor or County Mayor's designee to exercise all provisions contained in the settlement agreement or amended settlement agreement, including, but not limited to, enforcement of such agreement.

Section 3. This Board waives the requirements of Resolution No. R-130-06, which requires that contracts to be executed by non-County parties prior to being placed on a Board agenda, to provide the County Mayor or County Mayor's designee additional time to negotiate with J&D, which has expressed its willingness to be added as an additional party to the settlement agreement.

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

Jose "Pepe" Diaz, Chairman	aye		
Oliver G. Gilbert, III, Vice-Chairman	aye		
Sen. René García	aye	Keon Hardemon	aye
Sally A. Heyman	absent	Danielle Cohen Higgins	aye
Eileen Higgins	aye	Joe A. Martinez	aye
Kionne L. McGhee	aye	Jean Monestime	aye
Raquel A. Regalado	aye	Rebeca Sosa	aye
Sen. Javier D. Souto	aye		

The Chairperson thereupon declared this resolution duly passed and adopted this 16th day of November, 2021. 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

Melissa Adames

By: _____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

Terrence A. Smith
Eduardo W. Gonzalez

AGREEMENT FOR SETTLEMENT AND MUTUAL RELEASE

This AGREEMENT (the "Agreement") is entered into as of this ____ day of _____, 2020 (the "Effective Date") by and among PACKPLUS INC. DBA JOSMAR MEDICAL STAFFING ("Packplus") and MIAMI-DADE COUNTY ("County") (collectively referred to as the "Parties") in order to fully resolve all disputes the parties have pertaining to Miami-Dade County contract FB00361 and FB00361-1:

NOW THEREFORE, in consideration of the covenants undertaken herein by the Parties, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. County will pay a total payment of Five Hundred Thousand Dollars (\$500,000.00) to Packplus, payable to: The Onyx Group FBO Packplus Inc. Payment will be made via check by certified mail to 6600 Taft Street Hollywood, Florida 33024 within twenty (20) days of the Effective Date, or alternatively, County may make arrangements for the check to be picked up by Jonathan Arias, Esq. from County's office within twenty (20) days of the Effective Date. Packplus hereby agrees that The Onyx Group, as legal counsel for Packplus, is authorized by Packplus to receive payment on its behalf.
2. The Parties hereby release, acquit, and forever discharge each other and their past, present, and future shareholders, directors, officers, employees, principals, agents, servants, property managers, realtors, independent contractors, representatives, parent corporations, subsidiaries, affiliates, predecessors, successors, assigns, attorneys, and insurers from any and all actions, causes of action, claims, counterclaims, demands, damages, fines, penalties, assessments, costs, loss of services, expenses, interest, attorneys' fees and compensation whatsoever, in any way relating to or arising out of this matter, or this Agreement as long as the Parties comply with this Agreement.
3. In addition to the conditions set forth in Paragraphs 1 and 2, this Agreement and the Parties' obligations hereunder are contingent upon the final approval of this Agreement by the Miami-Dade Board of County Commissioners (the "Board") and the United States Department of Housing and Urban Development ("HUD"), which shall be within the Board and HUD's sole discretion. If the Board or HUD, in their sole discretion, do not approve of the Agreement, this Agreement shall be null and void. Packplus understands that such approval is an express contingency to the settlement of this matter.
4. The Effective Date of this Agreement shall be the date upon which the County Mayor or the County Mayor's designee executes same.

5. The Parties declare and represent that they were not induced to enter into this Agreement by any representations respecting any Party's rights or obligations or the nature and extent of any damages, legal liability, or financial responsibility made by any Party or their representatives.

6. The Parties further warrant that (i) they have executed this Agreement with full knowledge of their rights; (ii) they have received independent legal advice from their attorneys with respect to the matters herein set forth and the rights and asserted rights arising out of said matters; (iii) they have not relied on any statements or representations (other than representations set forth in this Agreement) by any other party or its representatives; and (iv) each party participated in the drafting of this Agreement.

7. Each party shall bear their own attorneys' fees and costs, if any, incurred in connection with this matter. In the event a party is in breach of this Agreement and is the prevailing party in any litigation, the prevailing party shall be entitled to an award of reasonable attorney's fees and costs. The Parties understand and agree that no party admits liability of any sort by reason of this Agreement.

8. The Parties acknowledge that this Agreement constitutes the entire agreement between them with respect to the subject matter herein. This Agreement supersedes and replaces all prior and contemporaneous agreements, negotiations, representation, warranties and understandings as to the subject matter of this Agreement, and that the terms of this Agreement are contractual and not a mere recital. They further acknowledge that they have read it and understand it; that the terms and conditions of this Agreement were arrived at in arm's-length negotiations between the Parties.

9. The Parties understand and agree that this Agreement has no bearing over prior, present or future awarded "Contracts" to Packplus Inc. and "Contract FB00361".

10. This Agreement shall be construed, enforced and interpreted in accordance with the laws of the State of Florida and Miami-Dade County will be the venue for any disputes pertaining to this Agreement.

11. No waiver or modification shall be binding unless executed in writing by all parties

12. This Agreement constitutes the entire, integrated agreement made by and among the parties. This Agreement fully supersedes any and all prior or contemporaneous understandings, representations, warranties, and agreements, pertaining to the subject matter hereof.

15. Each of the parties hereto represents and warrants that it has full and complete authority to enter into and execute this Agreement under the terms set forth above, and subject to the contingencies set forth herein.

16. This Agreement may be executed and delivered in separate counterparts, each of which, when so executed and delivered, shall be an original, but such counterparts together shall constitute but one and the same instrument and agreement.

PACKPLUS INC. DBA JOSMAR
MEDICAL STAFFINGS:

By: 
Name: JOSEPH OBAREYI
Title: PRESIDENT
Date: 6/30/2020

MIAMI-DADE COUNTY, a political
subdivision of the State of Florida.

By: _____
Name: _____
Title: Mayor or Mayor's designee
Date: _____

Approved for form and legal sufficiency:

By: _____
Terrence A. Smith
Assistant County Attorney