

MEMORANDUM

Agenda Item No. 8(F)(11)

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

DATE: May 3, 2022

FROM: Geri Bonzon-Keenan
County Attorney

SUBJECT: Resolution approving settlement and mutual release agreement by and between the County, Indigo Energy Partners, LLC ("Indigo") and Nationwide Mutual Insurance Company providing for a payment by Indigo to the County of \$745,000.00; approving settlement and release agreement between the County and the City of Miami Gardens ("City") providing for a payment by the County to the City of \$144,995.00; and authorizing the County Mayor to execute the settlement agreements and exercise all rights contained therein

Resolution No. R-416-22

The accompanying resolution was prepared by the Internal Services Department and placed on the agenda at the request of Prime Sponsor Vice-Chairman Oliver G. Gilbert, III.



Geri Bonzon-Keenan
County Attorney

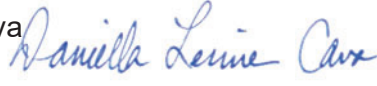
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Memorandum



Date: May 3, 2022

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

From: Daniella Levine Cava
Mayor 

Subject: Settlement Agreement between Miami-Dade County, the City of Miami Gardens and Indigo Energy Partners, LLC. Regarding a Breach of Contract for Fuel Delivery Services that resulted in Fuel Contamination

Summary

It is recommended that the Board of County Commissioners (Board) approve the resolution authorizing the Mayor or the Mayor's designee to execute a settlement agreement related to a claim made by the County against a County fuel supplier for damage related to contaminated fuel, and a settlement agreement with the City of Miami Gardens (the "City") related to claims the City may have against the County related to damage to City vehicles from fueling at County fuel locations.

On or around March 12, 2018, the County advised Indigo Energy Partners, LLC. ("Indigo") that both County and City fleet vehicles (278 vehicles), including police cruisers, were experiencing fuel-related issues. The City, who has contracted fuel services with Miami-Dade County's Internal Services Department since May of 2017, had also experienced vehicle malfunctions (approximately 34 vehicles) related to contaminated fuel provided by Indigo.

The County provided Indigo with third-party lab reports indicating the presence of contaminants in fuel samples collected from County underground storage tanks that had been supplied by Indigo through a third-party common carrier, Sun Fuels, Inc. Three fuel stations managed by the Internal Services Department Fleet Management Division were identified which had all received contaminated fuel from the vendor's deliveries. Repairs required 164 County vehicles engine replacements and an additional 114 vehicles inspections that required other corrective actions in order bring the vehicles back to operational condition.

Recommendation

It is recommended that the Board approve the resolution authorizing the Mayor or the Mayor's designee to execute the Settlement Agreements with Indigo Energy Partners, LLC. ("Indigo") (Attachment A, the "Indigo Settlement") and the City (Attachment B, the "City Settlement") (collectively, the "Indigo Settlement" and "City Settlement" are referred to herein as the "Settlement Agreements"). The Indigo Settlement will result in a payment to the County of (\$745,000.00), which is in addition to a \$194,758.92 previously received by the County from Indigo on the same claim; the Indigo settlement resolves a currently pending lawsuit styled *Miami Dade County v. Indigo Energy Partners LLC* (11th Jud'l Cir.) (Case No. 2018-039168-CA-01) (the "Lawsuit"). The County will apply \$144,995.00 of the payments from the Indigo Settlement to the City to resolve any claims that the City may have against the County from damage it incurred as a result of Indigo's actions.

Scope

The Settlement Agreements stem from litigation arising out of Invitation to Quote No. 3143-6 for Gasoline and Diesel Fuel under Bid 3143/9/18 (the "Contract") for supplying the County with gasoline and diesel fuel at the County's various fuel sites managed by the Internal Services Department's Fleet Management Division. The impact of the Contract is countywide.

Fiscal Impact/Funding Source:

The fiscal impact to the County from the Settlement Agreement with Indigo is a payment of Seven Hundred Forty-Five Thousand Dollars (\$745,000.00) from Indigo (“Settlement Payment”), which compromises a claim estimated at approximately \$799,038.55. A portion of the Settlement Payment (\$144,995.00) will be transferred to the City to secure a release of any potential claims the City may have against the County.

Track Record/Monitor

Alex Alfonso, Acting Assistant Director of the Internal Services Department, will oversee the collection of the Settlement Payment from Indigo, and the distribution of the \$144,995.00 payment to the City.

Delegated Authority

This item authorizes the County Mayor or the County Mayor’s designee to execute the Settlement Agreements for and on behalf of the County and to exercise all rights contained therein.

Background

The Internal Services Department Fleet Management Division is responsible for the acquisition, maintenance, fueling and disposal of the County’s mobile equipment fleet, including police cars, garbage trucks, non-MDT buses and construction equipment, which includes a loaner pool of approximately 9,000 vehicles. It also provides unleaded and diesel fuel to an estimated 12,000 County owned/rented vehicles and to various other local municipalities and governmental entities from its 29 fueling stations. From June 1, 2017 through November 1, 2018, the unleaded and diesel fuel at these fueling stations was supplied by Indigo pursuant to the Contract.

In May 2017, the County and City entered a contract whereby the County agreed to provide the City with vehicle fueling services in exchange for the City’s payment for the fuel plus a markup. The City continues to access County fueling locations under this agreement.

On or about March 12, 2018, the County advised Indigo that both County and City fleet vehicles, including police cruisers, were experiencing fuel-related issues. The County provided Indigo with third-party lab reports indicating the presence of contaminants in fuel samples collected from County underground storage tanks that had been supplied by Indigo through a third-party common carrier, Sun Fuels, Inc. Consequently, the County demanded that Indigo reimburse it for the costs it incurred because of exposure to contaminated fuel as provided for in the contract between the County and Indigo. As a result, Indigo, through its insurer Farmland, provided a partial payment in the amount of \$194,578.92, and the County filed the Lawsuit to recover the remaining damages.

The estimated recoverable loss to the County is approximately \$799,038.55. The County’s estimated recoverable loss excludes a \$190,513 mark-up charged by the Internal Services Department to other County departments for administering the fueling services and other expenses totaling \$54,329.71 incurred by the County in connection with the storage of the damaged engine cores for evidentiary purposes. In addition to the \$745,000.00 settlement payment from Indigo, the County anticipates receiving \$117,800.00 in credits for returning the damaged engine cores to the manufacturers. The City calculates its damages to be approximately \$177,754.00.

The Settlement Agreements

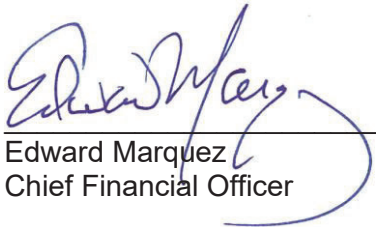
The uncertainties of litigation and the increased cost of litigating the Lawsuit, which would involve the use of expert testimony to establish the cause of the damage, prolonged storage of the damaged engines for evidentiary reasons, the possible phase-out or expiration of engine core credits offered by the manufacturer of the damaged engines, and the prospect of litigation with the City, it is recommended that this Board authorize the County Mayor or County Mayor’s designee to execute the Settlement Agreements.

Honorable Chairman Jose "Pepe" Diaz
and Members, Board of County Commissioners
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As a condition of the Indigo Settlement, the County will cooperate with Indigo by making available documents and witnesses for Indigo's use in its continued litigation against Sun Fuels, and the County will remove Indigo from the registry of delinquent vendors. The Indigo Settlement also requires Indigo to indemnify the County from any claims that may be brought against the County by Sun Fuels.

Because the County was contractually obligated to provide fuel to the City, and the contaminated fuel introduced to the County's fuel sites damaged City vehicles, the City Settlement includes a provision whereby the County provides payment of \$144,995.00 to the City in exchange for the release of any and all potential claims that the City may have against the County under the contract between the City and County.

Attachments



Edward Marquez
Chief Financial Officer

SETTLEMENT AND MUTUAL RELEASE AGREEMENT

This Settlement and Mutual Release Agreement (the “Agreement”) is entered into this ____ day of _____, 2022 by and between Miami-Dade County (the “County”), a political subdivision of the State of Florida, Indigo Energy Partners, LLC (“Indigo”), a Georgia limited liability company, and Nationwide Mutual Insurance Company as successor in interest to Farmland Mutual (“Nationwide”).

RECITALS

WHEREAS, Indigo responded to Invitation to Quote No. 3143-6 for Gasoline and Diesel Fuel under Bid 3143/9/18 (the “Contract”); and

WHEREAS, under the Contract, Indigo agreed that all products supplied under the Contract would be “fully guaranteed” and that Indigo “at no cost to the County” would “correct any product defects, which may occur as the result of faulty products”; and

WHEREAS, Indigo commenced supplying the County with Gasoline and Diesel Fuel on or about June 1, 2017; and

WHEREAS, on or about March 12, 2018 the County advised Indigo that fleet vehicles, including police cruisers, were experiencing fuel-related issues; and

WHEREAS, the County later advised Indigo that fleet vehicles, including police cruisers, continued to experience fuel-related issues; and

WHEREAS, the County provided Indigo with third-party lab reports indicating the presence of contaminant(s) in fuel samples collected from County underground storage tanks that had been supplied by Indigo through a third-party common carrier; and

WHEREAS, the County and Indigo agreed that Indigo would temporarily suspend the third-party common carrier that delivered fuel to the County during the pertinent time period; and

WHEREAS, the County has not experienced any fuel-related issues since Indigo suspended the above referenced third-party common carrier; and

WHEREAS, the County agreed to make select vehicles available for inspection by Indigo or its representatives; and

WHEREAS, representatives of Indigo have inspected select County vehicles, which included, in part, the participation of a representative of Indigo’s third-party common carrier, to wit Sun Fuels, Inc. (“Sun Fuels”); and

WHEREAS, at the vehicle inspections, damage consistent with exposure to fuel contamination was observed; and

WHEREAS, County demanded that Indigo reimburse it for the costs it has incurred because of exposure to contaminated fuel as provided for in the Contract, and Indigo, through

Nationwide, provided a partial payment in the amount of \$194,578.92; and

WHEREAS, however, after the issuance of the partial payment, no further payments were issued causing the County to file the litigation styled *Miami-Dade County v. Indigo Energy Partners, LLC* (Case No.: 2018-039168-CA-01) (11th Jud'l Cir.) (the "Lawsuit"); and

WHEREAS, Indigo and the County desire to amicably resolve their claims, on terms that include but are not limited to an agreement for Indigo to make a payment of Seven Hundred Forty-Five Thousand Dollars (\$745,000.00), exclusive of any amounts previously paid by Indigo to the County such as the aforementioned partial payment (the "Settlement Payment");

NOW, THEREFORE, in consideration of the mutual benefits to be derived and the representations and warranties, conditions, and covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties, intending to be legally bound hereby, agree as follows:

TERMS AND CONDITIONS

1. **Incorporation of Recitals.** The parties agree that the above recitals are true and correct and that those recitals are incorporated by reference and form a part of this Agreement.

2. **Effective Date.** The Effective Date of this Agreement shall be the sooner of the date (1) of the expiration of the County Mayor's veto period subsequent to the approval of this Agreement by the Board of County Commissioners (the "BCC") without the County Mayor vetoing the BCC's resolution approving same or (2) on which the County Mayor approves the BCC-approved resolution authorizing the execution of this Agreement. Notwithstanding the foregoing, Indigo's covenant not to withdraw its approval of this Agreement, as set forth in § 3 of this Agreement, shall be effective upon its execution of this Agreement.

3. **BCC Approval.** Indigo acknowledges that before the County may settle any claims or enter into any binding contractual obligations pursuant to this Agreement, the County must obtain the approval of the BCC and the subsequent assent of the County Mayor or, if the County Mayor vetoes any legislation approving this Agreement, an override of the County Mayor's veto by the BCC ("BCC Approval").

a. **BCC Approval Window.** Indigo acknowledges that BCC Resolution No. 130-06 requires that all non-County parties must execute the Agreement before the Agreement may be placed on the BCC's agenda. Accordingly, Indigo agrees to execute this Agreement before the County ("Indigo Execution") and as a precondition of the presentation of this Agreement to the County Mayor or County Mayor's Designee or to the BCC. From the date of Indigo Execution, the County shall have sixty (60) days in which to obtain BCC Approval (the "BCC Approval Window"). During the BCC Approval Window, Indigo (in exchange for sufficient consideration, the receipt of which is acknowledged, which consideration includes the County Mayor or County Attorney's recommendation of this Agreement to the Board) agrees that it shall not withdraw from or modify the terms of its settlement with the County, as presented in this Agreement, and if the Agreement does not make a BCC agenda within the BCC Approval Window, Indigo agrees to jointly move with the County to seek a continuance of the trial date of the Lawsuit from the Court until such time as the Agreement is heard and voted on by the BCC.

b. **The Parties' Obligations Before BCC Approval.** Neither party shall be required to file any document compromising any claims it may have against the other party and shall not have released the other party until the Effective Date of this Agreement.

c. **Consequence Upon Failure to Obtain BCC Approval.** To the extent the BCC does not approve this Agreement, and after all opportunities for BCC reconsideration have passed, the parties shall return to the status quo existing before the parties' preparation of this Agreement, and the fact that the County and Indigo sought to negotiate a resolution to their dispute concerning the Contract, including any supporting documents necessary to present this Agreement to the Board, shall be inadmissible for all reasons and shall not prejudice any of the their pre-existing rights and remedies with respect to each other or any other person or entity.

4. **Agreement to Settle; No Admission of Liability.** Subject to the terms and conditions of this Agreement, including Indigo's payment of the Settlement Payment, Indigo and the County hereby agree as follows:

- a. Without requiring the County to incur or undertake any expense, the County shall provide Indigo, upon Indigo's request with reasonable notice given, access to documents and County-employed witnesses (both without charge or subpoena), and the County's consulting expert, without charge except as to the consulting expert's fees and costs. The County does not hereby make any representations or warranties as to the contents of any documents, and the testimony that any witnesses, whether County-employed or the consulting expert, may give.
- b. The County shall join in the defendants' pending motion for continuance, which obligation the County already discharged through its filing of a joinder on March 2, 2022, and the mediation between the parties shall be deemed open subject to the approval of this Agreement in accordance with Section 3.
- c. The County shall remove Indigo from the registry of delinquent vendors.
- d. The County shall photograph the current condition of the engines that sustained damage. The County shall not be required to store the engines beyond March 24, 2022, it being understood that as part of this Agreement, the County is entitled to return those engines to the manufacturer for credits; further, such engines may be sooner disposed upon the agreement of Sun Fuels. For the purpose of the requirement that the County photograph the current condition of the engines, Indigo and Nationwide accepts the e-mail from Yoamel Zequeira of February 25, 2022 at 5:55 p.m. in fulfillment of this requirement.
- e. It is understood that the terms of this Agreement, the payment of any moneys, or any other action or forbearance taken pursuant to this Agreement shall in no way constitute, nor be construed as, an admission of liability or acknowledgement of the validity of any allegation, finding, or

conclusion by Indigo or the County, or their respective agents, but rather are made as a contractual settlement by way of compromise to avoid the expense and uncertainty of further litigation.

5. **Filing of Stipulations of Dismissal.** Within fifteen (15) days of the Effective Date, the County shall file a Stipulation of Dismissal with Prejudice of Counts I and II, dismissing all claims asserted against Indigo in the Lawsuit with prejudice, but not dismissing Indigo's Third-Party claims against Sun Fuels. The Stipulation of Dismissal shall provide that the Court retains jurisdiction to enforce the terms of the Agreement and that each party shall bear its own attorneys' fees and costs.

6. **Payment Terms.** Indigo and Nationwide agree to the payment of the Settlement Payment to the County. The Settlement Payment shall be due and payable within thirty (30) days of the Effective Date of this Agreement. In the absence of written instructions from the County to the contrary, payment to the County shall be made through any commercially reasonable means (e.g., wire transfer or cashier's check), and its payment shall name Miami-Dade County as the payee and be delivered to the attention of Alex Alfonso, Miami-Dade County Internal Services Department, 111 Northwest 1st Street, 21st Floor, Miami, Florida 33128. For purposes of this Agreement, Indigo's obligation to make the Settlement Payment shall be considered satisfied upon delivery and permanent clearance of funds of the Settlement Payment in accordance with the foregoing terms.

7. **Indigo and Nationwide's Release of the County.** For the consideration and promises made herein, Indigo and Nationwide release and forever discharge the County from any and all claims, causes of action, demands, disputes and rights of whatever nature and kind, choate or inchoate, known or unknown, past or future, related to or in any way arising out of the Contract or the claims that were or could have been asserted in the Lawsuit.

8. **County's Release of Indigo, Nationwide, and Sun Fuels.** For the consideration and promises made herein, the County releases and forever discharges Indigo, Nationwide, and Sun Fuels from any and all claims, causes of action, demands, disputes and rights of whatever nature and kind, choate or inchoate, known or unknown, past or future, related to or in any way arising out of the Contract or the claims that were or could have been asserted in the Lawsuit. This release shall not be effective until Indigo delivers the Settlement Payment to the County pursuant to § 6 of this Agreement. Indigo agrees to hold harmless and indemnify the County if Sun Fuels pursues against the County any claim, cause of action, demand, dispute or right of any kind, choate or inchoate, known or unknown, past or future, related to or in any way arising out of the Contract or the claims that were or could have been asserted in the Lawsuit.

9. **Parties to Bear Own Costs and Fees.** Each party shall bear their own attorneys' fees and costs in any action, including through all stages of appellate review, relating to or arising out of the Lawsuit or the enforcement of the terms of this Agreement.

10. **Florida Law Applies; Exclusive Venue.** This Agreement shall be construed under the laws of the State of Florida without regard to its choice of law provisions. Venue for any dispute arising out of this Agreement shall lie exclusively in the U.S. District Court for the Southern District of Florida or in the 11th Judicial Circuit in and for Miami-Dade County, Florida.

11. **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.

12. **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.

13. **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.

14. **Authority to Execute and Bind.** 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 and, where applicable, their parent, affiliated, subsidiary, successor, assignee and related entities. Further, the parties represent that they have not assigned any of their respective rights or claims subject of or to this Agreement to any third party.

15. **Captions.** The captions or headings in this Agreement are for convenience only and in no way define, limit, or describe the scope or intent of any provisions of this Agreement.

16. **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 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. Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law. 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.

17. **No Waiver.** No waiver by any party or any party's agents, legal representatives, successors, or assigns of a breach of any provision of this Agreement shall be binding upon the non-breaching party or his agents, legal representatives, successors, or assigns unless the same is in writing and signed by a duly authorized representative, and any such waiver shall not operate or be construed as a waiver of any subsequent breach.

18. **Counterparts; Electronic Signatures.** The parties agree that this Agreement, and any and all other documents in connection with this Agreement, may be executed in one or more counterparts, each of which shall be deemed an original but all of which shall together constitute one and the same Agreement. This Agreement may be executed as facsimile, email, or electronic

originals and each copy of this Agreement bearing the facsimile, email, or electronic transmitted signature of any party's authorized representative shall be deemed to be an original.

IN ACCEPTANCE WHEREOF, Miami-Dade County, Indigo Energy Partners, LLC, and Nationwide Mutual Insurance Company, have set their respective hands as of the date and year appearing by their respective signatures.

Indigo Energy Partners, LLC

Nationwide Mutual Insurance Company

As successor in interest to Farmland Mutual

By: _____

By: _____

Print: _____

Print: _____

Title: _____

Title: _____

Dated: _____

Dated: _____.

Miami-Dade County, Florida

By: _____

Print: _____

Title: _____

Dated: _____

By: _____

Assistant County Attorney
As to Form and Legal Sufficiency

originals and each copy of this Agreement bearing the facsimile, email, or electronic transmitted signature of any party's authorized representative shall be deemed to be an original.

IN ACCEPTANCE WHEREOF, Miami-Dade County, Indigo Energy Partners, LLC, and Nationwide Mutual Insurance Company, have set their respective hands as of the date and year appearing by their respective signatures.

Indigo Energy Partners, LLC

Nationwide Mutual Insurance Company

As successor in interest to Farmland Mutual

By: _____

By: BL Jones

Print: _____

Print: Blair Jones

Title: _____

Title: Claim Rep

Dated: _____

Dated: 4-12-22

Miami-Dade County, Florida

By: _____

Print: _____

Title: _____

Dated: _____

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

originals and each copy of this Agreement bearing the facsimile, email, or electronic transmitted signature of any party's authorized representative shall be deemed to be an original.

IN ACCEPTANCE WHEREOF, Miami-Dade County, Indigo Energy Partners, LLC, and Nationwide Mutual Insurance Company, have set their respective hands as of the date and year appearing by their respective signatures.

Indigo Energy Partners, LLC

Nationwide Mutual Insurance Company

As successor in interest to Farmland Mutual

By: _____

Print: _____

Title: _____

Dated: _____

By: John E. Monksfield Jr.
Print: John E. Monksfield Jr.
Title: CEO

By: _____

Print: _____

Title: _____

Dated: _____

Miami-Dade County, Florida

By: _____

Print: _____

Title: _____

Dated: _____

By: _____

Assistant County Attorney
As to Form and Legal Sufficiency

ATTACHMENT B

SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement (the “Agreement”) is entered into this ____ day of _____, 2022 by and between Miami-Dade County (the “County”), a political subdivision of the State of Florida, and the City of Miami Gardens (the “City”), a municipal corporation organized under the laws of the State of Florida.

RECITALS

WHEREAS, the County operates and manages various fueling stations through the County, which the City desired to use for the purpose of fueling City-owned vehicles with unleaded and/or diesel fuel; and

WHEREAS, on or about May 22, 2017, the County and City entered a contract (the “Contract”) whereby the County agreed to provide the City with vehicle fueling services in exchange for the City’s payment for the fuel plus a markup, which Contract remains in force between the parties as it has an indefinite term; and

WHEREAS, the County contracts with a third-party, Indigo Energy Partners, LLC (“Indigo”), to supply the fueling stations with fuel; and

WHEREAS, as a result of actions beyond the County’s control, certain County fuel stations were provided with contaminated fuel, damaging County and City vehicles and resulting in the County filing a lawsuit against Indigo, which lawsuit is styled *Miami-Dade County v. Indigo Energy Partners, LLC* (Case No.: 2018-039168-CA-01) (11th Jud’l Cir.) (the “Lawsuit”); and

WHEREAS, subject to its approval of the Board of County Commissioners (the “BCC”), the County and Indigo have reached a settlement agreement (the “Indigo Settlement”), which will result in a payment to the County by Indigo and its insurers in the amount of seven hundred forty-five thousand dollars (\$745,00.00); and

WHEREAS, the County and City have agreed to share in the settlement proceeds to settle any claims that the City could assert against the County under the Contract; and

WHEREAS, the City’s share of the settlement proceeds is one hundred forty four thousand, nine hundred and ninety five dollars (\$144,995.00) (the “Settlement Payment”),

NOW, THEREFORE, in consideration of the mutual benefits to be derived and the representations and warranties, conditions, and covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties, intending to be legally bound hereby, agree as follows:

TERMS AND CONDITIONS

1. **Incorporation of Recitals.** The parties agree that the above recitals are true and correct and that those recitals are incorporated by reference and form a part of this Agreement.

ATTACHMENT B

2. **Effective Date.** The Effective Date of this Agreement shall be the sooner of the date (1) of the expiration of the County Mayor's veto period subsequent to the approval of this Agreement and the Indigo Settlement by the BCC without the County Mayor vetoing the BCC's resolution approving same or (2) on which the County Mayor approves the BCC-approved resolution authorizing the execution of this Agreement and the Indigo Settlement.

a. **BCC Approval.** The City acknowledges that before the County may settle any claims or enter into any binding contractual obligations pursuant to this Agreement, the County must obtain the approval of the BCC and the subsequent assent of the County Mayor or, if the County Mayor vetoes any legislation approving this Agreement, an override of the County Mayor's veto by the BCC ("BCC Approval"). To the extent the BCC does not approve this Agreement and the Indigo Settlement, and after all opportunities for BCC reconsideration have passed, the parties shall return to the status quo existing before the parties' preparation of this Agreement, and the fact that the County and the City sought to negotiate a resolution to their dispute concerning the Contract, including any supporting documents necessary to present this Agreement to the BCC, shall be inadmissible for all reasons and shall not prejudice any of the their pre-existing rights and remedies with respect to each other or any other person or entity.

3. **Agreement to Settle; No Admission of Liability.** Subject to the terms and conditions of this Agreement, including the County's payment of the Settlement Payment, the parties hereby agree that the payment of any moneys, or any other action or forbearance taken pursuant to this Agreement shall in no way constitute, nor be construed as, an admission of liability or acknowledgement of the validity of any allegation, finding, or conclusion by the County or the City, or their respective agents, but rather are made as a contractual settlement by way of compromise to avoid the expense and uncertainty of litigation.

4. **Payment Terms.** The County agrees to the payment of the Settlement Payment to the City. The Settlement Payment shall be contingent upon the County's receipt and retention of the settlement payment payable under the Indigo Settlement and shall be due and payable within thirty (30) days of the County's receipt of such settlement payment from Indigo. In the absence of written instructions from the City to the contrary, the County shall make its payment to the City through any commercially reasonable means (e.g., wire transfer or cashier's check), payable to the "City of Miami Gardens," to be mailed c/o Sonja K. Dickens, Esq. as Attorney for the City of Miami Gardens, located at 18605 NW 27th Avenue, Miami Gardens, FL 33056. For purposes of this Agreement, the County's obligation to make the Settlement Payment shall be considered satisfied upon delivery and permanent clearance of funds of the Settlement Payment in accordance with the foregoing terms.

5. **City's Release of the County.** For the consideration and promises made herein, from the beginning of time through the effective date of this Agreement, the City releases and forever discharges the County from any and all claims, causes of action, demands, disputes and rights of whatever nature and kind, choate or inchoate, known or unknown, past or future, related to or in any way arising out of any claims related to the contaminated fuel that resulted in the lawsuit styled, *Miami- Dade County v. Indigo Energy Partners LLC*, 2018- 039168-CA-01.

ATTACHMENT B

6. **Party to Bear its Own Costs and Fees.** Each party shall bear their own attorneys' fees and costs in any action, including through all stages of appellate review, relating to or arising out of the Lawsuit or the enforcement of the terms of this Agreement.

7. **Florida Law Applies; Exclusive Venue.** This Agreement shall be construed under the laws of the State of Florida without regard to its choice of law provisions. Venue for any dispute arising out of this Agreement shall lie exclusively in the 11th Judicial Circuit in and for Miami-Dade County, Florida.

8. **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.

9. **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.

10. **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.

11. **Authority to Execute and Bind.** 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 and, where applicable, their parent, affiliated, subsidiary, successor, assignee and related entities. Further, the parties represent that they have not assigned any of their respective rights or claims subject of or to this Agreement to any third party.

12. **Captions.** The captions or headings in this Agreement are for convenience only and in no way define, limit, or describe the scope or intent of any provisions of this Agreement.

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 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. Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law. 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.

ATTACHMENT B

14. **No Waiver.** No waiver by any party or any party's agents, legal representatives, successors, or assigns of a breach of any provision of this Agreement shall be binding upon the non-breaching party or his agents, legal representatives, successors, or assigns unless the same is in writing and signed by a duly authorized representative, and any such waiver shall not operate or be construed as a waiver of any subsequent breach.

15. **Counterparts; Electronic Signatures.** The parties agree that this Agreement, and any and all other documents in connection with this Agreement, may be executed in one or more counterparts, each of which shall be deemed an original but all of which shall together constitute one and the same Agreement. This Agreement may be executed as facsimile, email, or electronic originals and each copy of this Agreement bearing the facsimile, email, or electronic transmitted signature of any party's authorized representative shall be deemed to be an original.

IN ACCEPTANCE WHEREOF, Miami-Dade County and the City of Miami Gardens, LLC have set their respective hands as of the date and year appearing by their respective signatures.

City of Miami Gardens

Miami-Dade County, Florida

By: _____

By: _____

Print: _____

Print: _____

Title: _____

Title: _____

Dated: _____

Dated: _____.

By: _____

Assistant County Attorney
As to Form and Legal Sufficiency



MEMORANDUM

(Revised)

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

DATE: May 3, 2022

FROM: 
Gen Bonzon-Keenan
County Attorney

SUBJECT: Agenda Item No. 8(F)(11)

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 David L. Levine Carr Mayor
Veto _____
Override _____

Agenda Item No. 8(F)(11)
5-3-22

RESOLUTION NO. R-416-22

RESOLUTION APPROVING SETTLEMENT AND MUTUAL RELEASE AGREEMENT BY AND BETWEEN THE COUNTY, INDIGO ENERGY PARTNERS, LLC ("INDIGO") AND NATIONWIDE MUTUAL INSURANCE COMPANY PROVIDING FOR A PAYMENT BY INDIGO TO THE COUNTY OF \$745,000.00; APPROVING SETTLEMENT AND RELEASE AGREEMENT BETWEEN THE COUNTY AND THE CITY OF MIAMI GARDENS ("CITY") PROVIDING FOR A PAYMENT BY THE COUNTY TO THE CITY OF \$144,995.00; AND AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE THE SETTLEMENT AGREEMENTS AND EXERCISE ALL RIGHTS CONTAINED 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:

Section 1. Approves the settlement agreement by and between the County, Indigo Energy Partners, LLC ("Indigo") and Nationwide Mutual Insurance Company, providing for a payment of \$745,000.00 from Indigo to the County, in substantially the form attached to the accompanying memorandum as Attachment A.

Section 2. Approves the settlement agreement between the County and the City of Miami Gardens ("City"), providing for a payment of \$144,995.00 from the County to the City, in substantially the form attached to the accompanying memorandum as Attachment B.

Section 3. Authorizes the County Mayor or County Mayor’s designee to execute the settlement agreements approved in sections 1 and 2 of this resolution and to exercise all rights contained therein.

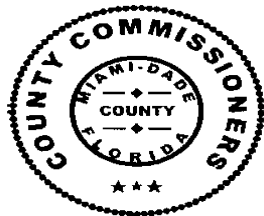
The foregoing resolution was offered by Commissioner **Rebeca Sosa** , who moved its adoption. The motion was seconded by Commissioner **Raquel A. Regalado** and upon being put to a vote, the vote was as follows:

Jose “Pepe” Diaz, Chairman	aye		
Oliver G. Gilbert, III, Vice-Chairman	aye		
Sen. René García	aye	Keon Hardemon	aye
Sally A. Heyman	aye	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 3rd day of May, 2022. 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: **Basia Pruna**
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

mjs

Melanie J. Spencer
Miguel A. Gonzalez