

Memorandum



Date: August 18, 2005

To: Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners

From: George M. Burgess
County Manager

Subject: Ratification of Partial Settlements of Contract Balances Owed to MCM Corporation
North Terminal Development Program

RTC
Agenda Item No. 3 (X)

RECOMMENDATION

It is recommended that the Board ratify the County Manager's execution, pursuant to the authority granted to him to administer County business during the period of July 8, 2005 through August 22, 2005, of partial settlement agreements with MCM Corporation (MCM) in the total amount of \$806,829.82 to pay for contract balances that the Miami-Dade Aviation Department (MDAD) believes is owed to MCM in connection with construction work MCM performed as a subcontractor to the Turner Austin Airport Team ("Turner Austin") on MIA's North Terminal Development Project. The settlement amounts are for work MCM performed under NTD Project numbers 737B (C-D Infill Foundation), 741A (D Extension Foundation & Shell), and 741E (D Extension MEP and Remaining Shell). MDAD believes MCM's work on these projects has been completed, including all significant punch list items known to date. HNTB, consulting engineers for the Bond Trustees under the Amended and Restated Trust Agreement of 2002, concurs with this assessment.

BACKGROUND

As part of the NTD Program, the County and American Airlines ("American") entered into a Lease, Construction and Finance Agreement ("LCF") for American to design and construct the NTD and the County to pay the costs thereof as a tenant improvement project. American Airline's Construction Manager, Turner-Austin, bid and eventually entered into subcontracts with MCM for work on the three NTD projects.

On June 21, 2005, the Board approved the Fourth Amendment to the LCF that transferred the responsibility of completing the NTD Program to the County. On June 27, 2005, American terminated Turner-Austin's contract effective July 27, 2005.

MCM had completed the work over a period of time beginning in 2003 (projects 737B and 741A) and ending in April 2004 (project 741E). MCM had requested the release of the contract balances by submitting Applications for Payment. Turner Austin and American failed to process MCM's pay applications. MCM has separately asserted claims against Turner-Austin for delays and extra work it alleges it has performed and that Turner Austin has not paid. Turner-Austin has contested these claims and has further disputed whether MCM had satisfactorily completed its base contract work. At this time, these issues are being litigated between MCM and Turner-Austin, American and various sureties.

Notwithstanding the allegations asserted by Turner Austin, MDAD staff, along with its consultants DAC, Alpha Corporation and HNTB has reviewed the project work in place and believe that any potential credits that may exist for punch list work are probably less than amounts that MCM may be entitled to receive for additional direct and indirect-related claims. This conclusion is supported by the attached report by Alpha Corporation, MDAD's Claims Consultant.

In view of this Board's intent that, as part of the take over of the NTD Project, contractors should be fairly and equitably paid for work performed under contract, I believe that MCM is entitled to partial release of the contract balances for the three projects in the total amount of \$806,829.82 for base contract work for which the County does not dispute is owed to MCM. Because the County does not hold a direct contract with MCM, the County has treated MCM's requests for partial release of the contract balances as claims, as there is no other mechanism by which to make payment directly to MCM for undisputed amounts owed to MCM. As part of these Partial Settlements, MCM has agreed to release the County from all claims arising out of the performance of the work for which payment is being made through the Partial Settlements. MCM's other claims, including claims for delays and extra work, are still under review by MDAD, HNTB and Alpha, and are not addressed by the Partial Settlements.

Based on the foregoing, it is recommended that the Board ratify my actions in approving the partial settlement agreements with MCM as being in the best interest of the County.

 8/12/15
Assistant County Manager



MEMORANDUM

(Revised)

TO: Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners

DATE: September 8, 2005

FROM: Murray A. Greenberg
County Attorney

SUBJECT: Agenda Item No.

Please note any items checked.

- "4-Day Rule" ("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
- Bid waiver requiring County Manager's written recommendation
- Ordinance creating a new board requires detailed County Manager's report for public hearing
- Housekeeping item (no policy decision required)
- No committee review

Approved Mayor
Veto
Override

Agenda Item No.

RESOLUTION NO. _____

RESOLUTION RATIFYING APPROVAL OF PARTIAL SETTLEMENT AGREEMENTS WITH MAGNUM CONSTRUCTION MANAGEMENT CORPORATION FOR NORTH TERMINAL DEVELOPMENT PROJECTS 741A, 741E AND 737B AND AUTHORIZING COUNTY MANAGER TO EXECUTE SAME

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

WHEREAS, at the County Commission meeting of May 3, 2005 this Board authorized the County Manager to administer County business during the period of July 8, 2005 through August 22, 2005 [Agenda Item No. 12(A)(3)]; such action(s) taken to be in accordance with the policies and procedures established by the Board of County Commissioners and be submitted to the Board for approval at the County Commission meeting of September 8, 2005,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board hereby ratifies the County Manager's execution of the Partial Settlement Agreements with Magnum Construction Management Corp., for North Terminal Development Projects 741A, 741E and 737B, a copy of which is attached hereto and made a part hereof.

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

- | | |
|----------------------|-------------------------------|
| | Joe A. Martinez, Chairman |
| | Dennis C. Moss, Vice-Chairman |
| Bruno A. Barreiro | Dr. Barbara Carey-Shuler |
| Jose "Pepe" Diaz | Carlos A. Gimenez |
| Sally A. Heyman | Barbara J. Jordan |
| Dorin D. Rolle | Natacha Seijas |
| Katy Sorenson | Rebeca Sosa |
| Sen. Javier D. Souto | |

The Chairperson thereupon declared the resolution duly passed and adopted this ,
2005. This resolution shall become effective ten (10) days after the date of its adoption unless
vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

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

HARVEY RUVIN, CLERK

By: _____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.



Henry N. Gillman



**SUMMARY OF ALPHA CORPORATION'S FINDINGS AND
RECOMMENDATIONS RELATED TO MCM'S
TIA'S ON 741A, 741E AND 737B**

I. PROJECT 741A

A. Alpha found that all delay claimed by MCM was concurrent with other delay caused by MCM, so no additional time-related costs are recommended for payment by the County. Alpha also recommends that MCM's exposure to liquidated damages related to final completion in the amount of \$147,000 not be pursued in light of the late issuance of the Substantial Completion certificate by the Project Architect/Engineer, and the transaction costs and expenses of pursuing the issue.

B. According to the County's records, current retainage on MCM's contract is \$159,313.37, and additional amounts that MCM may be entitled to receive for direct cost claims exceed any amounts known to the County for incomplete punchlist work. That being the case, based on the payment issues before the County, there is a balance due to MCM on the project of approximately \$159,313.37.

II. PROJECT 741E (INCLUSIVE OF TALMAC'S STUCCO TIA)

A. Alpha found that MCM incurred 226 days of excusable, non-concurrent delay. At the stipulated LIC amount of \$1,200/day, such delay could result in an increase in the TAAT/MCM contract amount of \$271,200 assuming resolution in MCM's favor of issues relating to waiver, release, limitation of remedies, and other contractual issues. This amount is inclusive of all time-related costs sought by MCM and its stucco subcontractor, Talmac. However, Alpha did not find that the County is responsible for the delay experienced by MCM. Alpha does not recommend assessment of any liquidated damages against MCM in connection with this project.

B. According to the County's records, current retainage on MCM's contract is \$314,292.13, and additional amounts that MCM may be entitled to receive for direct and indirect cost claims exceed any amounts known to the County for incomplete punchlist work.¹ In light of the foregoing, the current amount recommended for payment to MCM based on issues before the County is \$314,292.13.

III. PROJECT 737B

A. Alpha found that MCM incurred 157 days of excusable, non-concurrent delay. At the stipulated amount of \$1,241/day, such delay could result in an increase in the TAAT/MCM contract amount of \$194,837 assuming resolution in MCM's favor of issues relating to waiver, release, limitation of remedies, and other contractual issues. However, Alpha did not find that the County is responsible for the delay experienced by MCM. Alpha also recommends that MCM's exposure to liquidated damages for final completion not exceed \$147,000, but that the County not

¹ It should also be noted that based on HNTB's records, approximately \$198,000 has been backcharged to MCM's contract to pay for replacement contractors. However, those records also reflect that a previous backcharge to MCM's contract in the amount of approximately \$242,000 related to the slab floor leveling issue incorrectly attributed to MCM by TAAT, which amount has not been reallocated back into MCM's contract balance to date by TAAT.



pursue any such assessment against MCM since the C-D Infill program was eventually shut down for an extended time for design revisions not attributable to MCM's work.

B. According to the County's records, current retainage on MCM's contract is \$333,224.32, and additional amounts that MCM may be entitled to receive for direct and indirect cost claims exceed any amounts known to the County for incomplete punchlist work. In light of the foregoing, the current amount recommended for payment to MCM based on issues before the County is \$333,224.32.

PROJECT	RETAINAGE	MCM TIA REQUEST	POTENTIAL CLAIM ADDS TO DATE	RECOMMENDED COUNTY PAYMENT
741A	\$ 159,313.37	\$ 2,215,641	\$ 105,717 ¹	\$ 159,313.37
741E	\$ 314,292.13	\$ 896,444	\$ 500,709 ²	\$ 314,292.13
737B	\$ 333,224.32	\$ 389,951	\$ 197,445 ³	\$ 333,224.32
TOTAL	\$ 806,829.82	\$ 3,502,036	\$ 803,871	\$806,829.82⁴

¹ This amount based on net add recommended by the independent claims consultant retained by American Airlines to hear and opine on disputed scope of work issues from both an entitlement and quantum standpoint, KJM & Associates ("KJM").

²Total includes \$217,200 of potential indirect time-related costs, all of which TAAT is responsible for causing MCM to incur, and a net add to MCM's contract in the amount of \$105,717 recommended by KJM.

³Includes \$194,837 of potential indirect time-related costs, of which TAAT is responsible for causing \$64,532 of total amount, and American Airlines is responsible for causing \$130,200 of total due to acts or omissions of its design and program management professionals. Also included is a net add to MCM's contract in the amount of \$105,717 recommended by KJM.

⁴HNTB and Alpha are comfortable with recommending the above payment in light of the fact that (a) the additional costs MCM may be entitled to receive in additional direct and indirect costs exceed the potential offsets for any punchlist work which may not have been completed to date; (b) the Certificates of Substantial Completion for Projects 741A and 741E were issued extremely late, and, consequently, create uncertainty regarding punchlist-related issues; (c) the C-D Infill program was eventually shut down due to design-related issues not attributable to MCM; and (d) the surety for MCM has agreed that any such payment made to MCM shall be without prejudice to the County's right to pursue any damages that MCM may have caused or otherwise be responsible for on each of the subject projects.

NOTE: The above is based solely on the information submitted to the County to date for review, and does not consider other disputed issues that may exist between or among MCM, TAAT and/or American Airlines that may have not be presented to the County.



ENGINEERS & GENERAL CONTRACTORS

cgc023834

August 4, 2005

Henry N. Gillman, Assistant County Attorney
Miami Dade County Attorney's Office

VIA COURIERED, FAXED & E-MAILED

Fax: (305) 876-7294

E-mail: HGillman@miami-airport.com

RE: 737B / 741A / 741E
Executed partial settlements with Consents of Surety

Dear Mr. Gillman:

Enclosed are the executed partial settlement agreement and consents of surety with appropriate exhibits which I believe meet all your requirements. If you have any questions, please let me know; if you don't get to this today, please address any questions with my assistant Yanay; as I will not be in town tomorrow; she will be able to get a hold of me or Alfred.

Thanks again for all your help.

Sincerely
MCM, Corp


Pedro Munilla

cc: F. Pereira
J. Cospier
J. de Armas
J. Munilla
E. Jaramillo

2005 AUG -5 AM 11:42

0201 SW 70th STREET • 2nd FLOOR • MIAMI, FLORIDA • 33143
PHONE 305.541.0000 • www.mcmcorp.com • FAX 305.541.9771

**AGREEMENT FOR PARTIAL SETTLEMENT, RELEASE AND
WAIVER OF CLAIMS BETWEEN MIAMI- DADE COUNTY AND MAGNUM
CONSTRUCTION MANAGEMENT CORP. IN CONNECTION WITH NORTH
TERMINAL DEVELOPMENT PROJECT 737B
MIAMI INTERNATIONAL AIRPORT**

This Agreement is entered into this 4 day of Aug, 2005 between Miami-Dade County, a political subdivision of the State of Florida ("County") and Magnum Construction Management Corp. ("MCM"), a Florida corporation.

WHEREAS, on June 21, 2005, the County and American Airlines ("American") entered into the Fourth Amendment to Lease, Construction and Financing Agreement ("Fourth Amendment") which provides for the County to take over and complete the North Terminal Development Project ("NTD Project"); and

WHEREAS, on June 21, 2005, the County and American entered into a Claims Administration Agreement ("Claims Agreement") which requires American to pay the County \$105 million and the County to make a good faith effort to analyze, review, process and pay claims asserted against American or the County to the extent the County reasonably allocates responsibility to American; and

WHEREAS, American and Turner Construction Corporation and Austin Commercial, Inc. d/b/a Turner Austin Airport Team ("TAAT") previously entered into a Construction Management At-Risk Agreement and a Construction Management Agreement to manage the construction work for the NTD Project; and

WHEREAS, pursuant to its agreement with American, TAAT contracted with MCM for work to be performed on Project 737B (C-D Infill Building Foundations & Construction Staging Platform – Contract No. M0737B-A60-10000-S), at Miami International Airport ("Project"); and

WHEREAS, several disputes have arisen between TAAT and MCM and its subcontractors, including disputes as to unilateral back charges and unprocessed change orders by TAAT and requests for equitable adjustments from MCM and its subcontractors, which disputes are currently being processed under the Claims Administration Agreement and or litigated under various cases filed in the Circuit Court of the 11th Judicial Circuit in and for Miami-Dade County, Florida; and

WHEREAS, MCM and its subcontractors and suppliers have asserted various claims against TAAT and American for work performed and materials delivered, including a certified claim for the partial release of the contract balance on the Project dated July 21, 2005 in the amount of \$333,224.32; and

WHEREAS, the County's Bond Engineer, HNTB, and the County's construction claims consultant, Alpha Corporation, recommend that the County pay MCM the amount of \$333,224.32; and

WHEREAS, the County and MCM are desirous of settling MCM's claim for partial release of the contract balance.

NOW, THEREFORE, for and in consideration of the mutual covenants and promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the County and MCM agree as follows:

1. Within 20 days from the effective date of this settlement agreement fully and properly executed by both parties, the County shall pay to MCM \$333,224.32.

2. Payment of said sum of \$333,224.32 shall constitute full accord and satisfaction of any and all claims by MCM or any of its subcontractors or material suppliers relating to that portion of the work performed on the Project for which \$333,224.32 of the contract balance was being held.

3. In consideration of the payment by County to MCM of the amount stated in Paragraph 1 above and the mutual covenants in this settlement agreement, MCM hereby releases the County and American and their respective officers, directors, parents, employees, agents, instrumentalities, subsidiaries and affiliates, successors and assigns (the "Released Parties") from and waives and relinquishes any and all claims, direct and indirect, interest, disputes or causes of action it has or may have, whether known or unknown, against the Released Parties relating to the \$333,224.32 payment of the contract balance.

4. MCM shall indemnify and hold harmless the Released Parties from any and all liability, losses or damages, including attorney's fees and costs of defense, which the County or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature by MCM's subcontractors or material suppliers that performed work on the Project for which the amount of the contract balance was being held. MCM shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the Released Parties, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon.

5. Subject to the County's reservation of rights expressed below which includes enforcement of MCM and its Surety's obligations under the Consent of Surety to Requisition Payment, a copy of which is attached hereto as Exhibit "A", the County releases and waives any claims it has against MCM relating to the partial release of the contract balance on the Project. However, such payment is made without prejudice to the County's rights as follows:

- (1) to obtain from MCM and its Surety payments or credits to the extent MCM is found liable for failing to timely and properly complete its work or for liquidated damages pursuant to the Contract Documents for having caused delays to the Projects; and
- (2) to require the repair or replacement of defective work under the warranty and guaranty provisions of the Contract Documents; as they may still be applicable; and
- (3) to require the repair or replacement of latent defects in the work to the extent provided by Florida law; and
- (4) to enforce those provisions of the Contract Documents which specifically provide that they survive the completion of the work.

6. Nothing herein shall imply that MCM releases its remaining claims for work performed and materials delivered for the improvements of the Project.

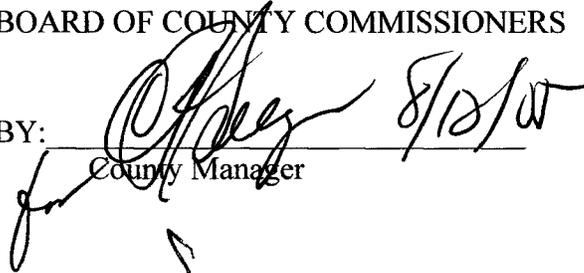
7. MCM acknowledges that it has read this Agreement, understands it, and has consulted with its attorney before executing this document.

8. The parties accept the terms of this Agreement, and have agreed to its terms solely for their own convenience, without admitting liability.

9. This settlement agreement, and each and every term and provision thereof, shall be subject to the express approval of the Board of County Commissioners. For all purposes in connection with the settlement agreement, the "Effective Date" of this settlement agreement shall be the day of which the last of the following events have occurred: (a) execution of this settlement agreement by all parties and, (b) approval of this settlement agreement by the Commission.

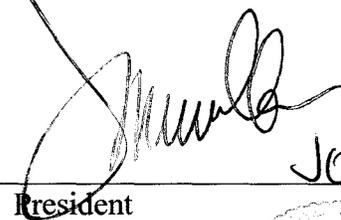
IN WITNESS WHEREOF, the parties by their duly authorized officials have executed this Agreement the day first above written.

MIAMI-DADE COUNTY
BOARD OF COUNTY COMMISSIONERS

BY: 
County Manager

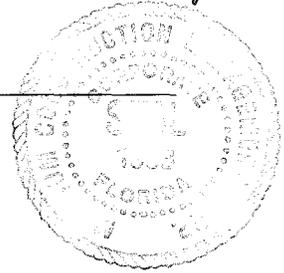
ATTEST:

Deputy Clerk

MCM CORP.
BY:  Jorge Munilla
Resident

Attest: _____
Secretary

SEAL



CONSENT OF SURETY COMPANY TO REQUISITION PAYMENT

PROJECT TITLE: C-D Infill Building Foundations & Construction Staging Platform
PROJECT LOCATION: Miami International Airport
TO: Miami Dade County

RE: CONSENT OF SURETY REQUIRED FOR RELEASE OF RETAINAGE

IN THE AMOUNT OF: \$333,224.32 Or any portion thereof (the "Payment")
CONTRACTOR: MCM CORP. CONTRACT No. M0737B-A60-1000-S

THE UNDERSIGNED SURETY COMPANY

TRAVELERS SURETY COMPANY
(INSTERT NAME OF SURETY COMPANY)

1500 Market Street, West Towe, Suite 2900, Philadelphia, PA 19102
(ADDRESS)

ON THE BOND OF THE CONTRACTOR LISTED ABOVE, Travelers Casualty and Surety Co. of American ("Surety") hereby approves of the Payment to the Contractor and without limitation agree that the Payment to the Contractor shall not relieve the Surety of any of its obligations to the Turner Austin Airport Team (TAAT), American Airlines and/or Miami Dade County (collectively the "Multiple Obligees") or other parties...

The Surety and MCM expressly agree that the Payment by any of the Multiple Obligees shall not relieve Surety nor MCM, from any obligations to the Obligees under the bond or under the above referenced contracts. In addition to such liability as is imposed under the terms of the bonds referenced above, the Surety and MCM hereby assume liability for and otherwise defend, indemnify and hold harmless the Multiple Obligees from and against and any and all damages for delay, claims, losses or expenses including, but not limited to, consequential damages, liquidated damages, legal costs and attorney's fees arising out of and/or resulting in any way from the making of the Payment if it is ultimately deteremined that MCM was not entitled to the Payment for any reason whatsoever...

This Consent of Surety expressly recognizes the following:

- 1. Claims have been made by various sub-contractors and/or materials suppliers against this Project and Contract, as more fully set forth in the attached exhibit identifying the pertinent Subcontractor(s)/ supplier(s), explaining the reasons why each has not been paid and or is unwilling to execute the affidavit of payment, and disclosing the respective amount of their claims. MCM's position on the subcontractors' claims is that these have not been liquidated nor paid to MCM and or are subject to setoffs and recoupments and to defenses from TAAT.
2. TAAT is asserting \$6,315,000.00 in damages against MCM for liquidated damages and for unsatisfactory prosecution of the work as described in TAAT's letter dated August 5, 2004. TAAT is also asserting numerous disputed unilateral Owner Change Order (OCOs) which are more fully referenced in the subject Application for Payment. MCM's position on the TAAT's claims is that the TAAT's claims lack total merit;
3. MCM is asserting various claims as more fully described in MCM's crossclaim and third party claim against TAAT and its sureties under various cases filed in the Circuit Court of Dade County, including Case No. 04-08822 CA 08.

THE SURETY CONSENTS AND APPROVES THE PAYMENT FOR THESE WITHOLDINGS FORTHWITH.
IN WITNESS THEREOF,

THE SURETY COMPANY HAS HEREUNTO SET ITS HAND THIS 3rd DAY OF August, 2005.

Travelers Casualty and Surety
Company of America
SURETY COMPANY

Jorge Munilla
MCM Corp.

ATTEST:
(SEAL) as per attached
Power of Attorney

Mary C. Aceves
SIGNATURE OF AUTHORIZED REPRESENTATIVE

SIGNATURE OF AUTHORIZED REPRESENTATIVE

(ATTACH SURETYS POWER OF ATTORNEY)

Mary C. Aceves, Attorney-in-Fact
President
TITLE

TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA
TRAVELERS CASUALTY AND SURETY COMPANY
FARMINGTON CASUALTY COMPANY
Hartford, Connecticut 06183-9062

POWER OF ATTORNEY AND CERTIFICATE OF AUTHORITY OF ATTORNEY(S)-IN-FACT

KNOW ALL PERSONS BY THESE PRESENTS, THAT TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA, TRAVELERS CASUALTY AND SURETY COMPANY and FARMINGTON CASUALTY COMPANY, corporations duly organized under the laws of the State of Connecticut, and having their principal offices in the City of Hartford, County of Hartford, State of Connecticut, (hereinafter the "Companies") hath made, constituted and appointed, and do by these presents make, constitute and appoint: **Charles D. Nielson, Charles J. Nielson, Laura Lee Clymer, Mary C. Aceves, Warren M. Alter, David R. Hoover, of Miami Lakes, Florida**, their true and lawful Attorney(s)-in-Fact, with full power and authority hereby conferred to sign, execute and acknowledge, at any place within the United States, the following instrument(s): by his/her sole signature and act, any and all bonds, recognizances, contracts of indemnity, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking and any and all consents incident thereto and to bind the Companies, thereby as fully and to the same extent as if the same were signed by the duly authorized officers of the Companies, and all the acts of said Attorney(s)-in-Fact, pursuant to the authority herein given, are hereby ratified and confirmed.

This appointment is made under and by authority of the following Standing Resolutions of said Companies, which Resolutions are now in full force and effect:

VOTED: That the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President, any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary may appoint Attorneys-in-Fact and Agents to act for and on behalf of the company and may give such appointee such authority as his or her certificate of authority may prescribe to sign with the Company's name and seal with the Company's seal bonds, recognizances, contracts of indemnity, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking, and any of said officers or the Board of Directors at any time may remove any such appointee and revoke the power given him or her.

VOTED: That the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President may delegate all or any part of the foregoing authority to one or more officers or employees of this Company, provided that each such delegation is in writing and a copy thereof is filed in the office of the Secretary.

VOTED: That any bond, recognizance, contract of indemnity, or writing obligatory in the nature of a bond, recognizance, or conditional undertaking shall be valid and binding upon the Company when (a) signed by the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary and duly attested and sealed with the Company's seal by a Secretary or Assistant Secretary, or (b) duly executed (under seal, if required) by one or more Attorneys-in-Fact and Agents pursuant to the power prescribed in his or her certificate or their certificates of authority or by one or more Company officers pursuant to a written delegation of authority.

This Power of Attorney and Certificate of Authority is signed and sealed by facsimile (mechanical or printed) under and by authority of the following Standing Resolution voted by the Boards of Directors of TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA, TRAVELERS CASUALTY AND SURETY COMPANY and FARMINGTON CASUALTY COMPANY, which Resolution is now in full force and effect:

VOTED: That the signature of each of the following officers: President, any Executive Vice President, any Senior Vice President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Secretary, and the seal of the Company may be affixed by facsimile to any power of attorney or to any certificate relating thereto appointing Resident Vice Presidents, Resident Assistant Secretaries or Attorneys-in-Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and any such power of attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding upon the Company in the future with respect to any bond or undertaking to which it is attached.

IN WITNESS WHEREOF, TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA, TRAVELERS CASUALTY AND SURETY COMPANY and FARMINGTON CASUALTY COMPANY have caused this instrument to be signed by their Senior Vice President and their corporate seals to be hereto affixed this 12th day of July, 2004.

STATE OF CONNECTICUT

}SS. Hartford

COUNTY OF HARTFORD

TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA
TRAVELERS CASUALTY AND SURETY COMPANY
FARMINGTON CASUALTY COMPANY



By *George W. Thompson*
George W. Thompson
Senior Vice President

On this 12th day of July, 2004 before me personally came GEORGE W. THOMPSON to me known, who, being by me duly sworn, did depose and say: that he/she is Senior Vice President of TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA, TRAVELERS CASUALTY AND SURETY COMPANY and FARMINGTON CASUALTY COMPANY, the corporations described in and which executed the above instrument; that he/she knows the seals of said corporations; that the seals affixed to the said instrument are such corporate seals; and that he/she executed the said instrument on behalf of the corporations by authority of his/her office under the Standing Resolutions thereof.



Marie C Tetreault
My commission expires June 30, 2006 Notary Public
Marie C. Tetreault

CERTIFICATE

I, the undersigned, Senior Vice President of TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA, TRAVELERS CASUALTY AND SURETY COMPANY and FARMINGTON CASUALTY COMPANY, stock corporations of the State of Connecticut, DO HEREBY CERTIFY that the foregoing and attached Power of Attorney and Certificate of Authority remains in full force and has not been revoked; and furthermore, that the Standing Resolutions of the Boards of Directors, as set forth in the Certificate of Authority, are now in force.

Signed and Sealed at the Home Office of the Company, in the City of Hartford, State of Connecticut. Dated this 3rd day of August, 2005.



By *Peter Schwartz*
Peter Schwartz
Senior Vice President

Exhibit to Consent of Surety for Project 737B dated August 3rd, 2005

<u>Sub/supplier making claim</u>	<u>Amt of claim</u>	<u>Reason why it has not been paid</u>
<u>737B Claims under base contract</u>		
CCSI	\$44,220.45	MCM supports the payment of the sum \$44,220.45; but only if provided a consent of surety that guarantees that if the sum is paid, and it is later determined that the payment should not have been paid, for any reason whatsoever (including for the event MCM is held liable on the case for damages related to 3C / CCSI labor dispute currently in litigation), MCM will be made whole inclusive of interest and atty fees.; the balance of the claim is in dispute.
Langer Electric	\$99,727.73	MCM supports the payment of the sum \$ 99,727.73; but only if provided a consent of surety that guarantees if the sum is paid, and it is later determined that the payment should not have been paid, for any reason whatsoever (including for delay damages and or back charges resulting from MCM and or TAAT hiring other electrical contractors to perform work allegedly within the scope of Langer's contract.
<u>737B Claims outside of base contract</u>		
FCB	\$ 51,179.74	The claim has not been liquidated nor paid to MCM and or is (or portions thereof) are not supported and or is subject to setoffs and recoupments from MCM and to defenses from TAAT
CCSI	716,219.19	The claim has not been liquidated nor paid to MCM and or is (or portions thereof) are not supported and or is subject to setoffs and recoupments from MCM and to defenses from TAAT
FMI	\$151,174.00	The claim has not been liquidated nor paid to MCM and or is (or portions thereof) are not supported and or is subject to setoffs and recoupments from MCM and to defenses from TAAT
LANGER	\$ 64,563.00	The claim has not been liquidated nor paid to MCM and or is (or portions thereof) are not supported and or is subject to setoffs and recoupments from MCM and to defenses from TAAT

**AGREEMENT FOR PARTIAL SETTLEMENT, RELEASE AND
WAIVER OF CLAIMS BETWEEN MIAMI- DADE COUNTY AND MAGNUM
CONSTRUCTION MANAGEMENT CORP. IN CONNECTION WITH NORTH
TERMINAL DEVELOPMENT PROJECT 741A
MIAMI INTERNATIONAL AIRPORT**

This Agreement is entered into this 4 day of Aug., 2005 between Miami-Dade County, a political subdivision of the State of Florida ("County") and Magnum Construction Management Corp. ("MCM"), a Florida corporation.

WHEREAS, on June 21, 2005, the County and American Airlines ("American") entered into the Fourth Amendment to Lease, Construction and Financing Agreement ("Fourth Amendment") which provides for the County to take over and complete the North Terminal Development Project ("NTD Project"); and

WHEREAS, on June 21, 2005, the County and American entered into a Claims Administration Agreement ("Claims Agreement") which requires American to pay the County \$105 million and the County to make a good faith effort to analyze, review, process and pay claims asserted against American or the County to the extent the County reasonably allocates responsibility to American; and

WHEREAS, American and Turner Construction Corporation and Austin Commercial, Inc. d/b/a Turner Austin Airport Team ("TAAT") previously entered into a Construction Management At-Risk Agreement and a Construction Management Agreement to manage the construction work for the NTD Project; and

WHEREAS, pursuant to its agreement with American, TAAT contracted with MCM for work to be performed on Project 741A (D Extension Shell Concrete Procurement Package – Contract No. M1741A-A60-1000-S), at Miami International Airport ("Project"); and

WHEREAS, several disputes have arisen between TAAT and MCM and its subs, including disputes as to unilateral back charges and unprocessed change orders by TAAT and requests for equitable adjustments from MCM and its subs, which disputes are currently being processed under the Claims Administration Agreement and or litigated under various cases filed in the Circuit Court of the 11th Judicial Circuit in and for Miami-Dade County, Florida; and

WHEREAS, MCM and its subcontractors and suppliers have asserted and certified various claims against TAAT and American for work performed and materials delivered, including a certified claim for partial release of the contract balance on the Project dated July 21, 2005 in the amount of \$159,313.37; and

WHEREAS, the County's Bond Engineer, HNTB, and the County's construction claims consultant, Alpha Corporation, recommend that the County pay MCM the amount of \$159,313.37; and

WHEREAS, the County and MCM are desirous of settling MCM's claim for partial release of the contract balance.

NOW, THEREFORE, for and in consideration of the mutual covenants and promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the County and MCM agree as follows:

1. Within 20 days from the effective date of this settlement agreement fully and properly executed by both parties, the County shall pay to MCM \$159,313.37.

2. Payment of said sum of \$159,313.37 shall constitute full accord and satisfaction of any and all claims by MCM or any of its subcontractors or material suppliers relating to work performed on the Project for which \$159,313.37 of the contract balance was being held.

3. In consideration of the payment by County to MCM of the amount stated in Paragraph 1 above and the mutual covenants in this settlement agreement, MCM hereby releases the County and American Airlines and their respective officers, directors, parents, employees, agents, instrumentalities, subsidiaries and affiliates, successors and assigns (the "Released Parties") from and waives and relinquishes any and all claims, direct and indirect, interest, disputes or causes of action it has or may have, whether known or unknown, against the Released Parties relating to the \$159,313.37 payment of the contract balance.

4. MCM shall indemnify and hold harmless the Released Parties from any and all liability, losses or damages, including attorney's fees and costs of defense, which the Released Parties may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature by MCM's subcontractors or material suppliers that performed work on the Project for which the amount of the contract balance was being held. MCM shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the Released Parties, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon.

5. Subject to the County's reservation of rights expressed below which includes enforcement of MCM and its Surety's obligations under the Consent of Surety to Requisition Payment, a copy of which is attached hereto as Exhibit "A", the County releases and waives any claims it has against MCM relating to the partial release of the contract balance on the Project. However, such payment is made without prejudice to the County's rights as follows:

- (1) to obtain from MCM and its Surety payments or credits to the extent MCM is found liable for failing to timely and properly complete its work or for liquidated damages pursuant to the Contract Documents for having caused delays to the Project; and
- (2) to require the repair or replacement of defective work under the warranty and guaranty provisions of the Contract Documents as they may still be applicable; and
- (3) to require the repair or replacement of latent defects in the work to the extent provided by Florida law; and
- (4) to enforce those provisions of the Contract Documents which specifically provide that they survive the completion of the work.

6. Nothing herein shall imply that MCM releases its remaining claims for work performed and materials delivered for the improvements of the Project.

7. MCM acknowledges that it has read this Agreement, understands it, and has consulted with its attorney before executing this document.

8. The parties accept the terms of this Agreement, and have agreed to its terms solely for their own convenience, without admitting liability.

9. This settlement agreement, and each and every term and provision thereof, shall be subject to the express approval of the Board of County Commissioners. For all purposes in connection with the settlement agreement, the "Effective Date" of this settlement agreement shall be the day of which the last of the following events have occurred: (a) execution of this settlement agreement by all parties and, (b) approval of this settlement agreement by the Commission.

IN WITNESS WHEREOF, the parties by their duly authorized officials have executed this Agreement the day first above written.

MIAMI-DADE COUNTY
BOARD OF COUNTY COMMISSIONERS

BY: [Signature] 8/18/05
County Manager

ATTEST:

Deputy Clerk

MCM CORP.
BY: [Signature] Jorge Munilla
President

Attest: _____
Secretary

SEAL



CONSENT OF SURETY COMPANY TO REQUISITION PAYMENT

PROJECT TITLE: D Extension Shell Concrete Procurement Package
PROJECT LOCATION: Airside @ MIA
TO: Miami Dade County

RE: CONSENT OF SURETY REQUIRED FOR RELEASE OF RETAINAGE

IN THE AMOUNT OF: \$159,313.37 Or any portion thereof (the "Payment")
CONTRACTOR: MCM CORP. CONTRACT No. M1741A-A60-1000-S

THE UNDERSIGNED SURETY COMPANY TRAVELERS SURETY COMPANY
(INSERT NAME OF SURETY COMPANY)
1500 Market Street, West Towe, Suite 2900, Philadelphia, PA 19102
(ADDRESS)

ON THE BOND OF THE CONTRACTOR LISTED ABOVE, Travelers Casualty and Surety Co. of American ("Surety") hereby approves of the Payment to the Contractor and without limitation agree that the Payment to the Contractor shall not relieve the Surety of any of its obligations to the Turner Austin Airport Team (TAAT), American Airlines and/or Miami Dade County (collectively the "Multiple Obligees") or other parties, including the security from any and all liens, claims or demands whatsoever that may now exist or be made in the future by any sub-contractor, material supplier or any other entity related to the above referenced contracts against the Multiple Obligees and or by and of the Multiple Obligees against the Contractor or the Surety for losses, damages, damages for delay (including liquidated damages), expenses, legal costs and attorneys fees resulting from such Payment.

The Surety and MCM expressly agree that the Payment by any of the Multiple Obligees shall not relieve Surety nor MCM, from any obligations to the Obligees under the bond or under the above referenced contracts. In addition to such liability as is imposed under the terms of the bonds referenced above, the Surety and MCM hereby assume liability for and otherwise defend, indemnify and hold harmless the Multiple Obligees from and against and any and all damages for delay, claims, losses or expenses including, but not limited to, consequential damages, liquidated damages, legal costs and attorney's fees arising out of and/or resulting in any way from the making of the Payment if it is ultimately determined that MCM was not entitled to the Payment for any reason whatsoever, including (a) because of the failure of MCM to timely and properly complete it work or otherwise comply with its obligations under the above referenced contracts; or (b) because MCM is found liable for liquidated damages pursuant to its contracts for having caused delays to the projects.

This Consent of Surety expressly recognizes the following:

- 1. Claims have been made by various sub-contractors and/or materials suppliers against this Project and Contract, as more fully set forth in the attached exhibit identifying the pertinent Subcontractor(s)/ supplier(s), explaining the reasons why each has not been paid and or is unwilling to execute the affidavit of payment, and disclosing the respective amount of their claims. MCM's position on the subcontractors' claims is that these have not been liquidated nor paid to MCM and or are subject to setoffs and recoupments and to defenses from TAAT.
2. TAAT is asserting \$2,003,750.00 in damages against MCM for liquidated damages and for unsatisfactory prosecution of the work as described in TAAT's letter dated August 5, 2004. TAAT is also asserting numerous disputed unilateral Owner Change Orders (OCO) which are more fully referenced in the subject Application for Payment. MCM's position on the TAAT's claims is that the TAAT's claims lack total merit.
3. MCM is asserting various claims as more fully described in MCM's crossclaim and third party claim against TAAT and its sureties under various cases filed in the Circuit Court of Dade County, including Case No. 04-23106 CA 22

THE SURETY CONSENTS AND APPROVES THE PAYMENT FOR THESE WITHHOLDINGS FORTHWITH.

IN WITNESS THEREOF,

THE SURETY COMPANY HAS HEREUNTO SET ITS HAND THIS 3rd DAY OF August, 2005.

Travelers Casualty and Surety Company of America
SURETY COMPANY

Jorge Munilla
MCM CORP.
SIGNATURE OF AUTHORIZED REPRESENTATIVE

ATTEST: as per attached Power of Attorney
(ATTAACH SURETYS POWER OF ATTORNEY)

Mary C. Aceves
SIGNATURE OF AUTHORIZED REPRESENTATIVE
Mary C. Aceves, Attorney-in-Fact
TITLE

President
TITLE

**TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA
TRAVELERS CASUALTY AND SURETY COMPANY
FARMINGTON CASUALTY COMPANY
Hartford, Connecticut 06183-9062**

POWER OF ATTORNEY AND CERTIFICATE OF AUTHORITY OF ATTORNEY(S)-IN-FACT

KNOW ALL PERSONS BY THESE PRESENTS, THAT TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA, TRAVELERS CASUALTY AND SURETY COMPANY and FARMINGTON CASUALTY COMPANY, corporations duly organized under the laws of the State of Connecticut, and having their principal offices in the City of Hartford, County of Hartford, State of Connecticut, (hereinafter the "Companies") hath made, constituted and appointed, and do by these presents make, constitute and appoint: Charles D. Nielson, Charles J. Nielson, Laura Lee Clymer, Mary C. Aceves, Warren M. Alter, David R. Hoover, of Miami Lakes, Florida, their true and lawful Attorney(s)-in-Fact, with full power and authority hereby conferred to sign, execute and acknowledge, at any place within the United States, the following instrument(s): by his/her sole signature and act, any and all bonds, recognizances, contracts of indemnity, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking and any and all consents incident thereto and to bind the Companies, thereby as fully and to the same extent as if the same were signed by the duly authorized officers of the Companies, and all the acts of said Attorney(s)-in-Fact, pursuant to the authority herein given, are hereby ratified and confirmed.

This appointment is made under and by authority of the following Standing Resolutions of said Companies, which Resolutions are now in full force and effect:

VOTED: That the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President, any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary may appoint Attorneys-in-Fact and Agents to act for and on behalf of the company and may give such appointee such authority as his or her certificate of authority may prescribe to sign with the Company's name and seal with the Company's seal bonds, recognizances, contracts of indemnity, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking, and any of said officers or the Board of Directors at any time may remove any such appointee and revoke the power given him or her.

VOTED: That the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President may delegate all or any part of the foregoing authority to one or more officers or employees of this Company, provided that each such delegation is in writing and a copy thereof is filed in the office of the Secretary.

VOTED: That any bond, recognizance, contract of indemnity, or writing obligatory in the nature of a bond, recognizance, or conditional undertaking shall be valid and binding upon the Company when (a) signed by the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary and duly attested and sealed with the Company's seal by a Secretary or Assistant Secretary, or (b) duly executed (under seal, if required) by one or more Attorneys-in-Fact and Agents pursuant to the power prescribed in his or her certificate or their certificates of authority or by one or more Company officers pursuant to a written delegation of authority.

This Power of Attorney and Certificate of Authority is signed and sealed by facsimile (mechanical or printed) under and by authority of the following Standing Resolution voted by the Boards of Directors of TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA, TRAVELERS CASUALTY AND SURETY COMPANY and FARMINGTON CASUALTY COMPANY, which Resolution is now in full force and effect:

VOTED: That the signature of each of the following officers: President, any Executive Vice President, any Senior Vice President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Secretary, and the seal of the Company may be affixed by facsimile to any power of attorney or to any certificate relating thereto appointing Resident Vice Presidents, Resident Assistant Secretaries or Attorneys-in-Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and any such power of attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding upon the Company in the future with respect to any bond or undertaking to which it is attached.

20

IN WITNESS WHEREOF, TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA, TRAVELERS CASUALTY AND SURETY COMPANY and FARMINGTON CASUALTY COMPANY have caused this instrument to be signed by their Senior Vice President and their corporate seals to be hereto affixed this 12th day of July, 2004.

STATE OF CONNECTICUT

}SS. Hartford

COUNTY OF HARTFORD

TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA
TRAVELERS CASUALTY AND SURETY COMPANY
FARMINGTON CASUALTY COMPANY



By *George W. Thompson*
George W. Thompson
Senior Vice President

On this 12th day of July, 2004 before me personally came **GEORGE W. THOMPSON** to me known, who, being by me duly sworn, did depose and say: that he/she is Senior Vice President of **TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA, TRAVELERS CASUALTY AND SURETY COMPANY and FARMINGTON CASUALTY COMPANY**, the corporations described in and which executed the above instrument; that he/she knows the seals of said corporations; that the seals affixed to the said instrument are such corporate seals; and that he/she executed the said instrument on behalf of the corporations by authority of his/her office under the Standing Resolutions thereof.



Marie C Tetreault
My commission expires June 30, 2006 Notary Public
Marie C. Tetreault

CERTIFICATE

I, the undersigned, Senior Vice President of **TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA, TRAVELERS CASUALTY AND SURETY COMPANY and FARMINGTON CASUALTY COMPANY**, stock corporations of the State of Connecticut, DO HEREBY CERTIFY that the foregoing and attached Power of Attorney and Certificate of Authority remains in full force and has not been revoked; and furthermore, that the Standing Resolutions of the Boards of Directors, as set forth in the Certificate of Authority, are now in force.

Signed and Sealed at the Home Office of the Company, in the City of Hartford, State of Connecticut. Dated this 3rd day of August, 2005.



By *Peter Schwartz*
Peter Schwartz
Senior Vice President

21

Exhibit to Consent of Surety for Project 741A dated August 3rd, 2005

<u>741A Claims under base contract</u>		
<u>Sub/supplier making claim</u>	<u>Amt of claim</u>	<u>Reason why it has not been paid</u>
3C Construction	\$369,027.24	MCM supports the payment of the sum \$305,908.98; the payment would be made only if MCM is provided a consent of surety that guarantees if the sum is paid, and it is later determined that the payment should not have been paid, for any reason whatsoever (including for the event MCM is held liable on the case for damages related to 3C / CCSI labor dispute currently in litigation), MCM will be made whole inclusive of interest and atty fees.; the balance of the claim is in dispute.
<u>741A Claims outside of base contract</u>		
<u>Sub/supplier making claim</u>	<u>Amt of claim</u>	<u>Reason why it has not been paid</u>
3C	\$3,869,444.06	The claim has not been liquidated nor paid to MCM and or is (or portions thereof) are not supported and or is subject to setoffs and recoupments from MCM and to defenses from TAAT
SFAB	\$779,328.73	The claim has not been liquidated nor paid to MCM and or is (or portions thereof) are not supported and or is subject to setoffs and recoupments from MCM and to defenses from TAAT
CuVen	\$424,766.99	The claim has not been liquidated nor paid to MCM and or is (or portions thereof) are not supported and or is subject to setoffs and recoupments from MCM and to defenses from TAAT

CONSENT OF SURETY COMPANY TO REQUISITION PAYMENT

PROJECT TITLE: D Extension MEP & Remaining Shell
PROJECT LOCATION: North Terminal Program, Miami International Airport
TO: Miami Dade County

RE: CONSENT OF SURETY REQUIRED FOR RELEASE OF RETAINAGE

IN THE AMOUNT OF: \$314,292.13 Or any portion thereof (the "Payment")
CONTRACTOR: MCM CORP. CONTRACT No. M1741E-A09-1000-S

THE UNDERSIGNED SURETY COMPANY TRAVELERS SURETY COMPANY
(INSTERT NAME OF SURETY COMPANY)
1500 Market Street, West Towe, Suite 2900, Philadelphia, PA 19102
(ADDRESS)

ON THE BOND OF THE CONTRACTOR LISTED ABOVE, Travelers Casualty and Surety Co. of American ("Surety") hereby approves of the Payment to the Contractor and without limitation agree that the Payment to the Contractor shall not relieve the Surety of any of its obligations to the Turner Austin Airport Team (TAAT), American Airlines and/or Miami Dade County (collectively the "Multiple Obligees") or other parties, including the security from any and all liens, claims or demands whatsoever that may now exist or be made in the future by any sub-contractor, material supplier or any other entity related to the above referenced contracts against the Multiple Obligees and or by and of the Multiple Obligees against the Contractor or the Surety for losses, damages, damages for delay (including liquidated damages), expenses, legal costs and attorneys fees resulting from such Payment.

The Surety and MCM expressly agree that the Payment by any of the Multiple Obligees shall not relieve Surety nor MCM, from any obligations to the Obligees under the bond or under the above referenced contracts. In addition to such liability as is imposed under the terms of the bonds referenced above, the Surety and MCM hereby assume liability for and otherwise defend, indemnify and hold harmless the Multiple Obligees from and against and any and all damages for delay, claims, losses or expenses including, but not limited to, consequential damages, liquidated damages, legal costs and attorney's fees arising out of and/or resulting in any way from the making of the Payment if it is ultimately deteremined that MCM was not entitled to the Payment for any reason whatsoever, including (a) because of the failure of MCM to timely and properly complete it work or otherwise comply with its obligations under the above referenced contracts; or (b) because MCM is found liable for liquidated damages pursuant to its contracts for having caused delays to the projects.

This Consent of Surety expressly recognizes the following:

- 1. Claims have been made by various sub-contractors and/or materials suppliers against this Project and Contract, as more fully set forth in the attached exhibit identifying the pertinent Subcontractor(s)/ supplier(s), explaining the reasons why each has not been paid and or is unwilling to execute the affidavit of payment, and disclosing the respective amount of their claims. MCM's position on the subcontractors' claims is that these have not been liquidated nor paid to MCM and or are subject to setoffs and recoupmets and to defenses from TAAT.
2. TAAT is asserting \$4,365,000.00 in damages against MCM for liquidated damages and for unsatisfactory prosecution of the work as described in TAAT's letter dated August 5, 2004. TAAT is also asserting numerous disputed unilateral Owner Change Order (OCOs) which are more fully referenced in the subject Application for Payment. MCM's position on the TAAT's claims is that the TAAT's claims lack total merit;
3. MCM is asserting various claims as more fully described in MCM's crossclaim and third party claim against TAAT and its sureties under various cases filed in the Circuit Court of Dade County, including Case No. 04-08822 CA 08.

THE SURETY CONSENTS AND APPROVES THE PAYMENT FOR THESE WITHOLDINGS FORTHWITH.

IN WITNESS THEREOF,

THE SURETY COMPANY HAS HEREUNTO SET ITS HAND THIS 3rd DAY OF August, 2005.

Travelers Casualty and Surety
Company of America
SURETY COMPANY

Jorge Munilla
MCM

ATTEST:
(SEAL) as per attached
Power of Attorney

Mary C. Aceves
SIGNATURE OF AUTHORIZED REPRESENTATIVE

Jorge Munilla
SIGNATURE OF AUTHORIZED REPRESENTATIVE

(ATTACH SURETYS POWER OF ATTORNEY)

Mary C. Aceves, Attorney-in-Fact President
TITLE

**AGREEMENT FOR PARTIAL SETTLEMENT, RELEASE AND
WAIVER OF CLAIMS BETWEEN MIAMI- DADE COUNTY AND MAGNUM
CONSTRUCTION MANAGEMENT CORP. IN CONNECTION WITH NORTH
TERMINAL DEVELOPMENT PROJECT 741E
MIAMI INTERNATIONAL AIRPORT**

This Agreement is entered into this 4 day of Aug., 2005 between Miami-Dade County, a political subdivision of the State of Florida ("County") and Magnum Construction Management Corp. ("MCM"), a Florida corporation.

WHEREAS, on June 21, 2005, the County and American Airlines ("American") entered into the Fourth Amendment to Lease, Construction and Financing Agreement ("Fourth Amendment") which provides for the County to take over and complete the North Terminal Development Project ("NTD Project"); and

WHEREAS, on June 21, 2005, the County and American entered into a Claims Administration Agreement ("Claims Agreement") which requires American to pay the County \$105 million and the County to make a good faith effort to analyze, review, process and pay claims asserted against American or the County to the extent the County reasonably allocates responsibility to American; and

WHEREAS, American and Turner Construction Corporation and Austin Commercial, Inc. d/b/a Turner Austin Airport Team ("TAAT") previously entered into a Construction Management At-Risk Agreement and a Construction Management Agreement to manage the construction work for the NTD Project; and

WHEREAS, pursuant to its agreement with American, TAAT contracted with MCM for work to be performed on Project 741E (D Extension MEP & Remaining Shell – Contract No. M1741E-A09-1000-S), at Miami International Airport ("Project"); and

WHEREAS, several disputes have arisen between TAAT and MCM and its subcontractors, including disputes as to unilateral back charges and unprocessed change orders by TAAT and requests for equitable adjustments from MCM and its subcontractors, which disputes are currently being processed under the Claims Administration Agreement and or litigated under various cases filed in the Circuit Court of the 11th Judicial Circuit in and for Miami-Dade County, Florida; and

WHEREAS, MCM and its subcontractors and suppliers have asserted various claims against TAAT and American for work performed and materials delivered, including a certified claim for partial release of the contract balance on the Project dated July 21, 2005 in the amount of \$314,292.13; and

WHEREAS, the County's Bond Engineer, HNTB, and the County's construction claims consultant, Alpha Corporation, recommend that the County pay MCM the amount of \$314,292.13; and

WHEREAS, the County and MCM are desirous of settling MCM's claim for partial release of the contract balance.

NOW, THEREFORE, for and in consideration of the mutual covenants and promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the County and MCM agree as follows:

1. Within 20 days from the effective date of this settlement agreement fully and properly executed by both parties, the County shall pay to MCM \$314,292.13.

2. Payment of said sum of \$314,292.13 shall constitute full accord and satisfaction of any and all claims by MCM or any of its subcontractors or material suppliers relating to that portion of the work performed on the Project for which \$314,292.13 of the contract balance was being held.

3. In consideration of the payment by County to MCM of the amount stated in Paragraph 1 above and the mutual covenants in this settlement agreement, MCM hereby releases the County, and American and their respective officers, directors, parents, employees, agents and instrumentalities, subsidiaries and assigns (the "Released Parties") from and waives and relinquishes any and all claims, direct and indirect, interest, disputes or causes of action it has or may have, whether known or unknown, against the Released Parties relating to the \$314,292.13 payment of the contract balance.

4. MCM shall indemnify and hold harmless the Released Parties from any and all liability, losses or damages, including attorney's fees and costs of defense, which the County or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature by MCM's subcontractors or material suppliers that performed work on the Project for which the amount of the contract balance was being held. MCM shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the Released Parties, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon.

5. Subject to the County's reservation of rights expressed below which includes enforcement of MCM and its Surety's obligations under the Consent of Surety to Requisition Payment, a copy of which is attached hereto as Exhibit "A", the County releases and waives any claims it has against MCM relating to the partial release of the contract balance on the Project. However, such payment is made without prejudice to the County's rights as follows:

- (1) to obtain from MCM and its Surety payments or credits to the extent MCM is found liable for failing to timely and properly complete its work or for liquidated damages pursuant to the Contract Documents for having caused delays to the Projects; and
- (2) to require the repair or replacement of defective work under the warranty and guaranty provisions of the Contract Documents; as they may still be applicable; and
- (3) to require the repair or replacement of latent defects in the work to the extent provided by Florida law; and
- (4) to enforce those provisions of the Contract Documents which specifically provide that they survive the completion of the work.

6. Nothing herein shall imply that MCM releases its remaining claims for work performed and materials delivered for the improvements of the project.

7. MCM acknowledges that it has read this Agreement, understands it, and has consulted with its attorney before executing this document.

8. The parties accept the terms of this Agreement, and have agreed to its terms solely for their own convenience, without admitting liability.

9. This settlement agreement, and each and every term and provision thereof, shall be subject to the express approval of the Board of County Commissioners. For all purposes in connection with the settlement agreement, the "Effective Date" of this settlement agreement shall be the day of which the last of the following events have occurred: (a) execution of this settlement agreement by all parties and, (b) approval of this settlement agreement by the Commission.

IN WITNESS WHEREOF, the parties by their duly authorized officials have executed this Agreement the day first above written.

MIAMI-DADE COUNTY
BOARD OF COUNTY COMMISSIONERS

BY: _____

County Manager

[Handwritten Signature] 8/10/05

ATTEST:

Deputy Clerk

MCM CORP.

BY: _____

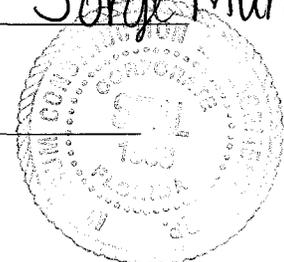
President

Attest: _____

Secretary

[Handwritten Signature]

Jorge Munilla



SEAL

**TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA
TRAVELERS CASUALTY AND SURETY COMPANY
FARMINGTON CASUALTY COMPANY
Hartford, Connecticut 06183-9062**

POWER OF ATTORNEY AND CERTIFICATE OF AUTHORITY OF ATTORNEY(S)-IN-FACT

KNOW ALL PERSONS BY THESE PRESENTS, THAT TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA, TRAVELERS CASUALTY AND SURETY COMPANY and FARMINGTON CASUALTY COMPANY, corporations duly organized under the laws of the State of Connecticut, and having their principal offices in the City of Hartford, County of Hartford, State of Connecticut, (hereinafter the "Companies") hath made, constituted and appointed, and do by these presents make, constitute and appoint: Charles D. Nielson, Charles J. Nielson, Laura Lee Clymer, Mary C. Aceves, Warren M. Alter, David R. Hoover, of Miami Lakes, Florida, their true and lawful Attorney(s)-in-Fact, with full power and authority hereby conferred to sign, execute and acknowledge, at any place within the United States, the following instrument(s): by his/her sole signature and act, any and all bonds, recognizances, contracts of indemnity, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking and any and all consents incident thereto and to bind the Companies, thereby as fully and to the same extent as if the same were signed by the duly authorized officers of the Companies, and all the acts of said Attorney(s)-in-Fact, pursuant to the authority herein given, are hereby ratified and confirmed.

This appointment is made under and by authority of the following Standing Resolutions of said Companies, which Resolutions are now in full force and effect:

VOTED: That the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President, any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary may appoint Attorneys-in-Fact and Agents to act for and on behalf of the company and may give such appointee such authority as his or her certificate of authority may prescribe to sign with the Company's name and seal with the Company's seal bonds, recognizances, contracts of indemnity, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking, and any of said officers or the Board of Directors at any time may remove any such appointee and revoke the power given him or her.

VOTED: That the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President may delegate all or any part of the foregoing authority to one or more officers or employees of this Company, provided that each such delegation is in writing and a copy thereof is filed in the office of the Secretary.

VOTED: That any bond, recognizance, contract of indemnity, or writing obligatory in the nature of a bond, recognizance, or conditional undertaking shall be valid and binding upon the Company when (a) signed by the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary and duly attested and sealed with the Company's seal by a Secretary or Assistant Secretary, or (b) duly executed (under seal, if required) by one or more Attorneys-in-Fact and Agents pursuant to the power prescribed in his or her certificate or their certificates of authority or by one or more Company officers pursuant to a written delegation of authority.

This Power of Attorney and Certificate of Authority is signed and sealed by facsimile (mechanical or printed) under and by authority of the following Standing Resolution voted by the Boards of Directors of TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA, TRAVELERS CASUALTY AND SURETY COMPANY and FARMINGTON CASUALTY COMPANY, which Resolution is now in full force and effect:

VOTED: That the signature of each of the following officers: President, any Executive Vice President, any Senior Vice President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Secretary, and the seal of the Company may be affixed by facsimile to any power of attorney or to any certificate relating thereto appointing Resident Vice Presidents, Resident Assistant Secretaries or Attorneys-in-Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and any such power of attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding upon the Company in the future with respect to any bond or undertaking to which it is attached.

IN WITNESS WHEREOF, TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA, TRAVELERS CASUALTY AND SURETY COMPANY and FARMINGTON CASUALTY COMPANY have caused this instrument to be signed by their Senior Vice President and their corporate seals to be hereto affixed this 12th day of July, 2004.

STATE OF CONNECTICUT

}SS. Hartford

COUNTY OF HARTFORD

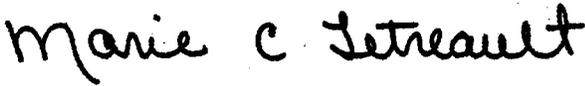
TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA
TRAVELERS CASUALTY AND SURETY COMPANY
FARMINGTON CASUALTY COMPANY



By 
George W. Thompson
Senior Vice President

On this 12th day of July, 2004 before me personally came **GEORGE W. THOMPSON** to me known, who, being by me duly sworn, did depose and say: that he/she is Senior Vice President of **TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA, TRAVELERS CASUALTY AND SURETY COMPANY and FARMINGTON CASUALTY COMPANY**, the corporations described in and which executed the above instrument; that he/she knows the seals of said corporations; that the seals affixed to the said instrument are such corporate seals; and that he/she executed the said instrument on behalf of the corporations by authority of his/her office under the Standing Resolutions thereof.




My commission expires June 30, 2006 Notary Public
Marie C. Tetreault

CERTIFICATE

I, the undersigned, Senior Vice President of **TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA, TRAVELERS CASUALTY AND SURETY COMPANY and FARMINGTON CASUALTY COMPANY**, stock corporations of the State of Connecticut, DO HEREBY CERTIFY that the foregoing and attached Power of Attorney and Certificate of Authority remains in full force and has not been revoked; and furthermore, that the Standing Resolutions of the Boards of Directors, as set forth in the Certificate of Authority, are now in force.

Signed and Sealed at the Home Office of the Company, in the City of Hartford, State of Connecticut. Dated this 3rd day of August, 2005.



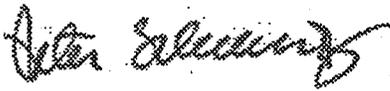
By 
Peter Schwartz
Senior Vice President

Exhibit to Consent of Surety for Project 741E dated August 3rd, 2005

<u>741E Claims under base contract</u>		
<u>Sub/supplier making claim</u>	<u>Amt of claim</u>	<u>Reason why it has not been paid</u>
American Fire Retardant Corp.	\$33,171.33	The funds have not been paid and payment is subject to setoffs and or recoupments in the amount of approximately \$43,000 resulting from TAAT relating to issue of the intumescent paint on the tube steel of the curtain wall face mask at the cores; Subcontractor for which the subcontractor has been unwilling to provide consent of surety. They say 14 TAAT says 43
Best Rolling Doors, Inc.	\$2,128.08	The subcontractor has been unwilling to provide a consent of surety. To cover backcharge from TAAT allegedly for damage to other trades as a result of Best Rolling Doors, Inc. welding Operations.
CCSI	\$43,046.68	MCM supports the payment of the sum \$43,046.68; but only if provided a consent of surety that guarantees that if the sum is paid, and it is later determined that the payment should not have been paid, for any reason whatsoever (including for the event MCM is held liable on the case for damages related to 3C / CCSI labor dispute currently in litigation), MCM will be made whole inclusive of interest and atty fees.
<u>741E Claim outside of base contract</u>		
<u>Sub/supplier making claim</u>	<u>Amt of claim</u>	<u>Reason why it has not been paid</u>
Talmac	\$857,016.82	The claim has not been liquidated nor paid to MCM and or is (or portions thereof) are not supported and or is subject to setoffs and recoupments from MCM and to defenses from TAAT
CCSI	\$220,473.00	The claim has not been liquidated nor paid to MCM and or is (or portions thereof) are not supported and or is subject to setoffs and recoupments from MCM and to defenses from TAAT
Everett Painting	\$280,556.00	The claim has not been liquidated nor paid to MCM and or is (or portions thereof) are not supported and or is subject to setoffs and recoupments from MCM and to defenses from TAAT
Mario's Enterprises	\$ 17,355.00	The claim has not been liquidated nor paid to MCM and or is (or portions thereof) are not supported and or is subject to setoffs and recoupments from MCM and to defenses from TAAT
Crown-Corr	\$ 35,972.00	The claim has not been liquidated nor paid to MCM and or is (or portions thereof) are not supported and or is subject to setoffs and recoupments from MCM and to defenses from TAAT
AFRC	\$ 4,908.00	The claim has not been liquidated nor paid to MCM and or is (or portions thereof) are not supported and or is subject to setoffs and recoupments from MCM and to defenses from TAAT