

May 6, 2008

Date:

To: Honorable Chairman Bruno A. Barreiro
and Members, Board of County Commissioners

Agenda Item No. 12(A)(1)

From: George M. Burgess
County Manager

R. A. Cuevas, Jr.
County Attorney

Subject: Settlement Agreement and Mutual Release to the Contract with A.C.T. Services for the Golden Glades Library; Project No. W30114

Recommendation

It is recommended that the Board approve the attached Settlement Agreement in the amount of \$127,458.00 which includes the contract balance of \$94,254.00 held in retainage and Mutual Release with A.C.T. Services, Inc., for work performed in connection with the construction of the Golden Glades Library. The attached proposed Settlement Agreement was prepared by General Services Administration (GSA) on behalf of Miami-Dade Public Library Department and is recommended for approval.

Background

On October 8, 2004, the County contracted with A.C.T. Services, Inc. for the construction of the new Golden Glades Branch Library for the adjusted contract amount of \$1,745,100.00. The original contract completion date was January 3, 2006. The Board has previously approved three (3) change orders increasing the contract value to \$1,848,121.00 and adding additional days extending the completion date to July 14, 2006. The County has paid \$1,753,867.00 to A.C.T. Services, Inc., toward work completed; leaving a contract balance of \$94,254.00 held in retainage. Under this Settlement Agreement, the County agrees the amount due to A.C.T. Services Inc. is set forth at \$46,625.00 plus the release of the retainage (\$94,254.00) less a credit of (\$13,421.00) for deletion of scope, for a total of \$127,458.00 and a new substantial completion date of November 16th, 2006; this increases A.C.T. Services, Inc. contract amount to \$1,881,325.00. This mutually agreed upon Settlement Agreement is to adjust the contract for additional labor and materials due to scope changes and compensable calendar days to the construction contract. The consensus of this Settlement Agreement allows the County the ability to execute the agreed upon terms. Approval of this Settlement Agreement will prevent any potential future litigation between the County and A.C.T. Services, Inc., regarding monetary disputes as they may relate to this project. The reason for the delayed submittal to the Board of County Commissioners of this Settlement Agreement is due to difficulties encountered during the negotiation discussions with the contractor while reviewing monies due. The contractor's final settlement amounts, which were needed to compile this agreement, were received by GSA on November 8, 2007.

Scope

This settlement agreement has county-wide impact.

Fiscal Impact/Funding Source

\$127,458.00 Library Taxing District

Track Record/Monitor

The monitor for this project is Robert Stebbins, Jr., Section Manager

Honorable Chairman Bruno A. Barreiro
And Members, Board of County Commissioners
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Delegated Authority

This item authorizes the Mayor or his designee to execute the settlement agreement on behalf of the County.



Director
General Services Administration



MEMORANDUM

(Revised)

TO: Honorable Chairman Bruno A. Barreiro
and Members, Board of County Commissioners

DATE: May 6, 2008

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

SUBJECT: Agenda Item No. 12(A)(1)

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. 12(A)(1)
5-6-08

RESOLUTION NO. _____

RESOLUTION AUTHORIZING EXECUTION OF A SETTLEMENT AGREEMENT AND MUTUAL RELEASE WITH A.C.T. SERVICES, INC., FOR WORK PERFORMED IN CONNECTION WITH THE CONSTRUCTION OF THE GOLDEN GLADES LIBRARY; AND AUTHORIZING THE COUNTY MAYOR OR HIS DESIGNEE TO EXERCISE ANY AND ALL OTHER RIGHTS CONFERRED 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 DADE COUNTY, FLORIDA, that this Board hereby approves a Settlement Agreement for Final Settlement, General and Mutual Release, and Waiver of Claims between Miami-Dade County and A.C.T. Services, Inc., in substantially the form attached hereto, for work performed in connection with the new construction of the Golden Glades Branch Library; and authorizes the County Mayor or his designee to execute same for and on behalf of Miami-Dade County; and authorizes the County Mayor or his designee to exercise any and all other rights conferred therein.

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

Bruno A. Barreiro, Chairman	
Barbara J. Jordan, Vice-Chairwoman	
Jose "Pepe" Diaz	Audrey M. Edmonson
Carlos A. Gimenez	Sally A. Heyman
Joe A. Martinez	Dennis C. Moss
Dorrin D. Rolle	Natacha Seijas
Katy Sorenson	Rebeca Sosa
Sen. Javier D. Souto	

The Chairperson thereupon declared the resolution duly passed and adopted this 6th day of May, 2008. 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.

HB

Hugo Benitez

SETTLEMENT AGREEMENT AND GENERAL RELEASE OF ALL CLAIMS

This Settlement Agreement and General Release of All Claims (the "Agreement") is made and entered as of this _____ day of _____ 2008, by and between Miami Dade County, a political subdivision of the State of Florida (the "County") and A.C.T. Services, Inc. a Florida Corporation whose principle place of business is 6157 N.W. 167th Street, Suite F1, Hialeah FL, 33015.

RECITALS

WHEREAS, the County entered into a contract, dated October 08, 2004 , ("Contract") with A.C.T. Services, Inc. for the completion of Miami-Dade County's General Services Administration Project No. W30114, comprised primarily of the construction of the Golden Glades Library located at 100 N.E. 166th Street, Miami, Florida in the aggregate amount of \$1,786,650.00 ("Project"); and

WHEREAS, there exists outstanding disputes regarding the remaining amount of money owed by the County to A.C.T. Services, Inc for its work on the Project; and

WHEREAS, the County has previously paid \$1,753,867.00 to A.C.T. Services, Inc. on account of Contractor's work on the Project; and

WHEREAS, the County and A.C.T. Services, Inc. wish to amicably settle all outstanding issues between the parties regarding the Project under the terms of this Agreement;

AGREEMENTS AND RELEASES

NOW THEREFORE, in consideration of the mutual covenants hereinafter set forth, the County and A.C.T. Services, Inc agree as follows:

1. The Foregoing recitals are true and correct and made part of this Agreement.
2. Upon the payment of **[ONE HUNDRED TWENTY SEVEN THOUSAND FOUR HUNDRED FIFTY SEVEN] DOLLARS AND [SEVEN] CENTS (\$[127,457.07])** to A.C.T. Services, Inc., receipt whereof is hereby acknowledged, A.C.T. Services, Inc., on behalf of the corporation and its officers, employees, subcontractors, materialmen, suppliers, including, but not limited to, and pass-through claims, successors, and assigns, does hereby forever release, acquit and discharge the County, its past, present and future employees, agents, servants, successors, heirs, executors, administrators and officers of and from any and all manner of action and actions, cause and causes of action, claims, liabilities, suits, debts, dues, sums of money, accounts, indemnities, guarantees, contributions, reckonings, bonds, bills, covenants, contracts, controversies, agreements, promises, variances, damages, injuries, judgments, executions, claims, expenses, attorneys' fees, compensation and all other damages now accrued or hereafter to accrue, including, without limitation, those accrued or hereafter to accrue, on account of, or

in any way concerning, relating to, arising out of, or in any manner connected with the Project and the County's obligations and duties to A.C.T. Services, Inc. under the Contract thereto.

The following is a breakdown of all monies:

1. Regulatory Changes: Requests by Miami-Dade County Building Department.

<u>Items</u>	<u>Amount</u>
• CPR #47: Supply and install St. Augustine 'Flotatam' sod in public right of way adjacent to the site as requested by the Public Works Inspector.	\$ 7,503.77
• CPR #53 & 56: Provide and install alerting fire alarm equipment and services to monitor the fire alarm system at subject project and upgrade the fire alarm system as requested by the fire alarm inspector.	\$ 17,857.56
• CPR #60: All material, labor, and equipment for the installation of one (1) 150-watt wall bracket light as required by the illumination code.	\$ 1,040.23
Total	\$ 26,401.56

2. Operating Department Changes: Requests by Miami-Dade County Public Library System

<u>Items</u>	<u>Amount</u>
• CPR #44: Incurred cost for labor, material, equipment and incidentals for painting soffit and brackets, which were originally metal and was changed to stucco.	\$1,250.00
• CPR #46: As requested by the Library Department to provide additional irrigation and landscape at entry per revised C-2 & L-2 drawings.	\$3,597.98
Total	\$4,847.98

3. Design Omission Change:

<u>Items</u>	<u>Amount</u>
• CPR #38: Install access panels in toilets 013 & 014 and janitor room 009.	\$ 3,462.11
• CPR #39: Installation of power to the Instant Hot water heater and the Irrigation Controller.	\$ 2,980.23
• CPR #51: Increase water pressure for the irrigation.	\$ 1,305.55
• CPR #59: All material, labor, equipment and incidentals to construct fire rated separation at west wall of mechanical room.	\$ 7,626.93
Total	\$ 15,374.82

4. Time Extension:

<u>Item:</u>	<u>Days</u>
• CPR #38: Install access panels in toilets 013 & 014 and janitor room 009.	8
• CPR #43: Time extension request for delays caused by inclement weather.	6
• CPR #44: Labor, material, equipment and incidentals for painting soffit and brackets at subject project. Soffits were originally metal and were changed to stucco. Brackets are added feature.	4
• CPR #46: Provide additional irrigation and landscape at entry canopy per revised irrigation and landscape drawings.	10
• CPR #47: Supply and install St. Augustine 'Flotatam' sod in public right of way adjacent to the site as requested by the Public Works Inspector.	14
• CPR #48: Additional Costs to apply epoxy paint to columns and A/C enclosure. Epoxy paint was not originally specified.	4
• CPR #52: To make portions of the ceiling accessible in order to service VAV box located at entry.	2
• CPR #53: Provide and install Notifier fire alarm equipment and services to monitor the system at subject project.	21

<u>Items:</u>	<u>Days</u>
• CPR #53: Provide and install Alerting fire alarm equipment and services to monitor the system at subject project.	21
• CPR #54: The Public Works inspector requests certain items of work to be done before final sign off of the permit.	3
• CPR #56: Upgrade the fire alarm system as requested by the fire alarm inspector.	21
• CPR #57: Provide additional fire alarm services by the fire alarm monitoring company.	15
• CPR #58: To relocate smoke detectors in the high ceilings per request of Fire Marshall.	3
• CPR #59: All material, labor, equipment and incidentals to construct fire rated separation at west wall of mechanical room.	10
• CPR #60: All material, labor, and equipment for the installation of one (1) 150-watt wall bracket light as required by the illumination code.	4
Total	125

3. County and A.C.T. Services, Inc. agree that the date for final completion of the Project is March 03, 2007.
4. A.C.T. Services, Inc. agrees that all monies due it under, or in connection with, the work performed on the Project to accept \$127,457.07, as full accord and satisfaction of all monies due it under or in connection with the contract documents and the work performed on the Project by A.C.T. Services, Inc., its subcontractors, materialmen and suppliers including, but not limited to, any pass-through claims have now been paid and satisfied.
5. Notwithstanding any other provision of this Agreement to the contrary, the County expressly reserves its rights with respect to:
 - a. Require the repair or replacement of latent defects in the work to the extent provided by Florida law; and
 - b. Enforce those provisions of the Contract, which specifically provide that they survive the completion of the work.
6. A.C.T. Services, Inc. hereto understands and acknowledges that this is a compromised settlement and a general release without any admission of liability or error or bad faith on the part of the County or any of its prior or present employees, agents, officers, attorneys, and representatives, and any such unlawful or erroneous conduct is hereby expressly denied.

7. A.C.T. Services, Inc. acknowledges that it has read this Agreement and understands it, before executing this document.
8. The parties agree that no provision of this Agreement shall be interpreted for or against any party because that party or its legal representative drafted the provision.
9. A.C.T. Services, Inc. shall submit with the final payment request, for any Project where subcontractor have performed Work, a Final Release of Lien/Subcontractor's Statement of Satisfaction for each subcontractor marked as a final.

ATTEST:

HARVEY RUVIN, CLERK

By: _____
Deputy Clerk

Julie Ann Williams
WITNESS

WITNESS

Approved for legal sufficiency:

[Signature]
County Attorney's Office

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

By: _____
George M. Burgess
County Manager

A.C.T. Services, Inc.
By: [Signature]
Derrick Golding
President

Carolina Casualty Insurance Company
(Name of Surety)
By: [Signature]
Attorney-in-Fact ROBERT KNOKE

POWER OF ATTORNEY
CAROLINA CASUALTY INSURANCE COMPANY
URBANDALE, IOWA

No. 509

KNOW ALL MEN BY THESE PRESENTS: that CAROLINA CASUALTY INSURANCE COMPANY ("Company") a corporation duly organized and existing under the laws of the State of Iowa, having its principal office in Jacksonville, Florida, has made, constituted and appointed, and does by these presents make, constitute and appoint: *Robert Knoke, Stewart McVay, Marie L. Wood or Wanda Daniel of Berkley Surety Group, Inc. of Tampa, FL*

its true and lawful Attorney-in-Fact, to sign its name as surety only as delineated below and to execute, seal, acknowledge and deliver any and all bonds and undertakings, with the exception of Financial Guaranty Insurance, providing that no single obligation shall exceed **Twenty Million and 00/100 Dollars (\$20,000,000.00)**, to the same extent as if such bonds had been duly executed and acknowledged by the regularly elected officers of the Company at its principal office in their own proper persons.

This Power of Attorney is granted pursuant to the Minutes of the Special Meeting of the Board of Directors of Carolina Casualty Insurance Company held on March 30, 1966, to wit:

RESOLVED: "That the following Officers of the Carolina Casualty Insurance Company, Chairman of the Board, President, Secretary and Treasurer, or either of them, are hereby authorized to execute on behalf of Carolina Casualty Insurance Company, Powers of Attorney authorizing and qualifying the Attorney-in-Fact named therein to execute bonds on behalf of the Carolina Casualty Insurance Company, and further, that the said Officers of the Company mentioned, are hereby authorized to affix the corporate seal of the said Company to Powers of Attorney executed pursuant hereto".

RESOLVED FURTHER, this Power of Attorney limits the acts of those named therein to the bonds and undertakings specifically named therein, and they have no authority to bind the company except in the manner and to the extent therein stated.

RESOLVED FURTHER, this Power of Attorney revokes all previous powers issued in behalf of the Attorney-in-Fact named above.

RESOLVED FURTHER, that the signature of any authorized officer and the seal of the Company may be affixed by facsimile to any power of attorney or certification thereof authorizing the execution and delivery of any bond, undertaking, recognition, or other suretyship obligations of the Company; and such signature and seal when so used shall have the same force and effect as though manually affixed. The Company may continue to use for the purposes herein stated the facsimile signature of any person or persons who shall have been such officer or officers of the Company, notwithstanding the fact that they may have ceased to be such at the time when such instruments shall be issued.

IN WITNESS WHEREOF the Carolina Casualty Insurance Company has caused these presents to be signed and attested by its appropriate officers and its corporate seal hereunto affixed this 31st day of January, 2008.

(Seal) Attest: *Betty C. Sutherland*
By: *Betty C. Sutherland*
Betty C. Sutherland
Vice President and Secretary

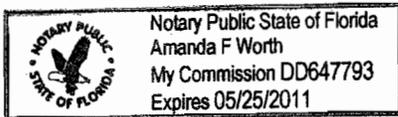
Carolina Casualty Insurance Company
By: *Reyad B. Cratem, III*
Reyad B. Cratem, III
Vice President, Chief Financial Officer and Treasurer

WARNING: THIS POWER OF ATTORNEY INVALID IF NOT PRINTED ON GREEN "MONITOR" SECURITY PAPER. STATE OF FLORIDA)

SS
COUNTY OF DUVAL)

On this 31st day of January, 2008, before me personally came Betty C. Sutherland to me known, who, being by me duly sworn, did depose and say: that she is Secretary of Carolina Casualty Insurance Company, the Corporation described in and which executed the above instrument; and that she knows the seal of said Corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said Corporation and that she signed her name thereto by like order.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal; the day and year herein first above written.



Amanda F. Worth
Notary Public, State of Florida at Large

CERTIFICATE

I, the undersigned, Secretary of CAROLINA CASUALTY INSURANCE COMPANY, DO HEREBY CERTIFY that the foregoing is a just, true, correct and complete copy of original Power of Attorney; that the said Power of Attorney has not been revoked or rescinded and that the authority of the Attorney-in-Fact set forth therein, who executed the bond to which this Power of Attorney is attached, is in full force and effect as of this date.

Given under my hand and the seal of the Company, this 6th day of FEBRUARY, 2008.

(Seal) *Betty C. Sutherland*
Betty C. Sutherland, Secretary