Memorandum

MIAMI-DADE COUNTY

Date: February 17, 2009

Agenda Item No. 12(A)(1)

To: Honorable Chairman Dennis C. Moss
and Members, Board of County Commissioners

From: George M. Burgess
County Manager

R. A. Cuevas, Jr.
County Attorney

Subject: Settlement Agreement with Joseph Middlebrooks & Associates, Inc. and Resolution of Lawsuit: *Joseph Middlebrooks & Associates, Inc., v. Miami-Dade County*, Case No. 05-23052 CA 03 (Circuit Court, Miami-Dade County).

RECOMMENDATION

It is recommended that the Board approve the attached Settlement Agreement (the "Settlement") between Miami-Dade County, Florida (the "County") and Joseph Middlebrooks & Associates, Inc. ("JMA"). This Settlement resolves all claims in the lawsuit captioned *Joseph Middlebrooks & Associates, Inc. v. Miami-Dade County*, Case No. 05-23052 CA 03 (Circuit Court, Miami-Dade County) (the "Lawsuit"), and all disputes relating to the parties' April 9, 2003 Professional Services Agreement, whereby JMA was to perform architectural services necessary for the design of two CAA Head Start Enrichment Centers (Project Nos. W00769 and W00770, CICC Project #A01-GSA-02, E) (the "Contract").

The terms of the Settlement were reached at a mediation ordered by the Court in the Lawsuit. The County and JMA engaged the services of Ms. Fredrica B. Elder, Esq. to serve as the mediator. Ms. Elder is a certified construction mediator and arbitrator who has mediated many construction and commercial disputes. On October 1, 2008, the parties attended a mediation conference with their respective counsel, and on October 6, 2008, the parties agreed to terms resolving and settling all disputes and claims. Staff from the General Services Administration (GSA) were present at the mediation.

THE LAWSUIT AND SETTLEMENT

Towards the latter stages of the project's design phase, a dispute arose between JMA and the County regarding alleged entitlement to additional payments and the completion status of the "Construction Documents" that JMA was to provide under the Contract. This lawsuit followed. When the lawsuit was filed, the issued work order authorizations for the design phase of the project totaled $158,826.00. Of this amount, $7,118.00 was held by the County pending receipt of the 100% Construction Documents.

Although the Construction Documents are incomplete, they have value and can be readily modified by GSA's in-house staff for re-use in future projects. With this in mind, we have agreed to accept the Construction Documents "as is" and retain the right to use the documents in the construction of one facility (and one repeat use), in exchange for the payment of $20,000, approximately a third of which represents the money withheld from JMA.

JMA currently possesses the Construction Documents, which include an electronic copy of all plans in AutoCAD format. Under the Settlement, the County shall pay JMA $20,000.00, which upon approval shall be paid within thirty (30) days from the date of the expiration of the Mayor's veto period following the approval of the Settlement by the Board of County Commissioners. Within five (5) days of receipt of the settlement sum from the County, JMA shall deliver to the County one (1) hard copy and one (1) electronic copy of the Construction Documents in AutoCAD format.

JMA and the County also shall execute and deliver General Releases in favor of each other for all claims brought or which could have been brought against each other related to the Contract and Lawsuit. Such General Releases shall be delivered simultaneously with delivery of payment and delivery of the AutoCAD files, respectively. JMA and the County are responsible for and bear their respective attorneys fees and costs in the Lawsuit.

Given GSA's desire to use the Construction Documents, and to minimize the time and expense necessary to fully litigate this matter through trial, the County Manager and County Attorney recommend approval of the Settlement.

Director, General Services Administration

MEMORANDUM

(Revised)

TO: Honorable Chairman Dennis C. Moss and Members, Board of County Commissioners

DATE: February 17, 2009

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 Mayor'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)
2-17-09

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE MAYOR OR HIS DESIGNEE TO EXECUTE THE SETTLEMENT AGREEMENT SETTLING ALL LEGAL CLAIMS AND COUNTERCLAIMS BETWEEN MIAMI-DADE COUNTY AND JOSEPH MIDDLEBROOKS & ASSOCIATES, INC., IN THE AMOUNT OF TWENTY THOUSAND DOLLARS ($20,000.00) IN CONNECTION WITH THE AGREEMENT DATED APRIL 9, 2003

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

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board approves the terms of and authorizes the Mayor or his designee to execute the Settlement Agreement between Miami-Dade County and Joseph Middlebrooks & Associates, Inc. substantially in the form attached to this resolution.

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:

Dennis C. Moss, Chairman
Jose "Pepe" Diaz, Vice-Chairman

Bruno A. Barreiro	Audrey M. Edmonson
Carlos A. Gimenez	Sally A. Heyman
Barbara J. Jordan	Joe A. Martinez
Dorrin D. Rolle	Natacha Seijas
Katy Sorenson	Rebeca Sosa
Sen. Javier D. Souto	

The Chairperson thereupon declared the resolution duly passed and adopted this 17th day of February, 2009. 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

Approved by County Attorney as
to form and legal sufficiency. BP

Bernie Pastor

By:_____
Deputy Clerk

SETTLEMENT AGREEMENT

This Settlement Agreement (the "Settlement Agreement") is made and entered into this ____ day of February, 2009, by and between the following, sometimes referred to hereafter collectively as the "Parties" and individually as a "Party":

Joseph Middlebrooks & Associates, Inc. ("JMA")

And

Miami-Dade County, Florida (the "County")

WHEREAS, on or about April 9, 2003 JMA and the County entered into a written agreement (" the Agreement"), whereby JMA was to perform architectural services in connection with the Prototype Design for Two CAA Head Start Enrichment Centers, Project Nos. W00769 and WOO770, CICC Project #A01-GSA-02, E ("the Project"); and

WHEREAS, JMA has retained ownership of the Construction Documents, including but not limited to, an electronic copy in AutoCAD format; and

WHEREAS, on or about the summer of 2005, a dispute arose between JMA and the County regarding entitlement to additional payment and the completion status of the Construction Documents; and

WHEREAS, on or about November 2005, JMA commenced a lawsuit against the County in Miami-Dade County Circuit Court, styled Joseph Middlebrooks & Associates, Inc. v. Miami-Dade County, Case No. 05-23-052 CA 03 (the "Lawsuit"); and

WHEREAS, on or about December 12, 2007, the County filed a counterclaim against JMA in the Lawsuit; and

WHEREAS, the County wishes to obtain ownership and use of the Construction Documents for possible use in the construction of one facility and one repeat use; and

WHEREAS, on October 1, 2008 JMA and the County attended a mediation conference with their respective counsel in conjunction with the Lawsuit; and

WHEREAS, on October 6, 2008 JMA and the County agreed to terms resolving their dispute; and

WHEREAS, the Parties, each of whom is represented by counsel, recognize their respective rights and obligations, and are desirous of settling – fully and finally – the Lawsuit as well as any and all claims and counterclaims which were or could have been brought in the Lawsuit, or which were, could have been, or could be brought in connection with the Project; and

WHEREAS, prior to signing this Agreement, each Party had an opportunity to and in fact has had counsel review this Agreement and explain that Party's rights and obligations under and the legal effect of this Agreement; and

WHEREAS, the Parties have signed this Agreement of their own free will and volition, with the full recognition and understanding of their rights and obligations under and the legal effect of this Agreement;

NOW THEREFORE, in consideration of their mutual promises made herein, and for other good and valuable consideration, receipt of which is hereby acknowledged by each party, JMA and the County, intending to be legally bound, hereby agree as follows:

1. JMA and the County agree that the foregoing recitals are true and correct and incorporated herein by this reference.

2. Neither this Agreement nor anything in it shall act as or constitute an admission of liability or concession by any Party that any Party, or any of its respective past or present officers, directors, shareholders, agents, employees, independent contractors, agents, accountants or attorneys, committed any wrongful act, or violated or breached the terms of any agreement or duty owed, whether statutory or otherwise, in connection with the Lawsuit.

3. The County shall pay JMA the total sum of twenty thousand and no/100 ($20,000.00) dollars ("the Settlement Sum"). The County shall pay the Settlement Sum within thirty (30) days from the date of the expiration of the Mayor's veto period following the approval of this Settlement Agreement by the Board of County Commissioners of Miami-Dade County, Florida. The County shall make the payment to Daniel Davis, Trust Account. Such funds shall remain on deposit in the trust account of Daniel Davis until notification from the County of receipt of the AutoCAD files as described in the following paragraph. Additionally, the Parties, through their respective counsel in the Lawsuit, within five (5) days of payment of the Settlement Sum, shall prepare and file with the Court, in accordance with Rule 1.420 of the Florida Rules of Civil Procedure, a joint stipulation of dismissal with prejudice (along with a proposed Order of Dismissal With Prejudice) providing that the Lawsuit should be dismissed with prejudice, with each side to bear its own attorneys' fees and costs, and with the Court reserving jurisdiction for the purpose of enforcing this Settlement Agreement. This Settlement Agreement shall be presented to the Board of County Commissioners of Miami-Dade County, Florida for approval by February 17, 2009. If the Board of County Commissioners of Miami-Dade County, Florida fails to approve this Settlement Agreement by March 30, 2009, or if the Mayor veto's the approval of the Board of County Commissioners of Miami-Dade County, Florida, then this Settlement Agreement shall be void.

4. Within five (5) days of receipt of the Settlement Sum from the County, JMA shall deliver to the County one (1) hard copy and one (1) electronic copy of the

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Construction Documents as submitted to the County on or about August 17, 2004 in AutoCAD format.

5. JMA and the County shall execute and deliver General Releases in favor of each other for all claims brought or which could have been brought against each other related to the Agreement and Lawsuit. Such General Releases shall be delivered simultaneously with delivery of payment and delivery of the AutoCAD files, respectively.

6. JMA and the County shall be responsible for and bear their respective attorneys fees and costs in the Lawsuit.

7. Time if of the essence of this Settlement Agreement.

8. This is the entire Settlement Agreement between the parties and may not be modified or amended except by a written document signed by the party against whom enforcement is sought.

9. Miami-Dade County Circuit Court shall retain jurisdiction of this matter if necessary to enforce the terms of this Settlement Agreement.

10. Each person signing this Settlement Agreement on behalf of a Party represents and warrants that he or she has full power and authority to enter into this Settlement Agreement and to fully, completely, and finally settle the Lawsuit, including but not limited to any and all claims and counterclaims which were or could have been asserted in the Lawsuit.

11. This Agreement shall be enforceable and construed according to the laws of the State of Florida without regard to its conflict of laws provisions. The Parties agree that any action to enforce this Settlement Agreement shall be brought in the Court in the Lawsuit.

12. If it becomes necessary for either party to enforce the terms of this Settlement Agreement, then the prevailing party in such action shall be entitled to reimbursement of reasonable attorneys' fees and costs.

13. This Settlement Agreement may not be assigned or delegated by either party without the prior written consent of the other party.

IN WITNESS WHEREOF, the parties have signed this agreement as of the day and year first noted below:

REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK FOLLOWED BY TWO SIGNATURE PAGES

DM

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

DATE OF EXECUTION: _____

ATTEST:

_____
Deputy Clerk

APPROVED AS TO FORM & LEGAL SUFFICIENCY:
MIAMI-DADE COUNTY ATTORNEY

By: _____

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Joseph Middlebrooks & Associates, Inc.

BY: _____

Name: Joseph Middlebrooks

Title: President, Joseph Middlebrooks & Associates, Inc.

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