Memorandum

MIAMI-DADE COUNTY

Date: October 6, 2009

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

Agenda Item No. 12(A)(2)

From: George M. Burgess
County Manager

R. A. Cuevas, Jr.
County Attorney

Subject: Approval of Settlement Agreement with Coreland Construction Corporation and Miami-Dade County in the amount of $238,909.20, Circuit Court Case No. 07-39959 CA 27 relating to roof replacement and waterproofing at Building 845, MIA, RFQ No. 0207-597751R

RECOMMENDATION

It is recommended that the Board approve the attached Settlement Agreement between Miami-Dade County and Coreland Construction Corporation relating to the roof replacement and waterproofing at Building 845, MIA, RPQ No. 0207-597751R arising out the lawsuit styled *Coreland Construction Corporation v. Miami-Dade County,* Case No. 07-39959 CA 27, in the Circuit Court of the 11th Judicial Circuit in and for Miami-Dade County, Florida.

SCOPE

Miami International Airport is located within District Six; however, the impact of this agenda item is countywide in nature as Miami International Airport is a regional asset.

FISCAL IMPACT

The total construction contract was for $1,638,400.19. There is a balance remaining under the contract in the amount of $316,397.44. The settlement of $238,909.20 is less than the balance remaining under the contract and no additional funds will be required.

TRACK RECORD/PROJECT MONITOR

According to the records provided by the Capital Improvements Information System, Coreland Construction has been awarded fourteen projects from Miami-Dade County. The average performance evaluation for these projects is 3.0.

This project has been closed, however, the lawsuit and settlement agreement are under the supervision of Construction Manager 3, Thomas E. Hart.

BACKGROUND

This construction contract was advertised for public bidding in 2005. Coreland Construction was awarded the contract in the amount of $1,434,397.00 with 120-days to complete the project. There were unforeseen conditions resulting in extra work being issued totaling $204,003 bringing the final contract amount to $1,638,400.19.

The project included roof replacement and waterproofing of Building 845 which is located at 5600 N.W. 36th. Street. The work scope was to make the building water-tight by replacing several roofs; the 6th floor roof, the 3, 4, & 5 floor terrace roofs and concrete pavers plus replace the existing glazing and caulking where identified on the contract documents.

The notice-to-proceed was issued on September 2, 2005. Although Coreland Construction completed two out of the six roofs awarded, a dispute arose between the County, the Contractor, and the Architect as to how to remove and replace the (4) single-ply terrace roofs and their concrete walk pavers in order to meet the slopes required by the South Florida Building Code. The sub-contractor, A-1 Duran alleged the roofing system would not work as designed. After numerous meetings were held to verify the specified system would work as designed, a consensus could not be reached by the parties and the project did not move ahead. During these meetings, the manufacturer advised everyone that if the roofs were not installed as per their specifications, no warranties would be issued. While these meetings were ongoing, Coreland continued to perform under the contract although progress was slowed due to the continuing dispute.

After three and a half months of negotiations between all parties, including County staff, the General Building Contractor (Coreland Construction), the Roofing Contractor (A-1 Duran), the Architect of Record (Rodriguez, Peterson & Porras), and the Sarnafil manufacturer's representative, a resolution to the issue could not be accomplished forcing MDAD to issue a stop-work directive on February 23, 2007. Up until the issuance of the stop work order, Coreland had invoiced for, and was paid by MDAD, $1,322,002.75 for work performed. Due to the ongoing disputes between the Contractor, the Architect and the County, a business decision was made because of the urgency of the work to finish the project under another contract and to terminate with Coreland for convenience. A new contract totaling $458,000 was awarded to complete the remaining punchlist items and remove and replace the disputed four terrace roof areas. Although this course of action caused the Department to spend $380,511.75 more than the original contract amount, not addressing the deficiencies in the existing roof work had the potential of costing the County much more in liability claims from the tenants. All work has since been successfully completed.

On July 5, 2007, Coreland Construction submitted a preliminary invoice to MDAD in the amount of $246,889 in response to Termination for Convenience (TFC) instructions. The preliminary invoice submitted was rejected because it did not contain the requested attachments required in the TFC, such as, but not limited to, releases of lien from sub-contractors and suppliers, manufactures' warranties, certificates of completion from the Building Department and the fact that the total dollar amount stated exceeded the amount of inspected and approved work Coreland had completed prior to the stop work directive being

issued. Although requested in writing in the Preliminary Invoice rejection letter, no revised invoice was ever submitted by Coreland Construction.

As a result of the rejection of the improper invoice submitted, Coreland Construction filed a law suit against Miami-Dade County on November 16, 2007 stating that the work had been completed and services had been provided.

A proposed resolution has been achieved between the Miami-Dade Aviation Department and Coreland Construction to pay a final amount of $238,909. Payment under the agreement is subject to receipt of the requested items listed on the TFC. In return for payment Coreland will not pursue further actions against Miami-Dade County and its designees. The $238,909 includes $17,020 in attorney fees. Recovery of any amounts from Coreland for any allegedly defective work would be difficult to achieve through litigation; given the contract terms and factual posture of this case, Coreland would have significant defenses to any such action by the County.

PROJECT: Roof Replacement & Waterproofing at BLDG. 845

PROJECT NO.: 0207-597751-R1

CONTRACT NO.: CICC 7360-0/08

PROJECT DESCRIPTION: Remove and replace (5) roofs, (40) with concrete walk pavers and remove and replace window glazing as identified throughout building exterior.

PROJECT LOCATION: 5600 NW 36TH. Street

APPROVAL PATH: Board of County Commissioners

USING DEPARTMENT: Miami-Dade Aviation Department

MANAGING DEPARTMENT: Miami-Dade Aviation Department

PRIME CONTRACTOR: Coreland Construction

COMPANY PRINCIPAL(S); Monica Hernandez

COMPANY QUALIFIER: Monica Hernandez

COMPANY EMAIL ADDRESS: Coreland @Bellsouth.net

COMPANY STREET ADDRESS: 12301 SW 128TH Ct.

COMPANY CITY-STATE-ZIP: Miami, Florida, 33186

YEARS IN BUSINESS: Ten

PREVIOUS CONTRACTS WITH THE COUNTY:

AV) 0006-489322 Roof Replacement at Hangar 871
AV) 0508-791104 Terminal F Curved Metal Panels
AV) 0510-805436 Emergency Building Repairs
AV) 0510-805440 Metal Roof Replacement at Hangar 45
AV) 0511-811337 Emergency Repairs at Bldg. 845
AV) 0605-843055 Emergency Roof Repairs at Bldg. 47
DE) 20070041 Outfall Construction at South Terminal
GS) H00202R HAFB FEMA Hangar Repairs
GS) RS00043 W30185 W40009 Election Department Extend PA
WS) W-838 Medley Yard Building
WS) W-838 John E. Preston Water Treatment Plant
GS) W00817-C Miami Gardens Neighborhood Services Center
GS) W60051R Richmond Tower Concrete Restoration
GS) W60223R1 Golden Glades Library

CSBE CONTRACT MEASURES: 15% ($223,852.15)

CSBE ACHIEVED: 15% ($223,852.15)

CSBE SUBCONTRACTORS AND SUPPLIERS (Section 10-34 Miami-Dade County Code)

SUBCONTRACTORS:
O&M Electric
Peoples Plumbing
A-1 Duran Roofing
One Stop Air Conditioning
City Caulking & Waterproofing INC.

SUPPLIERS:
Pavestone Co.
Caribean Structures, INC.
O'Keefes's, Inc.

Assistant County Manager

MEMORANDUM

(Revised)

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

DATE: October 6, 2009

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

SUBJECT: Agenda Item No. 12(A)(2)

Please note any items checked.

_____ **"3-Day Rule" for committees applicable if raised**

_____ **6 weeks required between first reading and public hearing**

_____ **4 weeks notification to municipal officials required prior to public hearing**

_____ **Decreases revenues or increases expenditures without balancing budget**

_____ **Budget required**

_____ **Statement of fiscal impact required**

✓ **Ordinance creating a new board requires detailed County Manager's report for public hearing**

_____ **No committee review**

_____ **Applicable legislation requires more than a majority vote (i.e., 2/3's ____, 3/5's ____, unanimous _____) to approve**

_____ **Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required**

5

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 12(A)(2)
10-6-09

RESOLUTION NO. _____

RESOLUTION APPROVING THE SETTLEMENT AGREEMENT TO RESOLVE ALL CLAIMS AGAINST THE COUNTY ARISING OUT OF THE LAWSUIT BETWEEN CORELAND CONSTRUCTION CORPORATION AND MIAMI-DADE COUNTY, CIRCUIT COURT CASE NO. 07-39959 CA 27, IN THE AMOUNT OF $238,909.20, RELATING TO ROOF REPLACEMENT AND WATERPROOFING AT BUILDING 845 MIA, 5600 NW 36 STREET, CICC 7360-0/08, RFQ NO. 0207-597751R; AUTHORIZING THE MAYOR OR DESIGNEE TO EXECUTE THE AGREEMENT AND ALL OTHER DOCUMENTS NECESSARY TO IMPLEMENT THE AGREEMENT, SUBJECT TO APPROVAL OF THE COUNTY ATTORNEY AS TO LEGAL SUFFICIENCY

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

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board hereby approves the attached Settlement Agreement ("the Agreement") in the amount of $238,909.20, between Coreland Construction Corporation and Miami-Dade County, Circuit Court Case No. 07-39959 CA 27, relating to the Roof Replacement and Waterproofing at Building 845 MIA, 5600 NW 36 Street, CICC 7360-0/08, RFQ No. 0207-597751R, in substantially the form attached hereto and incorporated herein; authorizes the County Mayor or designee to execute the Agreement attached hereto; and to execute all other documents necessary to implement the Agreement, subject to approval of the County Attorney as to legal sufficiency.

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 6th day of October, 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. GAL

By:_____
Deputy Clerk

Cynji A. Lee

AGREEMENT for FINAL SETTLEMENT, RELEASE, INDEMNITY and WAIVER OF CLAIMS BETWEEN MIAMI-DADE COUNTY and CORELAND CONSTRUCTION CORPORATION

This Agreement is entered into this ____ day of ____, 2009 between Miami-Dade County, a political subdivision of the State of Florida ("County") and Coreland Construction Corporation, ("Contractor") as follows:

Whereas the County contracted with Contractor for work pursuant to RPQ No.: 0207-597751R, Roof Replacement & Waterproofing at MIA Building 845 MIA, 5600 NW 36th Street, CICC 7360-0/08 ("Project"); and

Whereas the County issued a Stop Work Order to the Contractor on February 23, 2007 and then issued a letter terminating the contract for convenience on May 18, 2007; and

Whereas the Contractor has filed this lawsuit ("Lawsuit") seeking compensation in connection with the Project; and

Whereas the County and the Contractor have determined to settle all disputes arising out of the Project pursuant to the terms of this Agreement and this Lawsuit.

In consideration of these recitals and the covenants hereinafter contained, and other good and valuable consideration the receipt and sufficiency of which is acknowledged, the parties agree, subject to the formal approval of the Board of County Commissioners and the County Mayor as follows:

1. The recitals set forth above are incorporated herein and made an integral part thereof.

2. County will pay to Contractor the total amount of $238,909.20, (the "Settlement Funds"); which includes:

a. $221,889.20, the amount due for work completed as of the Stop Work Order issued on February 23, 2007; and

b. $17,020.00, the amount of verified attorney's fees and costs Contractor has expended in litigation of this matter.

3. Contractor agrees to accept this amount as full accord and satisfaction of all monies due it under or in connection with the Project, and the work performed on the Project, including but not limited to work performed by Contractor, by its Surety, and by their subcontractors, materialmen and suppliers, and in full accord and satisfaction of all claims that were asserted or could have been asserted, whether known or unknown, in connection with the Project including, but not limited to, claims asserted in the Lawsuit.

4. As conditions precedent of payment, Contractor shall:

a. deliver to the County the 20-year SBS Modified Bitumen mineral Surfaced Roofing Manufacture's warranty and the 20-year Sealants and Caulking Manufacturer's warranty executed by the manufacturer; and

b. furnish a Final Release from each subcontractor or supplier performing work on the Project indicating that the subcontractor or supplier has been paid in full for its work on the Project or a Consent of Surety, in compliance with Section 10-35, Code of Miami-Dade County.

5. In consideration of the payment by County to Contractor of these amounts Contractor releases County, and its officers, employees and agents, from and waives and relinquishes any and all claims, disputes or causes of action it has or may have, whether known or unknown, against County, and their officers, employees and agents arising out of or in connection with the Project or the work performed or to be performed under the Project, including, but not limited to, those claims previously asserted in connection with this Project, and those claims that could have been asserted in connection with this Project, whether known or unknown. Contractor, on its own behalf and on behalf of its subcontractors at every tier, its suppliers and vendors, and its employees and laborers, will indemnify and hold harmless the County, its officers, employees and agents (including its consultants on the Project), form any and all liabilities, damages, losses and costs, including, but not limited to, reasonable attorneys fees, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of Contractor and persons employed or utilized by Contractor in the performance of the construction contract, to the full extent permitted by Sec.725.06(2) Fla. Stat. and otherwise by Florida Law.

6. By accepting this agreement, County waives all claims against Contractor, except that County expressly reserves all rights:

a. to require the repair or replacement of defective work under the warranty and guaranty provisions of the Contract Documents as documented by the warranties described in Paragraph 4.a. above;

b. to require the repair or replacement of latent defects in the work to the extent provided by Florida Law;

c. to enforce those provisions of the Contract Documents, which specifically provide that they survive the Stop Work Order issued on February 23, 2007 or the termination for convenience letter issued May 18, 2007; and

d. to enforce the terms of the Payment Bond against Surety in the event that timely claims may be made by any covered third parties.

7. Upon clearance of the Settlement Funds, Contractor will file a voluntary dismissal with prejudice, of its pending claims against the County in the Lawsuit. Each

party will bear its own fees and costs in connection with the Lawsuit, except as provided in Paragraph 2.b. above.

8. The parties acknowledge that they have read this Agreement, understand it, and have consulted with their respective attorneys before executing this document.

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

MIAMI-DADE COUNTY BOARD OF COUNTY COMMISSIONERS

By: _____
County Mayor

CORELAND CONSTRUCTION CORPORATION

By: _____
President