Memorandum

MIAMI-DADE COUNTY

Date: February 2, 2010

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

Agenda Item No. 12(A)(2)

From: Honorable Carlos Alvarez
County Mayor

George M. Burgess
County Manager

R. A. Cuevas, Jr.
County Attorney

Subject: Resolution Approving the Settlement Agreement between Atlantic Civil, Inc. and Miami-Dade County to Resolve Outstanding Litigation for Mutual Releases of All Claims

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Recommendation

It is recommended that the Board of County Commissioners (the Board) approve the attached Settlement Agreement ("Settlement") between Miami-Dade County, Florida and Atlantic Civil, Inc. The attached proposed Settlement with Atlantic Civil, Inc. ("ACI"), resolves all claims between the parties for work performed in connection with the construction of the Federal Emergency Management Agency (FEMA) secondary canal repair, restoration and sediment handling for the North Canal (Project Number CF002890) and the Lindgren Canal Repair, Restoration & Sediment Handling (Project Number CF002550), the Quality Neighborhoods Improvement Program (QNIP) Bel-Aire Drainage Improvements Stormwater Drainage (Project Number 693137Q-A) and an unasserted claim regarding Pay Item # 12, Permit Fee Reimbursement in Contract # W-836 Alexander Orr Jr. Water Treatment Plant Removal of Calcium Carbonate Deposit. The Settlement releases all claims ACI has against the County and all claims the County has against ACI on those matters as a walk-away settlement with no monies being paid by any party.

Scope

Settlement of the lawsuits between Atlantic Civil, Inc. and the County for the mutual releases set forth in the Settlement Agreement in substantially the form attached hereto.

Fiscal Impact/Funding Source

There is no monetary impact to the parties in this Settlement.

Background

On May 3, 2004, the County contracted with ACI for the canal repair, restoration, and sediment handling of the North Canal, for the amount of $1,209,901.38 plus $120,990.14 in contingency allowances. The contract Notice to Proceed date was June 29, 2004, and the work was completed to the County's satisfaction by November 6, 2004. The County has paid $1,074,561.26 (which includes $0.00 in contingency payments) to Atlantic Civil, Inc.

On April 8, 2004, the County contracted with Atlantic Civil, Inc. for the canal repair, restoration, and sediment handling of the Lindgren Canal, for the amount of $685,038.98 plus $68,503.90 in contingency allowances. The contract Notice to Proceed date was May 6, 2004, and the work was completed by September 30, 2004. The County has paid $648,135.49 (which includes $0.00 in contingency payments) to Atlantic Civil, Inc.

ACI filed suit in state court for declaratory relief and breach of contract contending that the County did not pay them for the actual amount of dredged materials and also improperly refused to approve change orders for delays allegedly caused by the County in the performance of the dredging. *See Atlantic Civil, Inc. v. Miami-Dade County*, Circuit Court Case No. 05-1670-CA-01. Atlantic Civil contends that the County still owed ACI $328,849.34. The County contended that all compensable dredging under the contract was paid and that no further money was due and payable under the contract.

Additionally, ACI was engaged by the County under a contract for stormwater drainage improvements in a residential neighborhood called Bel-Aire located in the southern part of Miami-Dade County. ACI contends that the County breached the contract by providing misleading information and errors regarding the location of underground utilities and that as a consequence of the County's actions, ACI incurred substantial damages. The County contends it did not breach the contract because it did not guarantee the exact location of underground utilities at the time of bidding, and that ACI was fully paid based on the contractual unit prices ACI agreed to and provided to the County when it bid on the contract. ACI filed suit in state Court as a result of the alleged breach. *See Atlantic Civil, Inc. v. Miami-Dade County* 05-15474-CA-13

After a trial, a jury found in favor of the County and declined to award ACI any money on its claims. The County contends as a result of this verdict, ACI owes the County attorney's fees and costs for the defense of the claim. ACI has requested a new trial and a judgment in their favor notwithstanding the findings of the jury.

Finally, ACI has requested $154,274.81 for Pay Item #12, Permit Fee Reimbursement in Contract #W-836 Alexander Orr Jr. Water Treatment Plant Removal of Calcium Carbonate Deposit. ACI contends that the contract permits recovery of the excess funds in the allowance by the contractor on the completion of the work. The County disputes this claim.

Upon mediation of all of these outstanding claims, the parties agreed to a walk-away settlement pending approval by the Board of County Commissioners. Under the Settlement, ACI would fully release the County from any claims that have been or could be asserted in these matters and the County would similarly release ACI from such claims as well without any claim of responsibility. Under the Settlement, neither party will pay any money to the other party for the release of the claims.

The County also agrees that this Settlement fully resolves all matters regarding these contracts to the County's satisfaction and that the suits and the matters asserted thereunder shall not be considered against ACI in future evaluations by the County.

Assistant County Manager

MEMORANDUM
(Revised)

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

DATE: February 2, 2010

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**

Approved _____ Mayor
Veto _____
Override _____

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

RESOLUTION NO. _____

RESOLUTION APPROVING THE SETTLEMENT AGREEMENT BETWEEN ATLANTIC CIVIL, INC. AND MIAMI-DADE COUNTY TO RESOLVE OUTSTANDING LITIGATION FOR MUTUAL RELEASES OF ALL CLAIMS

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 settlement of the lawsuits Atlantic Civil, Inc. v. Miami-Dade County, Circuit Court Case No. 05-1670-CA-01 and Atlantic Civil, Inc. v. Miami-Dade County 05-15474-CA-13 between Atlantic Civil, Inc. and Miami-Dade County for the mutual releases set forth in the Settlement Agreement and authorizes the execution by the County Mayor or the Mayor's designee of the Settlement Agreement in substantially the form attached hereto.

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 2nd day of February, 2010. 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. OR

Oren Rosenthal

SETTLEMENT AGREEMENT

This Settlement Agreement and Mutual Release ("Agreement") dated _____, 2010, is entered by and between Atlantic Civil, Inc., a Florida corporation with FEIN 591274059 ("ACI") and Miami-Dade County a political subdivision of the State of Florida (the "County").

RECITALS

WHEREAS, ACI has filed suit against the County for breach of contract and declaratory relief in relation to the Contracts titled North Canal Project Canal Repair, Restoration & Sediment Handling Project Number CF002890 and Lindgren Canal Canal Repair, Restoration & Sediment Handling Contract Number CF002550 (the "Dredging Projects") in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County Case No. 05-1670-CA-01 ("Dredging Case"); and

WHEREAS, the County has filed a Counter-Claim for declaratory relief in the Dredging Case; and

WHEREAS, ACI filed suit against the County for breach of contract in relation to Contract titled Quality Neighborhoods Improvement Program (QNIP) Bel-Aire Drainage Improvements Stormwater Drainage Project No. 693137Q-A (the "Bel-Aire Project"), in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County Case No. 05-15474-CA-13 ("Bel-Aire Case"); and

WHEREAS, the County has asserted a claim for attorney's fees and costs as a result of a favorable jury verdict in the Bel-Aire Case; and

WHEREAS, ACI has requested a new trial and a judgment notwithstanding the verdict in the Bel-Aire Case and disputes the finding of the jury; and

WHEREAS, ACI has requested $154,274.81 for Pay Item # 12, Permit Fee Reimbursement in Contract # W-836 Alexander Orr Jr. Water Treatment Plant Removal of Calcium Carbonate Deposit ("Alexander Orr Claim"); and

WHEREAS, the County disputes ACI's entitlement to the requested $154,274.81 for Pay Item #12; and

WHEREAS, ACI and the County desire to settle any and all claims and controversies relating to the Bel-Aire Project, the Bel-Aire Case, the Dredging Project, the Dredging Case, and the Alexander Orr Claim

TERMS

NOW THEREFORE, in consideration of the foregoing recitals and following premises, promises, covenants, conditions, and other good and valuable consideration, the receipt, adequacy, and sufficiency of which is acknowledged, ACI and the County agree as follows:

1. The above recitals are incorporated by reference and are a part of this Agreement.

2. ACI and the County hereby compromise and settle all claims relating to the Bel-Aire Project, the Bel-Aire Case, the Dredging Projects, the Dredging Case, and the Alexander Orr Claim. It is understood that the terms of this Agreement in no way constitute an admission of liability by ACI or the County, but rather are made by way of compromise to avoid the expense and uncertainty of further litigation. The County shall not consider this Agreement or the claims and controversies relating to the Bel-Aire Project, the Bel-Aire Case, the Dredging Project, the Dredging Case, and the Alexander Orr Claim in evaluating or awarding any future County contracts or in any other matters (regulatory or otherwise) that may come before the Board of County Commissioners.

3. The parties shall file Joint Stipulations of Dismissal with Prejudice dismissing all parties' claims in the Bel-Aire Case and the Dredging Case. The Joint Stipulations of Dismissal with Prejudice shall provide that each party shall bear their own attorney's fees and costs in those cases.

4. The Joint Stipulations of Dismissal with Prejudice in the Dredging and Bel-Aire Cases shall be filed within 10 days of the approval of this Agreement by the Board of County Commissioners.

5. For the consideration and promises made herein, ACI releases and forever discharges

the County from any and all claims, causes of action, demands, disputes and rights of whatever nature and kind, known or unknown, past or future, related in any way to the Bel-Aire Project, the Bel-Aire Case, the Dredging Projects, the Dredging Case, and the Alexander Orr Claim that the ACI has or claims to have against County, and its employees, officers, agents, successors and assigns, attorneys, or otherwise, with the exception of claims and obligations arising out of this Agreement. Such release and discharge is made by ACI in its respective right and for its successors, executors, agents, employees, assigns, subcontractors, sureties, suppliers, and any and all other persons, firms, corporations, or other entities who may claim by or through ACI. ACI agrees that it will not, and that its legal representatives and assigns shall not, hereafter file in any court any action relating to the Bel-Aire Project, the Bel-Aire Case, the Dredging Projects, the Dredging Case and the Alexander Orr Claim, with the exception of any action to enforce this Agreement, and that to any such action (other than an action to enforce this Agreement) which nevertheless may hereafter be brought, this Agreement shall be a complete and conclusive defense.

6. For the consideration and promises made herein, the County releases and forever discharges ACI from any and all claims, causes of action, demands, disputes and rights of whatever nature and kind, known or unknown, past or future, related in any way to the Bel-Aire Project,the Bel-Aire Case, the Dredging Projects, the Dredging Case, and Alexander Orr Claim that County has or claims to have against ACI and its employees, officers, agents, shareholders, successors and assigns, attorneys, or otherwise, with the exception of claims arising out of this Agreement. Such release and discharge is made by County in its respective rights and for its successors, executors, agents, employees, assigns, Commissioners, managers, and any and all other persons, firms, corporations, or other entities who may claim by or through the County. The County agrees that it will not, and that their legal representatives and assigns shall not, hereafter file in any court any action relating to the Bel-Aire Project, the Bel-Aire Case, the Dredging Projects, the Dredging Case, and the Alexander Orr Claim, with the exception of any action to enforce this Agreement; and that to

any action (other than an action to enforce this Agreement) which nevertheless may hereafter be brought, this Agreement shall be a complete and conclusive defense.

7. Each party shall bear their own attorney's fees and costs relating to or arising from the Bel-Aire Project, the Bel-Aire Case, the Dredging Projects, the Dredging Case, and the Alexander Orr Claim.

8. This Agreement shall be construed under the laws of the State of Florida. Venue on any action to enforce this Agreement shall be proper only in a court located in Miami-Dade County, Florida. If such litigation arises, the prevailing party shall be entitled to its reasonable attorneys' fees, including any attorneys' fees and costs on appeal, from the other party.

9. This Agreement together with all documents required to be executed hereunder constitute the entire agreement and understanding between the parties to this Agreement. No supplement, modification, or amendment of this Agreement shall be binding unless it is executed in writing by the parties.

10. The terms and conditions of this Agreement are fully set forth in this document and no other material terms exist outside this document. This Agreement supersedes all prior and contemporaneous agreements and understandings.

11. The parties represent and agree that they have participated equally in the negotiation of the terms and provisions set forth in this Agreement and that no presumptions or inference shall apply against any party hereto to its construction.

12. The parties declare that they have completely read the terms of this Agreement, that they have discussed the terms of the Agreement with legal counsel of their choice, and that they fully understand and voluntarily accept the terms for the purpose of making a full and final compromise, adjustment and settlement of claims.

13. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, representatives, agents, attorneys, employees,

officers, directors, predecessors, affiliates, successors or assigns in connection with any legal action arising out of the agreement.

14. By executing this Agreement the undersigned warrant and represent that they are authorized to enter into this Agreement and empowered to bind their respective parties to its terms. Further, the parties represent that they have not assigned their rights or claims subject of this Agreement to any third party.

IN ACCEPTANCE WHEREOF, the parties have set their respective hands as of the date and year appearing by their respective signatures.

Atlantic Civil, Inc.	Miami-Dade County
By: _____	By: _____
[President]	[ ]
Title:	Title:
Dated: January 6, 2010.	Dated: _____, 2010.