

MEMORANDUM

Agenda Item No. 8(H)(1)

TO: Honorable Chairwoman Rebeca Sosa
and Members, Board of County Commissioners

DATE: March 4, 2014

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

SUBJECT: Resolution approving
mutual general release between
Miami-Dade County and the
Corradino Group

The accompanying resolution was prepared by Parks, Recreation and Open Spaces Department and placed on the agenda at the request of Prime Sponsor Senator Javier D. Souto.



R. A. Cuevas, Jr.
County Attorney

RAC/jls

Memorandum



Date: March 4, 2014

To: Honorable Chairwoman Rebeca Sosa
and Members, Board of County Commissioners

From: Carlos A. Gimenez
Mayor
R. A. Cuevas, Jr.
County Attorney

Subject: Mutual General Release Agreement between Miami-Dade County and The Corradino Group, Inc. Settling Pending Litigation in Exchange for \$150,000 Payment to Miami-Dade County

Recommendation

It is recommended that the Board of County Commissioners (Board) approve the attached Resolution authorizing the Mayor to execute the Mutual General Release (Attachment A) with The Corradino Group, Inc. ("Corradino"). The Mutual General Release will result in a payment to the County of \$150,000 and will settle a lawsuit, *Miami-Dade County v. The Corradino Group, Inc.*, currently pending in the Circuit Court of the Eleventh Judicial Circuit, in and for Miami-Dade County, Case No. 11-20418-CA-08 (Lawsuit).

Scope

The Mutual General Release stems from litigation related to Corradino's performance on two projects for the Miami-Dade County Parks, Recreation and Open Spaces Department (PROS): Amelia Earhart Park and Crandon Park, which are located in County Commission District 13, Commissioner Esteban Bovo, Jr. and County Commission District 7, Commissioner Xavier L. Suarez, respectively.

Fiscal Impact/Funding Source

The fiscal impact to the County from this Mutual General Release is \$150,000 in favor of the County.

Track Record/Monitor

The Parks, Recreation and Open Spaces Department (PROS) Project Manager will oversee the collection and deposit into a County account of the \$150,000 from Corradino.

Background

Corradino is an architectural services firm that was selected to provide PROS with services for projects at two County parks, Amelia Earhart Park and Crandon Park. For each project, Corradino was tasked with providing programming, schematic, design development and construction documents, permit processing, construction administration and warranty services.

A. The Amelia Earhart Park Agreement

The Amelia Earhart Park project was known as the "Amelia Earhart Park Soccer & Softball Complexes, Building and Utilities," to be performed under an agreement dated June 1, 1999 (the "Amelia Agreement"), for which the County agreed to pay a basic services fee of \$227,307. The County also

agreed to pay an additional fee of up to \$271,800 for any County-authorized work. As such, the total contract value under the Amelia Agreement was \$499,107.

The scope for the Amelia Earhart Park project included a soccer and a softball complex. Phase I of the project consisted of four soccer fields and irrigation, one field house, landscape buffer, lighted parking lot, service roads, and utilities. These project elements were constructed. The scope for Phase II of the project was modified from a softball complex, including five irrigated softball fields, to a soccer complex. The modified scope of the project consisted of three additional lighted and irrigated soccer fields, and a fourth soccer field presented as an additive alternate, two restroom/storage building facilities, landscaping, walkways, and a lighted parking lot. The Phase II project elements were not constructed.

In the Lawsuit, the County claimed that Corradino failed to provide the professional architectural and engineering services that it was required to provide under the Amelia Agreement. Specifically, the County claimed that Corradino failed to adequately file for and follow up on building permits and address, by making any required changes and resolving questions presented, any comments from the permitting authorities. As a result of the perceived shortcomings, the County terminated the Amelia Agreement on December 17, 2007. The County's notice of termination cited Corradino's failure to "address all the pending issues impacting the completion of 100% construction documents and dry run permit review process" and "cure all the pending issues impacting the completion of the project in accordance with the timeframe provided."

In response to the County's claim on the Amelia Agreement, Corradino asserted a variety of defenses. Corradino also brought its own claim against the County based both on breach of contract and unjust enrichment. Corradino specifically asserted that the project did not move past the permitting phase because of the County's delays, changes, breaches, and failure to pay all amounts due.

B. The Crandon Park Agreement

The Crandon Park project was performed under a contract titled "Full Service Project Specific Professional Services Agreement P&R Project No. A00-PARK-02" (the "Crandon Agreement"). The Crandon Agreement was for an amount up to \$1.5 million. On August 8, 2002, Corradino and the County executed a service order under the Crandon Agreement for the Crandon Park Central Restroom/Park Office/Dock Master and Existing Restroom Upgrades project.

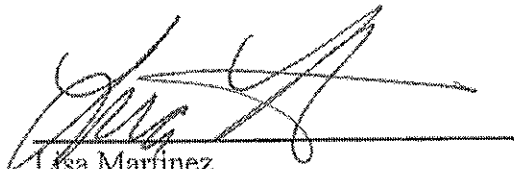
The scope for the Crandon Park project included construction of a new 1,550 square foot central restroom building and a 900 square foot park office building on the east side of Crandon Boulevard and construction of a 2,250 square foot two-story dock master and bait and tackle building and upgrades to existing restrooms on the west side of Crandon Boulevard. These project elements were constructed.

In the Lawsuit, the County claimed that Corradino breached the Crandon Agreement by failing to adequately perform construction administration services. The County cited these shortcomings as the basis for its December 7, 2007 termination of the Crandon Agreement. Specifically, the County referenced excessive change in personnel; lack of adequate, competent, and experienced staff; abandonment of professional services; failure to keep adequate records; lack of control and supervision of staff; failure to coordinate with sub-consultants; contributing to schedule slippage; delays in reviewing claims; failure to correct deficiencies; and Corradino's response to design errors in connection with the elevator at the Dock Master Building.

In response to the County's claims, Corradino asserted a variety of defenses. Corradino also brought its own claims against the County based both on breach of contract and unjust enrichment. Corradino alleged that the County created delays that extended the project duration from 390 to 800 days, interposed unnecessary changes, and breached the Crandon Agreement by failing to pay all amounts due. Corradino also shifted blame for issues with the Crandon Park agreement to the performance of the County's contractor, Miami Skyline.

C. The Mutual General Release

The proposed Mutual General Release (Attachment A) is a mutually acceptable settlement reached during court-required mediation. Under paragraph three of the Mutual General Release, the County and Corradino deny any and all liability to the other upon all claims which have been asserted or might hereinafter be asserted, and agree to the exchange of funds for the purpose of economic considerations to avoid further litigation. The stipulations in the Mutual General Release include Corradino paying Miami-Dade County \$150,000; agreeing not to submit for any PROS projects for a period of three (3) years; and cooperating with PROS in any claims and/or litigation against other persons and/or entities related to the subject case. Upon approval of this Mutual General Release by the Board and execution thereof by the County Mayor or Mayor's designee, a Joint Stipulation of Dismissal with Prejudice will be filed with the Court and Corradino has twenty days to tender a check for \$150,000 to Miami-Dade County.



Lisa Martinez
Senior Advisor, Office of the Mayor

Attachment



MEMORANDUM
(Revised)

TO: Honorable Chairwoman Rebeca Sosa
and Members, Board of County Commissioners

DATE: March 4, 2014

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

SUBJECT: Agenda Item No. 8(H)(1)

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 Mayor'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. 8(H)(1)
3-4-14

RESOLUTION NO. _____

RESOLUTION APPROVING MUTUAL GENERAL RELEASE BETWEEN MIAMI-DADE COUNTY AND THE CORRADINO GROUP RESOLVING THE LITIGATION STYLED MIAMI-DADE COUNTY V. THE CORRADINO GROUP (CASE NO. 11-20418-CA-08) IN EXCHANGE FOR A PAYMENT TO MIAMI-DADE COUNTY IN THE AMOUNT OF \$150,000.00 AND AUTHORIZING THE MAYOR OR MAYOR'S DESIGNEE TO EXECUTE THE MUTUAL GENERAL RELEASE AND EXERCISE ANY RIGHTS CONTAINED 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 MIAMI-DADE COUNTY, FLORIDA, that this Board approves and authorizes the County Mayor or Mayor's designee to execute the Mutual General Release between Miami-Dade County and The Corradino Group in order to resolve the litigation styled *Miami-Dade County v. The Corradino Group* (11th Jud'l Cir.; Case No.: 11-20418-CA-08), in exchange for payment to the County of \$150,000.00, and in accordance with the terms and conditions set forth in the Mutual General Release.

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:

Rebeca Sosa, Chairwoman
Lynda Bell, Vice Chair

Bruno A. Barreiro
Jose "Pepe" Diaz
Sally A. Heyman
Jean Monestime
Sen. Javier D. Souto
Juan C. Zapata

Esteban L. Bovo, Jr.
Audrey M. Edmonson
Barbara J. Jordan
Dennis C. Moss
Xavier L. Suarez

The Chairperson thereupon declared the resolution duly passed and adopted this 4th day of March, 2014. 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.

MAG

Miguel A. Gonzalez

MUTUAL GENERAL RELEASE

KNOW ALL MEN BY THESE PRESENTS, that MIAMI-DADE COUNTY (hereinafter referred to as "Mutual Releasor") and THE CORRADINO GROUP, together with its insurers (including past and present), parent, affiliated, subsidiary and related entities, shareholders, directors, officers, employees, agents, servants, independent contractors, and attorneys (hereinafter referred to as "Mutual Releasee"), for and in consideration of the exchange of ONE HUNDRED FIFTY THOUSAND DOLLARS (\$150,000.00) by Mutual Releasee to Mutual Releasor, hereby agree to resolve the lawsuit filed in the Circuit Court of the 11th Judicial Circuit in and for Miami-Dade County, Florida, styled *MIAMI-DADE COUNTY vs. THE CORRADINO GROUP*, and bearing case number 11-20418 CA 8 (hereinafter referred to as "Subject Case"), on the terms and conditions set forth in this Mutual General Release. This is a full and complete Mutual Release of the Mutual Releasor and Mutual Releasee with respect to any and all claims whatsoever which derive or arise out of the Subject Case.

This Mutual General Release Agreement shall hereinafter be referred to as the "Mutual General Release."

Mutual Releasor and Mutual Releasee hereby covenant and agree as follows:

1. This Mutual General Release is contingent upon a resolution approving this Mutual General Release by the Miami-Dade County Board of County Commissioners ("BCC").
 - a. Mutual Releasee acknowledges that BCC Resolution 130-06 requires that all non-County parties must execute the Mutual General Release before the Mutual General Release may be placed on the BCC's agenda. Accordingly, Mutual Releasee agrees to execute this Mutual General Release before the Mutual Releasor ("Mutual Releasee Execution") and as a precondition to the presentation of this Mutual General Release to the County Mayor or County Mayor's Designee or to the BCC. From the date of Mutual Releasee Execution, the County shall have 180 days to obtain BCC Approval (the "BCC Approval Window"). During the BCC Approval Window, Mutual Releasee agrees that it may not withdraw its execution of the Mutual General Release until the earlier of (i) failure to obtain BCC Approval or (ii) expiration of the BCC Approval Window.
 - b. Mutual Releasor shall not be required to file any document compromising its claim(s) in the Subject Case (e.g., a Stipulation of Dismissal) and shall not have released Mutual Releasee until obtaining BCC Approval and until the County Mayor's veto period expires, until the County Mayor declines to exercise his veto power, or until the BCC overrides the County Mayor's veto, should the County Mayor decide to veto the BCC's approval of this Mutual General Release.
 - c. The parties agree and acknowledge that, even if the BCC fails to approve the Mutual General Release, the terms set forth in paragraph 2 shall survive, and the

parties will be bound thereby.

2. If the BCC does not approve this Mutual General Release, the parties agree that they will not use in the Subject Case any statements or documents that were prepared or presented in connection with the settlement of the Subject Case, including statements made to the BCC. This term shall survive if the BCC does not approve this Mutual General Release.
3. Mutual Releasor and Mutual Releasee deny any and all liability to the other upon all claims which have been asserted or might hereinafter be asserted. The parties to this agreement stipulate that this Mutual General Release is not intended nor shall it be interpreted as an admission of any liability, fault, or responsibility; said fault and liability being expressly disclaimed. Mutual Releasor and Mutual Releasee stipulate and agree the exchange of funds is solely for the purpose of economic considerations to avoid further litigation. Mutual Releasor acknowledges and agrees that Mutual Releasee has viable defenses and a viable counterclaim that could have resulted in a judgment adverse to the Mutual Releasor and, if asked about the Subject Case in connection with obtaining BCC Approval, Mutual Releasor agrees to acknowledge as such.
4. Mutual Releasor hereby agrees not to solicit THE CORRADINO GROUP to bid on projects offered by the Miami-Dade County Parks, Recreation and Open Spaces Department for a period of three years from the date of execution of this Mutual General Release by the Mutual Releasor. THE CORRADINO GROUP hereby agrees not to submit bids for projects offered by the Miami-Dade County Parks, Recreation and Open Spaces Department for a period of three years from the date of execution of this Mutual General Release by the Mutual Releasor.
5. THE CORRADINO GROUP hereby agrees to cooperate in any claims and/or litigation by Mutual Releasor against other persons and/or entities which may bear responsibility for the damages sought by Mutual Releasor in the Subject Case. Mutual Releasee's obligation to cooperate shall include making itself and its current employees reasonably available upon sufficient notice from Mutual Releasor, without a subpoena. To the extent Mutual Releasee's employees are required to travel from outside the tri-county area (i.e., Palm Beach, Broward, and Miami-Dade Counties), Mutual Releasor agrees to pay the reasonable costs of coach airfare and hotel accommodations, provided that Mutual Releasor shall not be required to reimburse hotels costs exceeding the nightly rate for a standard room at the nearest Holiday Inn Express or budget class hotel.
6. The parties acknowledge and agree that this Mutual General Release resolves claims and defenses disputed by both parties.
7. Should any party to this Mutual General Release institute a legal proceeding to enforce its terms the prevailing party shall be entitled to reasonable attorneys' fees and costs. The parties agree that the sole and exclusive remedy for any breach of this Mutual General Release shall be injunctive or declaratory relief.

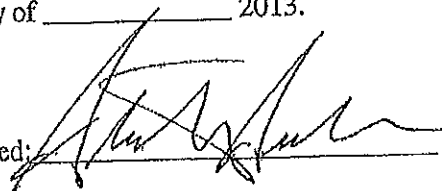
8. This Mutual General Release is entered into in the State of Florida and shall be construed and interpreted in accordance with its laws.
9. This Mutual General Release constitutes the entire agreement between the parties and supersedes any and all prior agreements, arrangements or understandings between the parties relating to the subject matter hereof.
10. This Mutual General Release cannot be changed or terminated orally and except as otherwise specifically provided herein, no change, modification, addition or amendment shall be valid unless in writing and signed by or on behalf of the parties hereto. If any part of this agreement is held to be unenforceable or invalid the remainder shall remain in full force.
11. It is the intention of Mutual Releasor and Mutual Releasee that this instrument shall operate as a release for all actions, causes of action, claims or demands arising out of the alleged incidents described in Subject Case or any cause of action based on the facts derived therefrom. The scope of this release shall not extend to any actions, causes of action, claims or demands that the parties have or might have against each other, which actions, causes of action, claims or demands arise out of acts or agreements other than those that form the basis of the Subject Case. The parties acknowledge that the release contained herein is only as to the parties to this Mutual General Release, and the parties hereby expressly preserve any claims that they have or might have against any third parties, including but not limited to, contractors and subcontractors involved in the projects that formed the basis of the Subject Case.
12. Mutual Releasor and Mutual Releasee have had the benefit of counsel and/or fully understand the terms of this Mutual General Release.
13. Consideration for this Mutual General Release includes, but is not limited to, the amount of ONE HUNDRED FIFTY THOUSAND DOLLARS (\$150,000.00) paid by the Mutual Releasee to the Mutual Releasor.
14. Mutual Releasor and Mutual Releasee voluntarily accept the aforementioned consideration for the purpose of making a full and final compromised, adjustment and settlement of all claims as described in paragraph 11, above.
15. Each party shall bear all attorneys' fees and costs arising from the action of their own counsel.
16. Upon the approval of this Mutual Release by the BCC, the parties will sign the attached Joint Stipulation of Dismissal with Prejudice and file it with the Court, and submit the attached Order of Dismissal with Prejudice for Execution by the Court. The Mutual Releasee will tender a check for \$150,000.00 to the Mutual Releasor within twenty days from receipt of the executed Joint Stipulation of Dismissal with Prejudice by the Mutual Releasor.

IN WITNESS WHEREOF, we have hereunto set our hand and seal on this Mutual General Release consisting of 4 (four) pages as the duly legally authorized representatives of the party for which we are signing on this _____ day of _____ 2013.

Signed: _____

As authorized representative
of Miami Dade County

Date: _____

Signed:  _____

Steve Sullivan
Chief Financial Officer
The Corradino Group

Date: 10/16/13

ACKNOWLEDGEMENTS FOLLOW ON THE NEXT PAGE

ACKNOWLEDGEMENTS

STATE OF FLORIDA
COUNTY OF MIAMI-DADE

Before me, the undersigned Notary Public, on this date personally appeared _____ who acknowledges to having executed this Mutual General Release.

SUBSCRIBED AND SWORN TO BEFORE ME this _____ day of _____, 2013

Notary Public - State of Florida
My Commission Expires:

Signer identified by:

Personal Knowledge; or Production of Identification
Type of Personal Identification produced: _____

STATE OF Kentucky
COUNTY OF Jefferson

Before me, the undersigned Notary Public, on this date personally appeared Steve Sullivan, who states that he is an authorized representative of The Corradino Group and acknowledges to having executed this Mutual General Release.

SUBSCRIBED AND SWORN TO BEFORE ME this 16 day of October, 2013

Marla A. White
Notary Public - State of Kentucky
My Commission Expires: 1/8/2017

Signer identified by:

Personal Knowledge; or Production of Identification
Type of Personal Identification produced: _____