Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 12(A)(3)

05-08-07

OFFICIAL FILE COPY
CLERK OF THE BOARD
OF COUNTY COMMISSIONERS
MIAMI-DADE COUNTY, FLORIDA

RESOLUTION NO. R-612-07

RESOLUTION AUTHORIZING THE EXECUTION OF THE SETTLEMENT AGREEMENT AND MUTUAL RELEASE SETTLING ALL LEGAL CLAIMS AND COUNTERCLAIMS BETWEEN MIAMI-DADE COUNTY AND SIGNAL SERVICE INDUSTRIES, INC. IN CONNECTION WITH CONTRACT NO. 18 FOR THE ANNUAL TRAFFIC SIGNAL SAFETY IMPROVEMENT PROJECT (MIAMI-DADE COUNTY PUBLIC WORKS DEPARTMENT PROJECT NO. 671811)

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 and Mutual Release between the County and Signal Service Industries, Inc. substantially in the form attached to this resolution.

The foregoing resolution was offered by Commissioner Dorrin D. Rolle, who moved its adoption. The motion was seconded by Commissioner Audrey M. Edmonson and upon being put to a vote, the vote was as follows:

Bruno A. Barreiro, Chairman aye
Barbara J. Jordan, Vice-Chairman aye

Joe A. Martinez	absent	Jose "Pepe" Diaz	aye
Audrey M. Edmonson	aye	Carlos A. Gimenez	aye
Sally A. Heyman	aye	Dennis C. Moss	aye
Dorrin D. Rolle	aye	Natacha Seijas	aye
Katy Sorenson	aye	Rebeca Sosa	absent
Sen. Javier D. Souto	absent		

MEMORANDUM
(Revised)

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

DATE: May 8, 2007

FROM: Murray A. Greenberg County Attorney

SUBJECT: Agenda Item No. 12(A)(3)

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**

The Chairperson thereupon declared the resolution duly passed and adopted this 10th day of May, 2007. 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: KAY SULLIVAN
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

Richard C. Seavey

LAW OFFICES

VEZINA, LAWRENCE & PISCITELLI, P.A.

413 EAST PARK AVENUE
TALLAHASSEE, FLORIDA 32301
TELEPHONE (850) 224-6205
FACSIMILE (850) 224-1353

PLEASE REPLY TO:

Fort Lauderdale

THE MUSEUM BUILDING
300 SW FIRST AVENUE SUITE 150
FORT LAUDERDALE, FLORIDA 33301
TELEPHONE (954) 728-1270
FACSIMILE (954) 728-1271

April 12, 2007

Via Federal Express Mail
Richard C. Seavey
Assistant County Attorney
111 N.W. First Street, Suite 2810
Miami, FL 33128-1993

Re: *Signal Service Industries, Inc., v. Miami-Dade County, Florida,* Miami-Dade County Circuit Court Case No. 06-07141 CA 15
Our File No.: 738-23

Dear Richard:

Enclosed please find the Settlement Agreement and Mutual Release executed by Signal Service Industries, Inc. Upon receipt, please execute on behalf of Miami-Dade County and in turn send me an original fully executed Settlement Agreement and Mutual Release.

Best regards.

Very truly yours,

Michael J. Friedman
Vezina, Lawrence & Piscitelli, P.A.

MF/vp

cc: Signal Service Industries, Inc.

Memorandum

MIAMI-DADE COUNTY

Date: May 8, 2007

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

Agenda Item No. 12(A)(3)

From: George M. Burgess
County Manager

Murray A. Greenberg
County Attorney

Subject: Settlement Agreement with Signal Service Industries, Inc. and Resolution of Lawsuit; *Signal Service Industries, Inc. v. Miami-Dade County*, No. 07141CA15 (Circuit Court, Miami-Dade County).

RECOMMENDATION

It is recommended that the Board approve the attached Settlement Agreement and Mutual Release (the "Settlement") between Miami-Dade County, Florida (the "County") and Signal Service Industries, Inc. ("Signal") to resolve all claims relating to the lawsuit captioned *Signal Service Industries, Inc. v. Miami-Dade County*, No. 07141CA15 (Circuit Court, Miami-Dade County) (the "Lawsuit").

BACKGROUND

In April 2004, the County and Signal entered into Contract No. 18 (the "Contract") in which Signal, among other things, agreed to perform work and provide services on the Annual Traffic Signal Safety Improvement Project No. 671811 (the "Project"). The Contract was to be performed on a work order basis and had an initial term expiring in one year or the County's spending of $1,000,000, whichever occurred first. The Contract allowed for an extension of one year and an additional $1,000,000. The Contract was bonded by Developers Surety and Indemnity Company (the "Surety"), which had issued Surety Performance and Payment Bond No. 532 008P (the "Bond")

Within two months of the execution of the initial Contract, and before the spending of the initial $1,000,000, the County sought to exercise the renewal option. The County sent Signal a blank Change Order and asked Signal to execute it and obtain the Surety's consent of the Change Order. Signal returned the Change Order to the County with signatures for both itself and the Surety. Approximately one year later, however, by letter from David H. Rhodes dated July 25, 2005 the Surety notified the County that the Surety had not consented to the Change Order, and that the purported signature of the Surety on the Change Order was not genuine. The County immediately sought an explanation from Signal, but Signal provided none. After Signal's failure to provide an explanation, the County terminated the Contract and terminated all work in progress. The Office of the Inspector General (the "OIG") also began an investigation. Ultimately, the OIG concluded its investigation without filing any charges.

Although Signal acknowledged the termination of the Contract, Signal sought payment for Project work it had completed prior to termination, and Signal invoiced the County for that work. While the County did not dispute that the work had been completed in large part, the County did not pay the invoices because the County had paid substantially higher costs than would have been paid to Signal to obtain substitute performance for the work that was supposed to be performed by Signal pursuant to the Change Order.

Following the County's continued refusal to pay the invoices, Signal filed the Lawsuit. The County filed a counterclaim in the Lawsuit seeking payment for the additional costs the County incurred to obtain substitute performance. Signal claims $174,631 for unpaid work plus prejudgment interest and costs. The County claims $563,595.41 in its Counterclaim.

Pursuant to Court order, the parties attended mediation on March 7, 2007. The parties did not reach a resolution on that day, but the mediator continued to work with the parties following the initial mediation. Ultimately, the parties mutually negotiated the terms of the Settlement. With respect to the County, there are two key terms in the Settlement.

First, the Settlement requires no payment by either party. In this regard, the County's own calculations show that the County owes Signal $172,950, and possibly interest, for work performed by Signal and accepted by the County. Therefore, even if the County is successful in obtaining a judgment against Signal on the County's counterclaim, that judgment would be offset by the $172,950 the County owes to Signal. In the Settlement, however, Signal is releasing the County from any obligation to pay Signal. Therefore, the Settlement essentially is a payment by Signal to the County of $172,950, plus any interest to which Signal would be entitled. While this de facto payment to the County is less than the amount claimed by the County in the Counterclaim, Signal has some substantial legal defenses to the County's counterclaim, particularly with respect to the reasonableness and calculation of damages. Further, the County faces collection issues in connection with any judgment obtained against Signal. Finally, resolving the matter at this stage would avoid attorney and staff costs which likely would be legally unrecoverable in any judgment.

Second, in lieu of debarment proceedings that the County contemplated bringing against Signal, the Settlement prohibits Signal and its principals from doing any business with the County, either as a contractor or subcontractor, for a period of three years. The Settlement provides for enforcement of this provision by injunction. This relief essentially is the same relief that the County would have sought in a debarment proceeding.

Accordingly, the Manager and County Attorney recommend approval of the Settlement.

Assistant County Manager

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This settlement agreement and mutual release (hereinafter referred to as "the Agreement") is made, voluntarily entered into, and effective as of the ___ day of _____, 2007 by and between Miami-Dade County, Florida ("MDC"), a political subdivision of the State of Florida and Signal Service Industries, Inc. ("Signal"), a Florida corporation (collectively "the Parties").

WHEREAS, in or about April 2004, Signal and MDC, entered into contract No. 18 (the "Contract") in which Signal, among other things, agreed to perform work and provide services on the Annual Traffic Signal Safety Improvement Project #671811 (the "Project") with an initial term expiring in one year or MDC spending of $1,000,000.00, whichever occurred first; and

WHEREAS, Signal and MDC executed Change Order One to the Contract extending the Contract by one year and an additional $1,000,000.00 although at the time of execution MDC had not spent the initial $1,000,000.00; and

WHEREAS, Developers Surety and Indemnity Company (the "Surety") issued Surety Performance and Payment Bond No. 532 008P (the "Bond") in connection with the Contract and the Project; and

WHEREAS, a dispute arose between Signal and MDC regarding the Contract, the Project, Change Order One and the Bond; and

WHEREAS, Signal filed and served the action styled *Signal Service Industries, Inc. v. Miami-Dade County, Florida*, No. 07141 CA 15 in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida (the "Action"); and

WHEREAS, MDC filed and served a counterclaim in the Action; and

WHEREAS, Signal and MDC, respectively, denied liability and asserted affirmative defenses in the Action; and

WHEREAS, the Parties desire to amicably settle all complaints, counterclaims, cross-claims, disputes, and claims between them arising out of events which are the subject matter of the Contract, Change Order One, the Bond, the Project, and the Action, and to release each other from any and all liability with respect to said events, and to set forth their mutual understanding and agreements with respect thereto;

NOW, THEREFORE, in consideration of the following covenants, obligations, payments, promises of release, and dismissal, the receipt, sufficiency, and adequacy of all such consideration being hereby expressly acknowledged, the Parties do hereby agree as follows:

1. **Incorporation:** The foregoing recitals of fact were made and shall be a part of this Agreement to the same extent as if fully set forth herein.

2. **No Payment by Either Party:** Other than money already paid up to March 20, 2007, Signal and MDC shall not pay any money to each other for any claims connected in way to the Contract, the Project, Change Order One, or the Action.

3. **Effective Date**: This Agreement is not effective until approved by the Board of County Commissioners of Miami-Dade County, Florida (the "BCC") and either (1) the expiration of the time period for veto by the Mayor of Miami-Dade County, or (2) the BCC's override of any such veto (the "Effective Date").

4. **Release by Signal:** Upon the Effective Date referenced in Paragraph 3 above, and subject to the enforcement of this Agreement, Signal hereby, now and forever, fully and finally, remises, releases, acquits and discharges MDC, and MDC's employees, officers, agents, directors, representatives, insurers, guarantors, attorneys, successors, and assigns, of and from

any and all claims, damages, demands, actions, liabilities, responsibilities, causes of action, debts due, sums of money, accounts, liens, reckonings, bills, covenants, controversies, agreements, or promises whatsoever, in law or in equity, known or unknown, whether in tort or otherwise, arising from or relating in any way to (i) the Contract, (ii) Change Order One, (iii) the Project, and/or (iv) the Action.

5. **Release by MDC:** Upon the Effective Date referenced in Paragraph 3 above, and subject to the enforcement of this Agreement and the indemnification in Paragraph 6 below, MDC hereby, now and forever, fully and finally, remises, releases, acquits and discharges Signal, and Signal's shareholders, principals, employees, officers, agents, directors, representatives, insurers (other than the Surety and the Bond), guarantors, attorneys, successors, and assigns, of and from any and all claims, damages, demands, actions, liabilities, responsibilities, causes of action, debts due, sums of money, accounts, liens, reckonings, bills, covenants, controversies, agreements, or promises whatsoever, in law or in equity, known or unknown, whether in tort or otherwise, arising from or relating in any way to (i) the Contract, (ii) Change Order One, (iii) the Project, and/or (iv) the Action.

6. **Indemnification by Signal**: Signal shall, to the fullest extent permitted by law, defend, indemnify and hold harmless MDC from any and all liability, losses or damages that were directly caused in whole or in part by any act, omission, or default of Signal, which MDC may incur as a result of claims, demands, suits, causes of action or proceedings of any kind or nature by any of Signal's subcontractors of any level, and/or material suppliers and/or their agents of any tier that performed work on the Project. Signal shall pay all claims and losses in connection therewith and shall investigate and defend all such claims, suits or actions of any kind or nature in connection therewith in the name of MDC, where applicable, including appellate

proceedings, and shall pay all costs, judgments and attorneys fees which may arise thereon.

7. **Signal's Voluntary Withdrawal from County Contracting**: For a period of three (3) years following the Effective Date referenced in Paragraph 3 above, neither Signal nor any of its principals, shareholders, directors, officers, or "affiliates" as defined in Miami-Dade County Code § 10-38(b)(1)[1] (the "Withdrawing Parties"), shall conduct business with the County as an agent, representative, contractor, subcontractor (of any level), or partner of any other contractor. This withdrawal from conducting business with the County does not apply to work simply because it is performed within the County (e.g. DOT work performed for the DOT within Dade County, private sector work or work performed for MDX within Dade County). In the event of a breach of this Paragraph, Signal agrees to the entry of appropriate injunctive relief against any Withdrawing Party if any breach remains uncured after ten (10) business days written notice to Signal from MDC that MDC deems that this Paragraph has been breached. This withdrawal from conducting business with the County does not apply to the individual named Steven Hurst, and Steven Hurst shall not be deemed a Withdrawing Party for the purposes of this Agreement.

8. **Dismissal of Claims:** Within five (5) business days of the Effective Date referenced in Paragraph 3 above, MDC and Signal shall file in the Action a stipulation of dismissal of the Action in its entirety with prejudice, each party to bear its own costs and fees.

9. **Attorneys' Fees and Costs:** The Parties shall bear their own attorneys' fees and costs incurred with relation to the matters addressed in this Agreement.

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[1] *Affiliates*. Business concerns, organizations, or individuals are affiliates of each other if, directly or indirectly, (i) either one (1) controls or has the power to control the other, or (ii) a third party controls or has the power to control both. Indicia of control include, but are not limited to, interlocking management or ownership, identity of interests among family members, shared facilities and equipment, common use of employees, or a business entity organized by a debarred entity, individual, or affiliate following the debarment of a contractor that has the same or similar management, ownership, or principal employees as the contractor that was debarred or suspended.

10. **Binding Nature:** Each of the Parties hereto acknowledges, represents and warrants to the other Parties hereto that (i) this Agreement is final and binding upon them, regardless of the adequacy of the consideration hereof, and regardless of the extent of damages allegedly suffered by any of the Parties, and (ii) the Party has not assigned any right, title or interest in or to any potential claim against any other Party hereto to any person or entity.

11. **Construction and Venue:** The Parties acknowledge that this Agreement was the product of mutual negotiation and for purposes of construing its terms, no individual Party shall be deemed to have drafted the Agreement. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Florida, without regard to such State's conflict of law decisions and law, and jurisdiction and venue to enforce the same shall exist solely in the Circuit of the 11th Judicial Circuit in and for Miami Dade County, Florida.

12. **No Admission of Liability:** This Agreement is a contractual settlement, not a mere recital, and is executed for the purpose of compromising disputed claims and avoiding future litigation. It is expressly understood and agreed by the Parties that nothing contained herein nor any action taken pursuant hereto shall ever be construed as an acknowledgment by the Party against whom any liability, claim, lien, defense, demand, charge, complaint, action, or cause of action is asserted of the validity of any such liability, claim, lien, defense, demand, charge, complaint, action, or cause of action, the validity of any such liability, claim, lien, defense, demand, charge, complaint, action, or cause of action being expressly denied by the Party against whom such liability, claim, lien, defense, demand, charge, complaint, action, or cause of action is asserted. Nothing contained in this Agreement shall ever be construed as an admission of liability or responsibility by any Party.

13. **Headings/Titles:** The headings for each paragraph are for convenience only and shall not be utilized in construing the meaning or intent of any of the terms of this Agreement.

14. **Successors:** This Agreement shall apply to and inure to the benefit of and be binding upon and enforceable against the Parties hereto, and their successors, heirs and assigns, as the case may be. However, this Agreement is not assignable by any Party hereto without the express written consent of all other Parties hereto.

15. **Severability:** The Parties have attempted to create an Agreement that is lawful and enforceable in all respects. The validity of this Agreement shall not be affected by any subsequent changes in either federal or state law, whether through legislation or judicial interpretation, which create, eliminate or change the rights and obligations of the Parties. However, if any provision of this Agreement is held to be invalid, void or unenforceable, the balance of the provisions shall, nevertheless, remain in full force and effect and shall in no way be affected, impaired or invalidated.

16. **Capacity and Legal Consultation:** Each of the Parties represent and warrant that it is duly constituted and organized and that it is duly authorized to enter into this Agreement on its own behalf. It is hereby expressly understood and agreed, and the Parties hereby represent, covenant, and warrant, that each signature hereafter appearing is authorized, genuine, and freely, voluntarily, knowingly, and willfully affixed hereon only after having had the opportunity to have the consequences of the terms of this Agreement explained to each of the Parties by counsel of their choosing.

17. **Multiple Counterparts:** This Agreement may be executed in any number of separate counterparts, each of which shall together be deemed an original, but the several counterparts shall together constitute but one and the same Agreement.

18. **Further Action:** Each of the Parties hereto agrees to execute and deliver all documents, provide all information and take or forbear from all such action as may be reasonable necessary or appropriate to achieve the purposes of this Agreement.

19. **Merger and Modification:** The Parties acknowledge that there has been no influence to enter into this Agreement in any manner, nor has any Party relied upon any verbal warranties or representations not set forth in this Agreement. This Agreement constitutes the sole and entire agreement between the Parties and no modification hereof shall be binding unless attached hereto and signed by all parties to this Agreement. All prior and contemporaneous conversation, negotiations, possible and alleged agreements, representations, covenants and warranties concerning the subject matter hereof are merged herein.

EXECUTION

IN WITNESS WHEREOF, the Parties hereto have executed and sealed this Agreement.

SIGNAL SERVICE INDUSTRIES, INC.,

Sworn to and subscribed before me
this 10th day of April, 2007.

Gabriel De Armas

Notary Public
My Commission expires on _____

GABRIEL DE ARMAS JR.
MY COMMISSION # DD 396781
EXPIRES: May 15, 2009
Bonded Thru Notary Public Underwriters

By: Patricia A. Rodolvis
Title: President

MIAMI-DADE COUNTY, FLORIDA,

Sworn to and subscribed before me
this ____ day of _____, 2007.

_____

Notary Public
My Commission expires on _____

By: _____
Title: _____

Approved as to legal form and sufficiency: _____

By: Richard Seavey
Assistant County Attorney