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CLERK OF THE BOARD
OF COUNTY COMMISSIONERS
MIAMI-DADE COUNTY, FLORIDA

Memorandum

MIAMI-DADE COUNTY

Date: May 6, 2008

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

From: George M. Burgess
County Manager

R. A. Cuevas, Jr.
County Attorney

Agenda Item No. 12(A)(3)

Resolution No. R-561-08

Subject: Settlement Agreement with South Florida Resource Conservation and Development Council, Inc. and Resolution of Lawsuit; *South Florida Resource Conservation and Development Council, Inc. v. Miami-Dade County*, No. 04-02913 CA40 (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 the South Florida Resource Conservation and Development Council, Inc. ("Council") to resolve all claims relating to the lawsuit captioned *South Florida Resource Conservation and Development Council, Inc. v. Miami-Dade County, Florida*, 04-02913 CA40 (Circuit Court, Miami-Dade County) (the "Lawsuit") and all claims pertaining to the Cooperative Agreement Between the Council and the County dated December 27, 2000 as amended (the "Contract"). A copy of the Settlement is attached as Exhibit 1.

The terms of the Settlement were reached at a mediation ordered by the Court in the Lawsuit. The County and Council engaged the services of Brian F. Spector, Esq. to serve as the mediator. Mr. Spector is a certified mediator who has mediated scores of complex commercial disputes. The County used Mr. Spector in the past to mediate successfully a lawsuit between Church & Tower, Inc. and the County. As part of the mediation process in this matter, and as was done in the Church & Tower matter, Mr. Spector provided an independent assessment of the strengths and weaknesses of the parties' respective litigation arguments. A copy of the mediator's report and recommendation in this matter (the "Mediation Report and Recommendation") is attached as Exhibit 2.

THE LAWSUIT

The Council filed the Lawsuit against the County in early 2004. In the Lawsuit, the Council seeks damages for the County's alleged breach of the Contract. The Lawsuit is set for trial beginning June 16, 2008. The factual background leading up to the Lawsuit is summarized at pages four through 7 of the Mediation Report and Recommendation.

A. The Lawsuit Claims and Counterclaims

While subdivided into various counts, the Council makes two basic claims in the Lawsuit. First, as summarized at page 3 of the Mediation Report and Recommendation, the Council's largest claim is that it is entitled to lost profits because the County breached the Contract by preventing the Council from completing work allegedly previously authorized by County staff under the Contract. If successful on this claim, the Council could be entitled to a judgment of $6 million. Second, the Council seeks approximately $600,000 for alleged un-reimbursed expenses purportedly incurred when allegedly accelerating work under the Contract at the County's request following passage of Resolution No. 812-02 on July 23, 2002. While both basic claims are at issue, the primary focus of the Lawsuit and the Mediation was on the lost profits claim.

The County has made two counterclaims in the Lawsuit, totaling approximately $138,000.

B. The County's Defenses

The County has asserted various defenses to the Council's lost profits claim, but it has two primary defenses.

First, the County has argued that the Council's lost profits claim is barred by sovereign immunity because the claim seeks payment for work which was not authorized by the Contract. More specifically, the County argues that the Contract's estimated cost could not be exceeded legally without amendments approved by the Board. The Contract's estimated cost initially was $2,491,431.50.[1] On January 29, 2002, the Board approved modifications one and two to the Contract increasing the estimated cost to $11 million. On July 23, 2002, the Board passed Resolution No. 812-02 directing the Manager to prepare an amendment increasing the estimated cost to $106 million to authorize the work for which the lost profits claim is made, but the Board rejected the proposed amendment on September 12, 2002. The County moved for summary judgment on this basis, but the Court denied the motion in February, 2007. The County has renewed the motion, and it is pending. If the Court denies the motion again, the Court will hear evidence with respect to the defense at trial. Mr. Spector's independent analysis at page 10 of the Mediation Report and Recommendation is that it is more likely than not that the County will lose on this defense at trial.

Second, the County has argued that the Contract's non-exclusivity clause[2] allowed the County to assign a canal to the Council for only some of the tasks described in the Contract rather than all tasks. The Council has responded to this argument with evidence that the assignments when made were made without any express limitations. The Council also points to testimony and documentary evidence that the term "segment" was a term of art referring to specific canal segments within the County's secondary canal system. Based on this evidence, the Council argues that the non-exclusivity did not allow the County to assign a canal to the Council and then later only authorize payment for certain tasks and not others.

The County has also argued that the Contract's provision allowing termination without cause on six months written notice operates to bar or limit the Council's claims and that the Council waived its claims

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[1] Although not stated expressly in the Contract, there is evidence that the estimated cost used in the Contract was the sum of two specific project worksheets that had been approved by FEMA at the time of the Contract's negotiation. Additionally, after stating the estimated cost, the Contract further provides:

> This estimate of cost is derived from figures calculated by FEMA, DCA and the County and does not necessarily represent a final estimate but rather a working estimate for the purposes of manifesting the agreement and understandings set forth in this cooperative agreement. The project is intended to restore the secondary canal system of the County to pre Hurricane Irene condition.

Shortly after the County's execution of the Contract, FEMA and the DCA approved project worksheets for canal restoration totaling more than $201 million. The Council argues that the intent of the Contract was that the estimated cost increased commensurate with the value of FEMA approved project worksheets, and that the Contract authorized the County Manager to assign work within the amount of that approval without further Board action.

[2] The non-exclusivity clause provides that "the County reserves the right to segment the Secondary Canal System Dredging Project(s) and enter into similar agreements with other entities if deemed to be in the best interest of the County."

by subsequent conduct in, among other things, entering into a third modification of the Contract to allow the Village of Pinecrest to access the Contract.

THE SETTLEMENT

As of the date of mediation, the Council's total damages if successful at trial were alleged to be $5.7 million. That figure includes compensatory damages, prejudgment interest, attorneys' fees, and costs. If the matter proceeds to trial, prejudgment interest will continue to accrue, and the Council's attorneys' fees and costs will increase. Consequently, a judgment at trial could exceed $6 million.

After lengthy negotiation, the parties agreed to the settlement which provides for the County's payment to the Council of $900,000 in exchange for a complete and total release of by the parties of all claims and counterclaims, and any claims that were, could have been, or could be raised under the Contract. This amount is considerably less than the current exposure, and $200,000 less than the Council's demand for judgment filed in the litigation.

Given the potential exposure as set forth in the analysis attached Mediation Report and Recommendation, the County Manager and County Attorney recommend approval of the Settlement.

The County Manager and County Attorney further recommend that the Board waive the requirements of Resolution R-130-06 requiring that contracts be executed by all non-County parties prior to placement on the County Commission agenda. The request is made because the timeframes required by the Court in this matter did not allow the County Manager and County Attorney to secure the signature of the Council on the attached signature agreement at the time of the item's placement on the County Commission agenda.

Assistant County Manager

MEMORANDUM
(Revised)

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

DATE: May 6, 2008

FROM: R. A. Cuevas, Jr. 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

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 12(A)(3)
5-6-08

RESOLUTION NO. **R-561-08**

RESOLUTION AUTHORIZING THE MAYOR OR HIS DESIGNEE TO EXECUTE THE SETTLEMENT AGREEMENT SETTLING ALL LEGAL CLAIMS AND COUNTERCLAIMS BETWEEN MIAMI-DADE COUNTY AND SOUTH FLORIDA RESOURCE CONSERVATION AND DEVELOPMENT COUNCIL, INC. IN CONNECTION WITH THE COOPERATIVE AGREEMENT DATED DECEMBER 27, 2000

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 the terms of and authorizes the Mayor or his designee to execute the Settlement Agreement between the County and South Florida Resource Conservation and Development Council, Inc. substantially in the form attached to this resolution. The Board also waives the requirements of Resolution R-130-06 requiring that contracts be executed by all non-County parties prior to placement on the County Commission agenda for the reason set forth in the accompanying memorandum.

The foregoing resolution was offered by Commissioner **Natacha Seijas**, who moved its adoption. The motion was seconded by Commissioner **Dennis C. Moss** and upon being put to a vote, the vote was as follows:

Bruno A. Barreiro, Chairman	**aye**		
Barbara J. Jordan, Vice-Chairwoman	**aye**		
Jose "Pepe" Diaz	**absent**	Audrey M. Edmonson	**absent**
Carlos A. Gimenez	**aye**	Sally A. Heyman	**aye**
Joe A. Martinez	**absent**	Dennis C. Moss	**aye**
Dorrin D. Rolle	**absent**	Natacha Seijas	**aye**
Katy Sorenson	**absent**	Rebeca Sosa	**aye**
Sen. Javier D. Souto	**absent**		

The Chairperson thereupon declared the resolution duly passed and adopted this 6th day of May, 2008. 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

EXHIBIT 1

SETTLEMENT AGREEMENT

This Settlement Agreement (the "Agreement") is made and entered into this ____ day of April, 2008, by and between the following, sometimes referred to hereafter collectively as the "Parties" and individually as a "Party":

South Florida Resource Conservation and Development Council, Inc. (the "Council"),

and

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

Whereas, the Parties entered into the Cooperative Agreement Between South Florida Resource Conservation and Development Council, Inc. and Miami-Dade County dated December 27, 2000, and amended that agreement three times in three written modifications dated December 7, 2001 and May 19, 2003 (the "Contract");

Whereas, there is currently pending in the Circuit Court of the 11th Judicial Circuit in and for Miami-Dade County, Florida (the "Court"), Case No. 04-02913 CA40, an action entitled *South Florida Resource Conservation and Development Council, Inc. v. Miami-Dade County, Florida* (the "Lawsuit");

Whereas, the County has asserted counterclaims in the Lawsuit;

Whereas, the County as advised that it has additional claims against the Council arising out of disallowances by FEMA which the County has not yet asserted in the Lawsuit;

Whereas, on or about April 4, 2006, Mintz Truppman, P.A. filed a Notice Attorney's Charging Lien (the "Charging Lien") in the Lawsuit;

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 Contract;

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

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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, for and in consideration of the following covenants and agreements, or other valuable consideration, the receipt and sufficiency of which are hereby acknowledged and conclusively established, the Parties covenant and agree as follows:

1. **Recitals**: The foregoing recitals are true and correct.

2. **Nothing In This Agreement To Act As Admission**: Neither this Agreement nor anything in it shall act as or constitute an admission by any Party that any Party, or any of their 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.

3. **Settlement of Lawsuit**: In settlement of the Lawsuit, including but not limited to any and all claims and counterclaims which were or could have been asserted in the Lawsuit, and any and all claims which could have been, or could in the future be, asserted in connection with the Contract, the County promises to pay the Council the sum of Nine Hundred Thousand Dollars $900,000.00, (the "Settlement Sum"). The County shall pay the Settlement Sum within five (5) business days from the date of the expiration of the Mayor's veto period following the approval of this Agreement by the Board of County Commissioners of Miami-Dade County, Florida. The County shall make the payment via wire transfer or check made payable to the client trust account of Higer, Lichter & Givner, LLP. The Settlement Sum shall not be disbursed from the Higer, Lichter & Givner, LLP client trust account until Mintz Truppmann, P.A. files a notice with the Court discharging the Charging Lien. 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 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 Agreement.

4. **Release from the Council to the County**: the Council hereby remises, releases, acquits, satisfies and forever discharges the County (including each of the County's past and present parent, subsidiary, affiliate or predecessor entities,

and any and all of its and/or their respective past and present officers, directors, agents, attorneys, accountants, insurers, servants, employees, and shareholders, and their respective heirs and personal representatives, all of the foregoing hereinafter collectively referred to as the "County Releasees"), of and from any and all, and all manner of, claims, actions, causes of action, suits, debts, sums of money, accounts, reckonings, contracts, controversies, agreements, promises, damages, and demands whatsoever, in law or in equity, which the Council had or now has, or which any successor or assign of the Council hereafter can, shall or may have, against the County Releasees, for, upon, or by reason of any matter, cause or thing whatsoever, from the beginning of the world to the date of this Agreement, whether known or unknown, direct or indirect, vested or contingent, which arises out of or relates (directly or indirectly) to the Contract. Without limiting the generality of the foregoing, the Council's release also specifically includes the release of any and all claims, rights, and causes of action, of any type or kind whatsoever, which were or could have been raised or asserted by the Council in the Lawsuit or in a separate action filed in the Court arising out of or relating (directly or indirectly) to the Contract. Notwithstanding the foregoing, the Council expressly excludes from the effect of this Release and does not release the County Releasees from the terms and conditions of this Agreement.

5. **Release from the County to the Council**: the County hereby remises, releases, acquits, satisfies and forever discharges the Council (including each of the Council's past and present parent, subsidiary, affiliate or predecessor entities, and any and all of its and/or their respective past and present officers, directors, agents, attorneys, accountants, insurers, servants, employees, and shareholders, and their respective heirs and personal representatives, all of the foregoing hereinafter collectively referred to as the "Council Releasees"), of and from any and all, and all manner of, claims, actions, causes of action, suits, debts, sums of money, accounts, reckonings, contracts, controversies, agreements, promises, damages, and demands whatsoever, in law or in equity, which the County had or now has, or which any successor or assign of the County hereafter can, shall or may have, against the Council Releasees, for, upon, or by reason of any matter, cause or thing whatsoever, from the beginning of the world to the date of this Agreement, whether known or unknown, direct or indirect, vested or contingent, which arises out of or relates (directly or indirectly) to the Contract. Without limiting the generality of the foregoing, the County's release also specifically includes the release of any and all claims, rights, and causes of action, of any type or kind whatsoever, which were or could have been raised or asserted by the County in the Lawsuit or in a separate action filed in the Court arising out of or relating (directly or indirectly) to the Contract including any claims for disallowances by FEMA that FEMA has asserted but which the County has not yet asserted in the

Lawsuit or a separate action and potential claims for disallowances that FEMA has not yet asserted. Notwithstanding the foregoing, the County expressly excludes from the effect of this Release and does not release the Council Releasees from the terms and conditions of this Agreement.

6. **Attorneys' Fees**: Other than as provided below, the Parties agree that each of them will be responsible for paying their own attorneys' fees, costs and expenses arising out of or connected with the Lawsuit, including but not limited to the preparation and execution of this Agreement.

7. **Paragraph Headings**: The headings of the paragraphs of this Agreement are inserted only for the purpose of convenience of reference, and the Parties recognize and agree that these headings may not adequately or accurately describe the contents of the paragraphs which they head. Such headings shall not be deemed to govern, limit, modify, or in any manner affect the scope, meaning, or intent of the provisions of this Agreement or any part or portion thereof, nor shall they otherwise be given any legal effect.

8. **Parties**: This Agreement, as well as the obligations created and the benefits conferred hereunder, shall be binding on and inure to the benefit of the Parties as well as their personal representatives, heirs, past and present representative officers, directors, agents, attorneys, accountants, insurers, employees, and any subsidiary, affiliated and parent corporations, collateral corporations, or other business entities controlled directly or indirectly by the Parties. Each Party hereby represents and warrants, with respect to any and all claims and counterclaims which were or could have been asserted in the Lawsuit against the other Party, that: (a) no other person or entity is entitled to assert any such claims or counterclaims against, or to recover any monetary, declarative, injunctive, equitable, or any other form of relief from, the opposing Party; and (b) no Party has assigned, transferred, hypothecated, or in any other way disposed of all or any portion of any of claims or counterclaims which were or could have been asserted in the Lawsuit against the opposing Party.

9. **Authority:** Each person signing this Agreement on behalf of a Party represents and warrants that he or she has full power and authority to enter into this 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.

10. **Governing Law and Venue**: 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 Agreement shall be brought in the Court in the Lawsuit.

11. **Enforcement Action**: The Parties agree that in the event any Party brings an action to enforce any of the provisions of this Agreement, the Party prevailing in any such action shall be entitled to recover, and the losing Party shall be obligated to pay, the reasonable attorneys' fees and costs incurred in such proceeding, including attorneys' fees and costs incurred in any appellate proceedings. **THE PARTIES AGREE TO WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY ENFORCEMENT PROCEEDING, ACTION, OR LITIGATION ARISING OUT OF, DIRECTLY OR INDIRECTLY, THIS AGREEMENT.**

12. **Entire Agreement**: The Parties acknowledge that this Agreement contains the full and complete agreement between and among them, and that there are no oral or implied agreements or understandings not specifically set forth herein. Each Party acknowledges that no other Party, or agent or attorney of any other Party, or any person, firm, corporation or any other entity has made any promise, representation, or warranty, whatsoever, express, implied, or statutory, not contained herein, concerning the subject matter hereof, to induce the execution of this Agreement. Each signatory also hereby acknowledges that he or she has not executed this Agreement in reliance on any promise, representation, or warranty not contained herein. The Parties further agree that no modifications of this Agreement may be made except by means of a written agreement signed by each of the Parties. Finally, the Parties agree that the waiver of any breach of this Agreement by any Party shall not be a waiver of any other subsequent or prior breach. From time to time at the request of any of the Parties to this Agreement, without further consideration and within a reasonable period of time after request hereunder is made, the Parties hereby agree to execute and deliver any and all further documents and instruments and to do all acts that any of the Parties to this Agreement may reasonably request which may be necessary or appropriate to fully implement the provisions of this Agreement.

16. **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.

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

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: _____

REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK FOLLOWED BY ONE SIGNATURE PAGE

South Florida Resource Conservation and Development Council, Inc.

BY: _____

Name:

Title:

EXHIBIT 2

Spector

Tel 305.666.1664 ▲ Cell 305.613.5200 ▲ Fax 305.661.8481

BRIAN F. SPECTOR, LLC

Post Office Box 566206 ▲ Miami, Florida 33256-6206
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March 31, 2008

Via E-Mail

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Re: *South Florida Resource Conservation & Development Council, Inc. versus Miami-Dade County*
Case No. 04-02913-CA-40
11th Judicial Circuit Court, Miami-Dade County, Florida

Dear Counsel:

I write in accordance with the terms of my engagement letter dated March 13, 2008, and your March 13, 2008, Joint Pretrial Stipulation filed with the Court.[1]

[1] For ease of reference, I quote below the applicable portion of your Joint Pretrial Stipulation:

> The parties have agreed to a format for the mediation in which the mediator would render a decision in the form of a letter as to his opinion as to the recommended settlement. The mediator will attempt to reach an agreement with the parties as to his recommended settlement, and if able, will render a decision consistent with the agreement of the parties. If unable to reach an agreement with the parties, the mediator will still issue a decision which will set forth his recommended settlement together with his rationale. In either event, the parties through their respective representatives will present the mediator's decision to the parties' respective decision

Recommended Settlement As To
Which There Is An Agreement In Principle

For the reasons set forth below, I have recommended, and the parties' respective counsel and representatives who attended the March 26, 2008 mediation have agreed in principle to, the settlement of this case on the following terms:

1. Payment by Miami-Dade County (the "County") to South Florida Resource Conservation & Development Council, Inc. (the "Council") of the lump sum of Nine Hundred Thousand Dollars ($900,000.00), sometimes referred to hereafter as the "Settlement Sum"; and

2. Exchange of mutual releases and dismissal with prejudice of the action presently pending in the Eleventh Judicial Circuit Court in and for Miami-Dade County, Florida (the "Court"), Case No. 04-02913-CA-40, entitled *South Florida Resource Conservation & Development Council, Inc. versus Miami-Dade County*, sometimes referred to hereafter as the Lawsuit.[2]

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makers. In the case of the Council, the mediator's decision will be presented to the Council's board of directors for approval; and in the case of the County, the mediator's decision will be presented to the BCC. **If the mediator's decision is consistent with an agreement by the parties' representatives than the parties' representatives will recommend that their respective decision makers approve the mediator's decision.** If the mediator's decision is not consistent with an agreement of the parties, then **the parties' representatives** will still present the mediator's decision to their respective decision makers, will support the process by which the mediator reached his decision, will not undermine the rationale for the mediator's decision, and **will vouch for the qualifications of the mediator to render his decision. The parties agree that the mediator's decision shall be presented to their respective decision makers at the next possible meeting of their respective decision makers**. (emphasis added)

[2] The Council and the County, sometimes referred to hereafter collectively as the "Parties" and individually as a "Party," will be releasing each from any and all claims, actions, causes of action, suits, debts, sums of money, accounts, reckonings, contracts, controversies, agreements, promises, damages, and demands whatsoever, in law or in equity, which either Party had or now has, or which any successor or assign of either Party hereafter can, shall or may have, against the other Party, for, upon, or by reason of any matter, cause or thing whatsoever, from the beginning of the world to the date of this Agreement, whether known or unknown, direct or indirect, vested or contingent, which arises out of or relates (directly or indirectly) to the "Cooperative Agreement" between the Council and the County dated December 27, 2000, as amended. Without limiting the generality of the foregoing, the Parties' releases will also specifically include the release of any and all claims, rights, and causes of action, of any type or kind whatsoever, which were or could have been raised or asserted by one Party against the other Party in the Lawsuit or in a separate action filed in the Court arising out of or relating (directly or indirectly) to the "Cooperative Agreement" between the Council and the County dated December 27, 2000, as amended. Within five (5) business days of payment of the Settlement Sum by the County, and receipt by the Council of good

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Basis For The Recommended Settlement

In preparing this letter and recommending settlement of the Lawsuit on the terms specified above, I have studied the pleadings, motions, memoranda, Court orders, and discovery materials (*i.e.* documents produced in discovery as well as transcripts of deposition testimony taken of various witness) which you furnished me in preparation for our March 26, 2008 mediation. By express agreement of both parties, I have also considered your respective presentations made during the plenary session of our mediation.

Nature of the Case

This is a contract dispute between the Council and the County. The subject contract is denominated as a "Cooperative Agreement," is dated December 27, 2000, and was modified three times, twice on December 7, 2001 and again on May 19, 2003. In summary, the Council contends that it contracted with the County to provide construction management services. The Council argues that the County breached the contract by preventing the Council from performing and refusing to pay the Council for the work which the County had contracted with the Council to perform. The Council seeks to recover its lost profits, prejudgment interest, attorneys' fees and costs which total close to $6 million. The County has counterclaimed, asserting two counts for breach of contract. The first seeks payment of approximately $67,000 for expenses which were paid to the Council but subsequently disallowed by FEMA, which the County contends requires reimbursement to the County under the contract. The second count seeks reimbursement to the County of advances made to the Council which were never used to pay subcontractors or the Council's management fee. The County contends that at project conclusion, the Council's own records reflect that excess advances total approximately $71,000. According to the County, the Council was (is) is obligated to return this sum to the County but failed to do so when requested. Additionally, during the plenary session of the March 26th mediation, the County contended that there are additional disallowances, beyond those presently sought in its counterclaim, which the County believes it is entitled to recover from the Council. In the absence of a settlement, the County would assert claims for those additional allowances either via amendment to its existing counterclaim or by filing a new lawsuit against the Council. The recommended settlement resolves any and all claims of the County against the Council, meaning those presently asserted and those

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funds, the Parties, through their respective counsel, shall prepare and file with the Court, in accordance with Rule 1.420 of the Florida Rules of Civil Procedure, a 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.

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which could be asserted by amendment of the pleadings or commencement of a new lawsuit.

The Undisputed Facts

In their Joint Pretrial Stipulation, the parties agreed that the following facts are undisputed:

1. Following damage caused by Hurricane Georges and disrepair, the Council entered into cooperative agreements with a number of parties to provide management services in connection with all phases of repair and restoration of Monroe County's drainage canals (the "Monroe County Project.").

2. The Council completed the Monroe County Project.

3. Following damage caused to the County's secondary canal system from Hurricane Irene, the County received approval from the Federal Emergency Management Agency ("FEMA") through the Florida Department of Community Affairs ("DCA") of project worksheets. Based on the Project worksheets, FEMA/DCA agreed to an allocation to the County of $2,491,431.50 for the repairs of the secondary canal restoration as identified for the scope of the work provided for in the project worksheets.

4. The County contacted the Council to discuss entering into a contract with the Council to provide management services in connection with restoration of the County's secondary canal system following Hurricane Irene.

5. After the County contacted the Council, the parties discussed the terms of a contract.

6. In October 2000, the "No Name Storm" hit the County and caused additional damage to the County's secondary canal system.

7. On November 17, 2000, the Council executed the Cooperative Agreement Between South Florida Resource Conservation and Development Council, Inc. and Miami Dade County (the "Contract").

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8. On December 19, 2000, the Miami-Dade County Board of County Commissioners ("BCC") passed Resolution R-1406-00 approving the Contract.

9. Pursuant to Resolution R-1406-00, the County Manager executed the Contract.

10. The BCC approved the Contract as a no-bid contract waiving the normal bidding requirements in the Code of Miami-Dade County and Florida Statutes.

11. With respect to the damage from Hurricane Irene and the "No Name Storm," the County's Office of Capital Improvements prepared and submitted project worksheets to FEMA though the DCA seeking approval of potential funding reimbursement for restoration of the County's secondary canal, and FEMA through DCA began approving those project worksheets.

12. Article XIII of the Contract provides that that the County shall administer the Contract through the County Manager. While retaining ultimate authority to administer the Contract, the County Manager delegated his authority to administer the Contract on a day to day basis to DERM which delegated its authority to DORM, once DORM was created. The parties dispute, however, the level of authority, if any, that the County Manager retained.

13. Subsequent to communications from County staff in e-mails correspondence, and meetings between January 2001 and September 2001, the Council began work on the following canals Russian Colony, Coral Gables, Comfort, Red Road, Naranja, SW 144th Street, Goulds, NW 58th Street, Gratigny, Opa-Locka, Melrose, Palm Spur, Dressels Dairy, Quail Roost Trailer Park, C100A Extension, Ludlum Glades, NW 127th Street, Westwood Lakes, and Graham Dairy (collectively the "19 Canals"). With the exception of the Russian Colony canal, the parties dispute the scope of the work that the County authorized the Council to perform with respect to the 19 Canals.

14. In March 2002, the C-102N Extension Canal was substituted for the Quail Roost Canal as a Council responsibility, but the number of canals on which the Council was directed to work did not change.

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15. By February 2001, FEMA and the DCA had approved in excess of $201 million in potential reimbursement to the County for restoration of the secondary canal system.

16. The Council executed Modifications One and Two to the Contract.

17. On January 29, 2002, the BCC approved Modifications One and Two in Resolution R-33-02.

18. On September 12, 2002, the Board of County Commissioners rejected a proposed third modification to the Contract.

19. Pursuant to the Contract, the Council performed management services for the County.

20. The fee for the management services provided by Council to the County was 7% of certain actual costs, but the County disputes that 7% fee of actual costs was and/or would be owed on costs incurred for disposal/tipping fees and for costs disallowed for errors, inefficiencies, and unnecessary work.

21. As to the Russian Colony project, the Contract authorized the Council to perform the survey, design, engineering and construction management services described in the Contract.

22. The Council performed the survey, design, engineering and construction management services described in the agreement for the Russian Colony project. The County disputes that all described services were performed timely and properly by the Council, but the County does not dispute that the County ultimately accepted and paid for the survey, design, engineering and construction management services provided by the Council in connection with the Russian Colony project. To the extent that the County is asserting in this statement that there is an issue as to the Council's performance, the Council does not concede or consent that this is a relevant issue.

23. As to approximately 18 other projects (Coral Gables, Red Road, Naranaja, S.W. 144th Avenue, Comfort, Goulds, N.W. 58th Street, Gratigny, Melrose, Palm Springs Spur, Opa Locka, Dressels Dairy, C-100A Extension, Ludlum Glades, N.W. 127th Street, Westwood

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Lakes, Graham Dairy, and C-102 North Extension) that are the subject of the complaint (collectively "18 Canal Projects"), the Contract authorized the Council to perform the survey, design and engineering management services described in the Contract. There is a dispute as to whether the Contract also authorized the Council to perform the construction management services as to the 18 Canal Projects.

24. As to the 18 Canal Projects, the Council performed the survey, design and engineering management services described in the Contract. The County disputes that all described services were performed timely and properly by the Council, but the County does not dispute that the County ultimately accepted and paid for the survey, design and engineering management services provided by the Council in connection with the 18 Canal Projects. To the extent that the County is asserting that there is an issue as to the Council's performance, the Council does not concede or consent that this is a relevant issue.

25. During the Council's performance, the County advanced funds to the Council from which Plaintiff deducted the costs of paying its subcontractors and the Council's fee of 7% of certain actual costs.

26. Through the County's staff and/or other consultants retained by the County, construction management services were performed as to the 18 Canal Projects.

27. The County has produced a spreadsheet that it prepared dated October 17, 2007 entitled "DERM FEMA Programs Hard vs. Soft Costs by Canals" which accurately sets forth the costs as to the 19 Canals.

28. The Council executed Modification Three to the Contract allowing the Village of Pinecrest to access the Contract. On May 6, 2003, the BCC approved Modification Three in Resolution R-430-03.

29. Neither the Council nor the County issued a termination notice explicitly referencing Article IV of the written agreement.

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Court Orders And Pending Motions

On March 8, 2007, and June 5, 2007, the Court entered two orders of great significance. The first order is entitled "Order On Plaintiff's Motion For Partial Summary Judgment And Defendant's Cross Motion For Partial Summary Judgment." In pertinent part, the March 8th Order, denying both motions for summary judgment, states as follows:

> 15. The Council argues the Contract unambiguously entitled them to, and in fact, required them to complete all stages of the dredging project once an assignment occurred.
>
> 16. Furthermore, the Council argues that once a project was assigned, the tasks delineated in the Contract to be performed could not be segmented and thus, did not allow the County to re-assign portions thereof without express agreement from Council.
>
> 17. However, the "Non Exclusivity" provision of the Contract states the County "[r]eserves the right to segment the Secondary Canal System Dredging Project(s) and enter into similar agreements with other entities if deemed to be in the best interest of the County." There is no explicit wording or provision in that section, or anywhere else in the Contract, that requires Council's permission for re-assignment; even with respect projects to cases already assigned. In fact, the Contract does not describe in detail how the County could "segment" the project except to say that whatever method chosen, it would be in the "best interest" of the County.
>
> 18. Thus, the Court finds that there are issues of fact which preclude the entry of Partial Summary Judgment.
>
> 19. The County argues the initial contract, (and its subsequent modifications), never authorized Council to perform the work Council claims they were authorized and required to do. Instead, the County asserts the Contract's own terms limited the tasks to be performed by Council. As evidence, the County points to the initial estimate for the dredging project of $2,491,431.50, which they believed, placed a limit on the amount of work Council could perform before they would be forced to seek a modification of the Contract to increase funding. This Court disagrees. Although it was initially estimated that funding for this project would total $2,491,431.50, the Contract states that this amount "[did] not necessarily represent a final estimate but rather a *working estimate*

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> for the purpose of manifesting the agreement and understandings set forth in this cooperative agreement." In fact, Article IV of the Contract acknowledges that "compensation for the Council cannot be determined until negotiations with the DCA and FEMA regarding actual [p]roject costs have been established..." Therefore, this Court finds that the Contract's initial compensation price, set at $2,491,431.50, does not explicitly limit the Council's duties, but rather is listed as an initial benchmark for funding the project. Whether or not the County was required to increase funding for the project once assigned is a material issue of fact in dispute by the parties.
>
> 20. Finally, to the extent the County argues that public contracting laws and sovereign immunity bars the Council's claim, this Court finds that when a governmental body enters into a contract fairly authorized by the powers granted by general law, a defense of sovereign immunity will not protect it from an action arising from the state's purported breach of contract. *County of Brevard* v. *Miorelli Engineering, Inc.,* 703 So.2d 1049, 1050 (Fla. 1997).

The second order, dated June 5, 2007, entitled "Order On Plaintiff's Motion For Clarification And/Or Rehearing" states, in pertinent part, as follows:

> 3. This Court's Order on March 8, 2007, denying both parties' motions for summary judgment, held there were genuine issues of fact regarding the interpretation of the contract in question. As such, this Court concluded summary judgment was inappropriate. *Cern Enterprises, Inc.* v. *Dept. of Transp.,* 868 So. 2d 674 (Fla. 1st DCA 2004).
>
> 4. Because this Court reaffirms its conclusion that both parties indeed construed issues of fact differently in their interpretation of the contract, summary judgment, (partial or otherwise), cannot be granted.
>
> 5. If even the slightest doubt exists regarding the existence of material issues of fact, a trial court is required to deny summary judgment. *Franco* v. *Miami-Dade County,* 947 So. 2d 512,515 (Fla. 3d DCA 2006).
>
> 6. Finally, because this Court, in its March 8, 2007 order, did not conclude, in the affirmative or negative, whether the contract in question was breached, this Court need not address the sovereign

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> immunity defense via summary judgment. *Pan-Am Tobacco Corp. v. Dept. of Corrections,* 471 So.2d 4, 5 (Fla. 1984) (holding that when a state enters into a contract fairly authorized and subsequently *breaches it, the defense* of sovereign immunity will not protect the state from action arising from the state's breach of that contract).

By virtue of these two orders, it appears to me that the determination at trial of the most significant issues in the Lawsuit would turn on the testimonial and documentary evidence adduced. Admittedly, I have not read every word of every deposition taken in the Lawsuit. Nor have I read every word of every document produced in discovery. Nevertheless, based on the materials I studied in preparation for, and the parties' respective presentations made during the plenary session of, the March 26th mediation, it appears to me that the Council would be more likely than the County to prevail at trial with regard to the issues of liability[3] and damages on the Council's "lost profits" claims. However,

[3] For example, based on the materials cited above, and despite conflicting evidence, it appears to me that the Council is more likely than not to persuade the Court that those persons duly authorized by the Miami-Dade County Manager (or the Manager's delegatee) to "perform this Agreement," as that phrase is used in Article XIII of the Cooperative Agreement, understood and acknowledged that "assignment" of a canal to the Council, as evidenced by various documents included PWs (Project Worksheets), meant that the Council was authorized to perform all services for that "segment" of the canal – survey, design, engineering and construction management. Moreover, the contract, as approved by the BCC, was intended "to restore the secondary canal system of the County to pre Hurricane Irene condition." *See* Cooperative Agreement, Art. III, Statement of Work. As such, and because the work described in Article III to be performed was based on an estimated cost derived from figures calculated by FEMA, DCA and the County and did "not necessarily represent a final estimate but rather a working estimate for the purposes of manifesting the agreement and understandings set forth in [the] cooperative agreement," there was no legal need to modify the contract when the canal segments assigned to the Council exceeded the "estimated amount" so long as 87.5% of the funding necessary for the projects was being provided through FEMA's Public Assistance Program and from the State of Florida through the Department of Community Affairs. The testimony of each and every witness then employed (or employed at the relevant time) by the County was that no one ever acted illegally in assigning canals to the Council even when such assignments resulted in work beyond the amount estimated in Article III of the contract. As I understand the deposition testimony I read and the segments of video depositions shown to me at the mediation's plenary session, the contract modifications were presented to the BCC "after" certain canals had been assigned to the Council. While such *post hoc* approval by the BCC was sought and obtained, the fact remains that the actions of the County's representative prior to such approval either were or were not lawful. In each instance, all individuals testified under oath that their actions were lawful in all respects. I construe the Council's willingness to "sign off" on the modifications as acceding to the wishes of those with the County with whom the Council was working, recognizing that failing to do so could or would result in termination "without cause" of the contract on six months advance written notice under Article IV. In summary, in my view, the evidence – principally elicited from the mouths of witnesses adverse to the Council and aligned with the County – is that the contract authorized the Council to perform, and the Council in fact was assigned all tasks, *i.e.* survey, design, engineering and construction management service, as to the 18 Canal Projects at issue. Consequently, the BCC's decision in September of 2002 not to permit the Council to complete work on these canals constituted a breach of contract for which the

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I am mindful that on February 22, 2008, the County filed a renewed motion for partial summary judgment. While it is unusual for a judge to reverse a ruling made earlier in a case -- here an order denying summary judgment -- it is theoretically possible that the County could prevail on its renewed motion for summary judgment, denying the Council a trial and resulting in entry of judgment for the County. Finally, on February 22, 2008, the Council also moved for summary judgment, thereby presenting the Court once again with an opportunity to determine the issue of liability prior to trial in the Council's favor.

Alternatives To Settlement

Obviously, in the absence of a settlement, the Lawsuit would proceed. The following alternative "outcomes" are all possible:

1. The Court could grant the County's renewed motion for partial summary judgment. If this occurred, the Council would recover nothing on its claims and possibly be responsible for paying some portion of the County's attorneys' fees by virtue of not accepting a $250,000 proposal for settlement (also referred to as an offer of settlement or an offer of judgment) made earlier in the case by the County. The County also could succeed on its counterclaims.

2. The Court could grant the Council's motion for summary judgment, resulting in a trial limited solely to the amount of damages properly recoverable by the Council. Under this scenario, in addition to the lost profit damages claimed by the Council, discussed in more detail below, the County could possibly be responsible for paying a portion (approximately $230,000) of the Council's attorneys' fees by virtue of not accepting a $1,100,000 proposal for settlement made earlier in the case by the Council.

3. If all pending motions were denied, the case would proceed to trial. The case is scheduled for a bench trial, *i.e.* a trial conducted by a judge, not a jury trial, estimated to last ten trial days. With regard to the largest claim in the case, that being the Council's claim for lost profits, my opinion, as stated above, is that the Council is more likely to prevail than the County on the issues of liability and damages. Under this scenario, having considered the reports of each side's damages expert, I believe the more credible/reliable

---

County would be liable to the Council for "lost profits," *i.e.* the 7% fee less all fixed and variable costs directly attributable to, or arguably allocable to, the Council's performance.

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expert opinion is that offered by the Council. If the Court agreed, the economic damages recoverable by the Council from the County would be $3,532,000.[4] Added to this sum would be prejudgment interest from 2002 to date, at various annual interest rates,[5] totaling approximately $1,586,000. In addition, there is also the possibility of the County being responsible for the Council's attorneys' fees (the sum previously specified above [approximately $230,000 to date] and the additional attorneys' fees through the ten-day trial). One would expect the County to appeal a judgment of this magnitude. It would be mere conjecture to opine on the amount of time it might take for this case to work its way through the appellate courts or the likely outcome of any appeal. For the sake of analysis one reasonably could assume that if there are appellate proceedings, and perhaps a new trial on remand, this case will not be over until the latter part of 2009 and, perhaps, even as late as the beginning of 2010, with post judgment interest accruing every day.

4. It is, of course, also possible that the County could prevail at trial. Under this scenario, the Council would recover nothing, the County would recover on its counterclaims totaling approximately $140,000, plus prejudgment interest, and the County's attorneys' fees by virtue of the Council not accepting a $250,000 proposal for settlement made earlier in the case by the County.

The Proposed
Settlement Is Fair And Reasonable

The proposed settlement here, as in all cases, is the end result of a process in which each party assesses risk and then offers to pay/receive a sum of money to avoid unfavorable outcomes. The Settlement Sum ($900,000.00), while substantial, is a fraction of the money which the Council seeks. The Council should accept this amount simply to end the case now, thereby avoiding additional expense and any possible adverse result. Similarly, the County should pay this amount now because, despite excellent representation by its

[4] The County's damages expert opined that, assuming the County breached the contract and is liable for damages, the Council's recovery would be in the range of zero dollars to approximately $570,000.

[5] The applicable rates for prejudgment interest are: 9% for 2002; 6% for 2003; 7% for 2004; 7% for 2005; 9% for 2006; 11% for 2007; and 11% for 2008 (or .0003014 per day). See http://www.fldfs.com/aadir/interest.htm.

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Assistant County Attorney, the evidence adduced at trial is, in my opinion, more likely to result in a judgment for the Council than it is for the County.

In closing, I readily acknowledge that counsel of record in this case know the evidence and applicable law better than I, having lived with this case for years in comparison to my days. But I was tasked with: reviewing materials; listening to presentations; indentifying and understanding the parties' respective interests, wants, and needs; and writing a letter setting forth my opinion, and underlying rationale, for a fair and reasonable settlement. I have done so to the best of my abilities, limited as they are. To the extent any reader of this letter wonders who I am and why anything I say should be given any consideration, I attach a summary biography and a complete resume.

I consider it a privilege to have worked for the parties and their counsel and genuinely thank all those involved in my selection for affording me this unique opportunity to assist the parties resolve this litigation.

Respectfully yours,

Brian F. Spector Date: 2008.03.31 11:35:09 -04'00'

Brian F. Spector

BFS:ms
Enclosures

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Brian Spector has been a lawyer since 1978. He presently concentrates on alternative dispute resolution, principally mediating complex matters. He is certified as a Circuit Mediator by the Supreme Court of Florida and as a mediator by the United States District Court for the Southern District of Florida. For 28 years Brian practiced with the Kenny Nachwalter law firm, a Miami-based commercial litigation boutique. His practice focused on complex business litigation, intellectual property litigation, legal ethics, professional responsibility, legal malpractice, accountant liability, securities litigation and securities arbitration. Starting in the early 1990's he also began mediating matters in these substantive areas and others, including class actions, construction, employment, real estate, and a wide variety of business disputes. While actively engaged in the practice of law, he was certified for 10 years by The Florida Bar in Business Litigation, having been a member of the inaugural Business Litigation Certification Committee. Brian serves on the Ad Hoc Advisory Committee On Court Annexed Mediation for the United States District Court of the Southern District of Florida. He is a member of the Florida Supreme Court's Committee on Standard Jury Instructions – Contract and Business Cases, the Florida Supreme Court's Commission on Professionalism, The Florida Bar's Standing Committee on Professionalism, and the American Law Institute. Brian earned his undergraduate degree (cum laude) at Syracuse University and his J.D. (magna cum laude) at the University of Miami School of Law. After law school he clerked for Senior U.S. Circuit Judge Bryan ("Cowboy") Simpson on the "old" U.S. Court of Appeals for the 5th Circuit. Brian has been recognized in: "The Best Lawyers In America" in the areas of Business and Commercial Litigation, Alternative Dispute Resolution, and Legal Malpractice Law; Florida Trend's Florida Legal Elite 2007 in the Mediators category; and the 2006 edition of Florida Super Lawyers as among the Top 100 lawyers in Florida. Brian has taught as an adjunct professor at the University of Miami School of Law, where his courses included Remedies, Professional Responsibility, Professional Liability, and Corporate Crimes. He has served as a court appointed receiver and special master, as well as an arbitrator for the American Arbitration Association and the National Association of Securities Dealers (now known as the Financial Industry Regulatory Authority).

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BAR ADMISSIONS

Florida, 1978
U.S. Supreme Court, 1985
U.S. Court of Appeals, Eleventh Circuit, 1981
U.S. Court of Appeals, Fifth Circuit, 1978
U.S. District Court, Southern District of Florida, 1978
U.S. District Court, Middle District of Florida, 1978

CERTIFICATION
(current and prior)

SUPREME COURT OF FLORIDA - CERTIFIED CIRCUIT MEDIATOR
(September 1, 2006 –)

UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF FLORIDA - CERTIFIED MEDIATOR (December 18, 2006 –)

FLORIDA BAR BOARD CERTIFIED BUSINESS LITIGATION LAWYER
(August 1, 1996 – July 31, 2006)

EDUCATION

UNIVERSITY OF MIAMI SCHOOL OF LAW
Coral Gables, Florida 33124
Juris Doctor (Magna Cum Laude), May 1978
Class Rank No. 4 of 312
Honors
University of Miami Law Review
Dean's List
American Jurisprudence Book Awards: Banking Law, Constitutional Law II, & Federal Jurisdiction
Omicron Delta Kappa, National Leadership Honor Society
Who's Who Among Students in American Universities and Colleges
The Society of Wig & Robe
The Society of Bar & Gavel
Finalist, Freshman Moot Court Competition
Activities
Articles & Comments Editor, University of Miami Law Review
Chairman, Moot Court Advisory Board
President, The Society of Wig & Robe

SYRACUSE UNIVERSITY
Syracuse, New York 13210
B.A. in Political Science (Cum Laude), December 1974
Honors - Dean's List
Activities
Student Association Representative
Chairman, Subcommittee on Academic Advising
Co-Chairman, Subcommittee on Tripartite Judicial System
Moot Court Participant in U.S. Constitutional Law class

EXPERIENCE

KENNY NACHWALTER, P.A. (formerly known as Kenny Nachwalter Seymour Arnold Critchlow & Spector, P.A.)
Miami, Florida
Associate (1979-84), Shareholder (1984-2007), Firm Counsel (1/1/05-8/31/07)
Practice areas included complex business litigation, intellectual property litigation, legal ethics and professional responsibility, legal malpractice, accountant liability, and securities litigation and arbitration.
Starting in the early 1990's also began mediating matters in these substantive areas and others, including class actions, construction, employment, real estate, and a wide variety of business disputes.

THE HONORABLE BRYAN SIMPSON (deceased),
Senior Circuit Judge, U.S. Court of Appeals, "Old" Fifth Circuit
Jacksonville, Florida
Judicial Clerkship (August 1978 - July 1979)

UNIVERSITY OF MIAMI SCHOOL OF LAW
Coral Gables, Florida 33124
Adjunct Faculty
Pleading & Discovery Workshop (Spring Semester 1985)
Professional Responsibility (Fall Semester 2004, Spring Semester 2005, Fall Semester 2005, Spring Semester 2006, Fall Semester 2006)
Professional Liability (Fall Semester 2005, Spring Semester 2006)
Corporate Crimes (Spring Semester 2006)
Remedies (Fall Semester 2006, Spring Semester 2007)
Instructor
Legal Research & Writing (1980-81 Academic Year)

SPECIAL MASTER
Served as Special Master in cases pending in the United States District Court for the Southern District of Florida and the 11th Judicial Circuit in and for Miami-Dade County, Florida

ARBITRATOR
Served as arbitrator for the American Arbitration Association (having been selected either by one of the parties or, in one instance, by the party-selected arbitrators to serve as the neutral) and the National Association of Securities Dealers (now known as now known as the Financial Industry Regulatory Authority)

RECEIVER
Served as a Receiver in a case pending in the 11th Judicial Circuit Court, in and for Miami-Dade County, Florida

MEDIATOR
Mediated cases pending in the United States District Court for the Southern District of Florida and various Florida state courts, as well as arbitrations pending before the American Arbitration Association

PUBLICATIONS

- Co-Author, Chapter 13, Jury Instructions For Business Litigation, Florida Bar Continuing Legal Education Manual "Business Litigation In Florida," 1989
- "Justice Without A Day In Court," Trial Lawyer's Forum, The Florida Bar Journal, April 1985
- "Venue Under the Antitrust Laws: Amenability of Parent Corporations to Suit by Virtue of Their Subsidiary's Activities," 33 Univ. Miami L. Rev. 271 (1978)
- Co-Author, "Permitting Sale of Insurance by Bank Holding Company Subsidiaries: A Reviewed Analytic Framework," 32 Univ. Miami L. Rev. 543 (1978)

LECTURES & SEMINARS

- American Bar Association, National Institute, sponsored by the Commercial Transactions Litigation Committee, Section of Litigation "When Can You Take It With You? - Trade Secret And Non-Competition Clauses In Employment Agreements" "Strategy For The Ex-Employee, The New Employer, And Potential Defendants" February 1983
- Federal Court Seminar entitled "Civil Litigation In The Southern District of Florida" - "Local Rules for the Southern District of Florida." Young Lawyer's Section - Dade County Bar Association, March 1985
- The Florida Bar Continuing Legal Education Committee and the Corporation, Banking and Business Law Section seminar entitled "Selected Issues In Commercial Litigation for the Business Litigator" - "Privilege Questions In The Commercial Litigation Area, Including Attorney-Client Privilege, Accountant-Client Privilege, and Trade Secret Protection," April 1987
- The Florida Bar Continuing Legal Education Committee and the Business Law Section seminar entitled "Current Issues and Developments In Commercial Litigation In Florida" - "Current Developments In Ethical Issues and Considerations For Commercial Litigation In Florida," April 1990
- Florida Institute of Certified Public Accountants, South Dade Chapter seminar entitled "The Certified Public Accountant's Role As Consultant or Expert Witness In Business Litigation," November 1990
- Professional Education Systems, Inc.'s seminar entitled "Handling Breach of Contract Disputes In Florida" - "Recovery of Money Damages and Statutory Liability," February 1991
- The Florida Bar Continuing Legal Education Committee and the Business Law Section seminar entitled "Enforcement of Trademark Rights Through Litigation" - "The Plaintiff's Case - Litigation Strategy and Trial Tactics," May 31, 1991
- International Anticounterfeiting Coalition seminar entitled "Florida: Problems and Solutions - Reflections Of The Trademark Owners's Counsel," October 29, 1991

LECTURES & SEMINARS (cont.)

- The Florida Bar Continuing Legal Education Committee and the Business Law Section seminar entitled "Business Litigation: Annual Update, Ethics, and Strategic Uses Of Trial Technology -Beyond The Yellow Pad" - "Florida Business Litigation 1992 Substantive Law Update," April 1992
- University of Houston Law Foundation seminar entitled "Federal Civil Litigation Under The New Rules" - "Federal Pleadings And Attacks On Pleadings," April/May 1994
- Florida Institute of Certified Public Accountants, 10th Annual Accounting Show, Solo Practioners Track, seminar entitled "Surprise! Subpoena - Now What?," September 21, 1995
- The Florida Bar Continuing Legal Education Committee and the Business Law Section seminar entitled "Trial Techniques for the Business Litigator" - "Examining and Cross Examining Business Witnesses", October 3, 1996
- Federal Bar Association, Broward County, Florida Chapter, seminar entitled "Southern District of Florida, Local Rule Amendments: Why, How and What", May 7, 1998
- Judicial Conference of the United States Court of Appeals for the Eleventh Circuit, Panel Discussion & State Meetings, "The Good, Bad and Ugly - What You Always Wanted To Know About Local Rules", May 1999
- The Florida Bar Continuing Legal Education Committee and the Business Law Section seminar entitled "Advice from the Experts: Successful Strategies for Winning Commercial Cases in Federal Courts" - "Discovery," September 27, 2002
- Miami, Florida Association of Mid-Sized Law Firms, presentation entitled "Lawsuits Against Lawyers: Litigation Trends, Preventive Measures," September 17, 2003
- Dade County Bar Association • Federal Court Committee, "Rule Amendments • Federal and Local • December 2004 and Beyond," October 19, 2004
- The Florida Bar Continuing Legal Education Committee and the Young Lawyers Division seminar entitled "Practicing With Professionalism," Panel Discussion on Professionalism, January 7, 2005
- Miami, Florida The Spellman-Hoeveler American Inn of Court, presentation entitled "Interviewing/Representing Corporate Constituents - An Ethical Minefield For Company Counsel," February 17, 2005
- 32nd National Conference of Appellate Court Clerks, Key West, Florida, presentation entitled "Ethical Issues For Appellate Court Clerks," August 10, 2005
- University of Miami School of Law Florida Bar CLER approved seminar entitled "The May 2006 Amendments To The Florida Rules of Professional Conduct: What You Need to Know and Why," May 12, 2006

LECTURES & SEMINARS (cont.)

- Presentation on Ethics to the Judicial Conference of the United States Court of Appeals for the Armed Forces, Columbus School of Law, The Catholic University of America, Washington, D.C., May 18, 2006
- 34th Annual Meeting National Conference of Appellate Court Clerks New Orleans, Louisiana, presentation entitled "Professional Ethics," August 7, 2007
- Florida International University College of Law, Professionalism Day Program Opening Remarks, August 12, 2007

JUDICIAL COMMITTEES

- Ad Hoc Advisory Committee On Court Annexed Mediation, United States District Court, Southern District of Florida, Member, 2007 –
- Advisory (Ad Hoc) Committee On Rules & Procedures for the United States District Court for the Southern District of Florida, Member, 1994 – , Chairman, 1996-2005, Ex Officio, 2005–2007
- Federal Judicial Bar and Community Liaison Committee, United States District Court, Southern District of Florida, Member, 2007 –
- Ad Hoc Committee on Attorney Admissions, Peer Review and Attorney Grievance for the United States District Court for the Southern District of Florida, Member, 2001–2007, Chairman, 2001-2003
- Civil Justice Advisory Group, United States District Court for the Southern District of Florida, Member, 1995
- Eleventh Circuit U.S. Court of Appeals Ad Hoc Review Committee for Rules Consistency, Member, 1998-99
- Supreme Court of Florida Committee on Standard Jury Instructions (Civil), Member, 1993-99
- Supreme Court of Florida's Commission on Professionalism, Member, 2006 –
- Supreme Court of Florida's Committee on Standard Jury Instructions – Contract and Business Cases, Member, 2006 –

PROFESSIONAL ACTIVITIES, ASSOCIATIONS & RECOGNITION

MARTINDALE-HUBBELL AV Rating, October 6, 1988 –
AMERICAN LAW INSTITUTE, 2002 –
THE BEST LAWYERS IN AMERICA (Steven Naife and Gregory White Smith eds.) www.bestlawyers.com
Business Litigation (8th-11th eds. 1999-2006)
Commercial Litigation (13th -14th eds. 2007-2008)
Legal Malpractice Law (12th-14th eds. 2006-2008)
Alternative Dispute Resolution (12th-14th eds. 2006-2008)
CHAMBERS USA AMERICA'S LEADING LAWYERS FOR BUSINESS 2004 -2007• Litigation: General Commercial www.chambersandpartners.com/
FLORIDA SUPER LAWYERS 2006-2008 • Professional Liability - Defense, selected as among the Top 100 Florida Super Lawyers in the 2006 edition www.superlawyers.com/
FLORIDA TREND'S FLORIDA LEGAL ELITE 2007 - Mediators

PROFESSIONAL ACTIVITIES, ASSOCIATIONS & RECOGNITION (cont.)

American Bar Association -- Member of Sections of: Business Law; Dispute Resolution; and Litigation. Member of The Center for Professional Responsibility.

The Florida Bar -- Member, 2006 – Standing Committee on Professionalism; Member, 1994-97, Business Litigation Certification Committee of The Florida Bar; Member, 1989--, Vice Chairman 1990-1991 & 1992-93, Chairman, 1993-1994, Florida Civil Procedure Rules Committee; Member, 1990-1992, Federal Practice Committee; Member, 1992-1993, Public Relations Committee; Member, 1991-93, Chairman, 1993-94, Florida Bar Grievance Committee 11K; Member of Sections of: Trial Lawyers; Business Law. Member, 1984 --, Vice-Chairman, 1988-90, Chairman, 1990-91, Business Litigation Committee; Member, 1984--, Chairman, 1989-90, Subcommittee for Standard Jury Instructions in Commercial Cases; Member, 1988-1990, Executive Council Business Law Section.

Dade County Bar Association -- Vice-Chairman, 1990--, Chairman, 1991-92, Federal Court Committee; Member, 1982-1984, 1985-1987 and Chairperson, 1984-1985, Board of Editors, Southern District Digest.

COMMUNITY ACTIVITIES

Bet Shira Congregation
Miami Florida
Board of Directors, 1989-90
Vice President • Ways & Means, 1990-91
Secretary, 1991-92
Chair, Legal Committee, 2007 –

Bet Shira Endowment Foundation, Inc.
Miami Florida
President & Chair, 2003-06
Member, Board of Trustees, 2001 –

Lawyers For Literacy, a project of
The Miami-Dade Family Learning Partnership
Miami, Florida
Participant, 2005 –