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

Memorandum

MIAMI-DADE COUNTY

Date: March 20, 2012

Agenda Item No. 13(A)(1)

To: Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners

From: Carlos A. Gimenez
Mayor

R. A. Cuevas, Jr.
County Attorney

Subject: Resolution Approving Miami-Dade County to Receive $40,000.00 Pursuant to a Settlement Agreement Between Miami-Dade County, Magna Construction, Inc., Developers Surety and Indemnity Co., Miri Construction, Inc. and Fidelity and Deposit Company of Maryland for Storm Drainage Work and Related Services under Public Works Project No. 693509Q Local Drainage DERM Contract No. 21 and Storm Drainage and Paving Project No. CO1 DERM-EEC Contract No. CF002208

Resolution No. R-269-12

RECOMMENDATION

It is recommended that the Board of County Commissioners (BCC) approve the attached resolution authorizing Miami-Dade County (the "County" or "MDC") to receive $40,000.00 in settlement of two lawsuits and authorizing the County Mayor or the County Mayor's designee to execute a settlement agreement. The lawsuits involve storm drainage work performed by Magna Contruction, Inc. ("Magna") as a direct contractor with the County in Public Works Project No. 693509Q Local Drainage DERM Contract No. 21 and storm drainage work performed by Magna as a subcontractor in a County project titled Storm Drainage and Paving Project No. CO1 DERM-EEC Contract No. CF002208.

SCOPE

These Projects are located within Commission Districts 1, 8 and 9.

FISCAL IMPACT/FUNDING SOURCE

There is no fiscal impact to the County. Magna will pay the County $40,000.

TRACK RECORD/MONITOR

The Public Works and Waste Management Department has monitored the storm drainage system and has found the system to be performing at a satisfactory level. Project Managers Frank Mendoza and Alberto Estevez are the responsible staff that monitored these projects.

BACKGROUND

This settlement resolves two lawsuits filed by the County: (1) Miami-Dade County v. Magna Construction, Inc. & Developers Surety and Indemnity Company, Case No. 08-14242 CA 30 (the "Magna Lawsuit"); and (2) Miami-Dade County v. Miri Construction, Inc. & Fidelity and Deposit Company of Maryland, Case No. 09-04493 CA 23 (the "Miri Lawsuit").

The Magna Lawsuit involves a project, Public Works Project No. 693509Q Local Drainage DERM Contract No. 21 (the "Magna Project"), where the County contracted with Magna directly. The Miri Lawsuit involves a County project where Magna performed work as a subcontractor to Miri Construction, Inc. titled Storm Drainage and Paving Project No. CO-1 DERM-EEC, Contract No. CF002208 (the "Miri Project"). Both lawsuits involve storm water drainage construction work Magna performed either as a principal contractor with the County in the Magna Lawsuit or as a subcontractor in a County project in the Miri lawsuit.

The goal of both projects was to improve storm water drainage and required the installation of exfiltration drains, catch basins and other miscellaneous drainage items. Plans and specifications incorporated into the contracts under both projects required the contractors to install drainage pipes at specific lengths, dig trenches at specific depths and install a specific number of catch basins and manholes at specific sizes. The work Magna performed that is at issue in the lawsuits involved multiple work sites and occurred approximately between February 2004 and June of 2005.

The County learned of Magna's alleged improper workmanship in both the Magna and Miri projects after receiving information from a former employee of Magna. Specifically, the allegations were that Magna dug trenches and installed drainage pipes and ballast rock at depths that were shallower than were contractually required; Magna submitted shop drawings for the installation of new drainage structures but, instead, installed used structures and charged the County for the installation of new structures; and that the digging of the trenches and the installation of drainage pipes and ballast rock at depths shallower than what was contractually required were concealed from the County. This prompted an investigation by the Miami-Dade County Office of the Inspector General. Criminal proceedings were filed against Magna, one of Magna's principals and two Magna employees by the State Attorney's Office. Ultimately, in 2008 and 2009, the criminal charges brought against Magna, its principal and the employees were dropped by the State Attorney's Office, pursuant to an agreement which compensated the Office of the Inspector General for investigative costs.

The County filed the Magna lawsuit on March 17, 2008. In addition to Magna, the County filed a claim against the surety on the Magna Project, Developers Surety & Indemnity Co., to recover under the performance bond. The County filed the Miri lawsuit on January 20, 2009. In addition to Miri, the County filed a claim against the surety on the Miri Project, Fidelity and Deposit Company of Maryland, to recover under the performance bond. In the Miri Lawsuit, Miri sued its subcontractor, Magna, as a third party defendant. In the lawsuits, the defendants, and, principally, Magna, denied the County's allegations and asserted various defenses. Magna disputed the County's testing of the drainage depths and whether the use of new drainage structures, as opposed to used structures, was required under the contracts at issue.

Specifically, Magna highlighted the fact that the County's own testing of the depth of the trenches at issue yielded inconsistent results. The County used a private laboratory and its own staff to estimate the depths of the trenches that the County alleged was shallower than

what was contractually required. The tests by the private lab and the County's own staff differed on the estimated depths of the trenches. Additionally, Magna argued that the storm drainage systems that they constructed and which are the subject of the lawsuit have performed adequately, without any issues, since their construction in 2004 and 2005. County staff confirms that the storm drainage systems at issue in the lawsuits have performed satisfactorily since their construction.

The County estimates that it may have overpaid up to $72,000 for both projects. Magna denies any liability in both lawsuits. Further, Magna asserts that even if the County were to prevail on its allegations, the County's overpayment is much less than $72,000. The County's actual overpayment for the work Magna performed at both projects is difficult to precisely calculate without digging up the trench drainage sites constructed over seven (7) years ago in residential neighborhoods. Using the County's higher end estimated overpayment amount of $72,000, the proposed $40,000 settlement amount will compensate the County for approximately 100 percent of the difference in the cost of used drainage structures versus new structures and 50 percent of the alleged deficiencies of the drainage trench depths.

The County, Magna, Developers, Miri and Fidelity have agreed to the attached settlement agreement subject to BCC approval. The proposed $40,000 payment to the County is reasonable given that the recommended settlement amount recovers a substantial amount of the County's high-end estimate of its overpayment on the projects. The recommended settlement is also reasonable given the uncertainties of successfully proving the claims. All the criminal charges against Magna, its principal and employees were eventually dropped. Additionally, the County would incur substantial litigation and expert costs in attempting to prove the depths of underground structures and trenches. Such litigation and expert costs may very well exceed the County's estimated overpayment.

Under the recommended settlement, all the parties, including Magna, receive a full and final release from any and all claims that could have been asserted in the lawsuit. Pursuant to the terms of the settlement, the County will not commence any debarment proceedings against Magna nor reject any future bids submitted by Magna on County projects as a result of the allegations in the Magna and Miri lawsuits. The County has not contracted with Magna since the 2004 and 2005 projects that are the basis of the lawsuits that are being recommended for settlement.

County Manager/Deputy Mayor

MEMORANDUM

(Revised)

TO: Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners

DATE: March 20, 2012

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

SUBJECT: Agenda Item No. 13(A)(1)

Please note any items checked.

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

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

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

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

_____ **Budget required**

_____ **Statement of fiscal impact required**

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

_____ **No committee review**

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

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

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 13(A)(1)
3-20-12

RESOLUTION NO. R-269-12

RESOLUTION APPROVING SETTLEMENT AGREEMENT BETWEEN MIAMI-DADE COUNTY, MAGNA CONSTRUCTION, INC., DEVELOPERS SURETY AND INDEMNITY CO., MIRI CONSTRUCTION, INC. AND FIDELITY AND DEPOSIT COMPANY OF MARYLAND FOR STORM DRAINAGE WORK AND RELATED SERVICES UNDER PUBLIC WORKS PROJECT NO. 693509Q LOCAL DRAINAGE DERM CONTRACT NO. 21 AND STORM DRAINAGE AND PAVING PROJECT NO. CO1 DERM-EEC CONTRACT NO. CF002208 IN THE AMOUNT OF $40,000.00 TO MIAMI-DADE COUNTY

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

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board hereby approves the attached Settlement Agreement between Miami-Dade County, Magna Construction, Inc., Developers Surety and Indemnity Co., Miri Construction, Inc. and Fidelity and Deposit Company of Maryland for the Quality Neighborhood Improvement Program, Project No. 693509Q Local Drainage DERM Contract No. 21 and the Multiple Award Indefinite Quantity Contract for Storm Drainage and Paving Project No. CO1 DERM-EEC, Contract No. CF002208 in the amount of $40,000.00 to Miami-Dade County and authorizes the County Mayor or the County Mayor's designee to execute the Agreement in substantially the form attached hereto, and to execute all other documents necessary to implement the Agreement, subject to the approval of the County Attorney as to legal sufficiency.

The foregoing resolution was offered by Commissioner **Lynda Bell**, who moved its adoption. The motion was seconded by Commissioner **Jean Monestime** and upon being put to a vote, the vote was as follows:

Joe A. Martinez, Chairman			**nay**
Audrey M. Edmonson, Vice Chairwoman			**aye**
Bruno A. Barreiro	**aye**	Lynda Bell	**aye**
Esteban L. Bovo, Jr.	**aye**	Jose "Pepe" Diaz	**aye**
Sally A. Heyman	**aye**	Barbara J. Jordan	**absent**
Jean Monestime	**aye**	Dennis C. Moss	**aye**
Rebeca Sosa	**aye**	Sen. Javier D. Souto	**aye**
Xavier L. Suarez	**absent**		

The Chairperson thereupon declared the resolution duly passed and adopted this 20th day of March, 2012. 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: **Christopher Agrippa**
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency. EWG

Eduardo W. Gonzalez

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Mutual Release (the "Agreement") is made, voluntarily entered into, and effective as of the __ day of _____2011 by and between Miami-Dade County, Florida ("MDC" or the "County"), a political subdivision of the State of Florida, Magna Construction, Inc. ("Magna"), a Florida corporation, Developers Surety and Indemnity Co. ("Developers"), a foreign corporation, Miri Construction, Inc. ("Miri"), a Florida corporation, and Fidelity and Deposit Company of Maryland ("Fidelity"), a foreign corporation (collectively the "Parties").

WHEREAS, on December 11, 2003, MDC and Magna entered into a written contract under which Magna agreed to perform, among other things, certain storm drainage work on the Quality Neighborhood Improvement Program, Local Drainage DERM Contract No. 21, and thereafter MDC issued Work Orders to Magna ("Contract No. 21" or the "Magna Project"); and

WHEREAS, Developers issued a Performance and Payment Bond, No. 531797P on Magna's behalf in connection with Contract No. 21 hereinafter referred to as the "Magna Bond"; and

WHEREAS, a dispute arose between MDC, Magna and Developers regarding Contract No. 21; and

WHEREAS, MDC filed and served the action styled *Miami-Dade County, Florida v. Magna Construction, Inc. and Developers Surety & Indemnity Co.*, Miami-Dade County Circuit Court Case No. 08-14242 CA30 (the "Magna Lawsuit"); and

WHEREAS, Magna filed its Answer, Affirmative Defenses and Counterclaim against MDC in the Magna Lawsuit; and

WHEREAS, Developers filed its Answer, Affirmative Defenses and Counterclaim against MDC in the Magna Lawsuit; and

WHEREAS, MDC and Miri entered into a written contract under which Miri agreed to furnish certain construction services on the Multiple Award Indefinite Quantity Contract for Storm Drainage and Paving Project No. CO1 DERM-EEC, Contract No. CF002208 ("Contract No. CF00208"), and Miri subcontracted the drainage portion of Contract No. CF002208 to Magna; and

WHEREAS, Fidelity issued a Performance and Payment Bond No. 08599627 hereinafter referred to as the "Miri Bond" on Miri's behalf in connection with Contract No. CF002208; and

WHEREAS, a dispute arose between MDC, Miri, Fidelityand Magna regarding Contract No. CF002208; and

WHEREAS, MDC filed and served the action styled *Miami-Dade County, Florida v. Miri Construction, Inc., et al.*, Miami-Dade County Circuit Court Case No. 09-04493 CA23 against Miri and Fidelity and Miri asserted a Third Party Complaint against Magna (the "Miri Lawsuit"); and

WHEREAS, Magna filed its Answer and Affirmative Defenses against Miri in the Miri Lawsuit; and

WHEREAS, MDC, Magna and Developers desire to amicably settle all claims and disputes between them arising out of the events which were or could have asserted by either party in the Magna Lawsuit, 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; and

WHEREAS, MDC, Miri and Magna desire to amicably settle all claims and disputes between them arising out of the events which were or could have asserted by either party in the

Miri Lawsuit, 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; and

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 expressly acknowledged, the Parties 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. **Payment:** Magna agrees to pay MDC Forty Thousand Dollars ($40,000.00) within ten (10) days after this Agreement's Effective Date to resolve all claims that were or could have been asserted by MDC, Magna and Developers in the Magna Lawsuit, and all claims that were or could have been asserted by MDC, Miri and/or Magna in the Miri Lawsuit.

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 MDC (Magna Lawsuit):** Upon the Effective Date referenced in Paragraph 3 above, and subject to enforcement of this Agreement, MDC now and forever, fully and finally remises, releases, acquits and discharges Magna and Developers, including their respective employees, parent companies, affiliated companies, 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 equity, known of unknown, whether in tort or otherwise, arising from or

relating in any way to the claims and defenses that were or could have been asserted by MDC against Magna and Developers in the Magna Lawsuit including, but not limited to any and all claims relating in any way to the Magna Bond Developers furnished.

5. **Release by Magna and Developers (Magna Lawsuit):** Upon the Effective Date referenced in Paragraph 3 above, and subject to enforcement of this Agreement, Magna and Developers now and forever, fully and finally remise, release, acquit and discharge 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 equity, known of unknown, whether in tort or otherwise, arising from or relating in any way to the claims and defenses that were or could have been asserted by Magna and Developers against MDC in the Magna Lawsuit including but not limited to any and all Magna and Developers claims against MDC relating in any way to the Magna Project and/or the Magna Bond.

6. **Declaration of Developers:** Nothing in this Settlement Agreement and Mutual Release shall limit, impair, or restrict in any way Developers' rights of indemnity from Magna with regard to: the Magna Project; Developers' Magna Bond; any claims against the Magna Bond; and/or Developers' investigation or payment of any claims against the Magna Bond, whether those rights of indemnity arise by contract, at law or in equity.

7. **Release by MDC (Miri Lawsuit):** Upon the Effective Date referenced in Paragraph 3 above, and subject to enforcement of this Agreement, MDC now and forever, fully and finally remises, releases, acquits and discharges Miri and Fidelity, including their employees, parent companies, affiliated companies, 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 equity, known of unknown, whether in tort or otherwise, arising from or relating in any way to the claims and defenses that were or could have been asserted by MDC against Miri and Fidelity in the Miri Lawsuit, including but not limited to, any and all claims relating in any way to the Miri Bond.

8. **Release by Miri (Miri Lawsuit):** Upon the Effective Date referenced in Paragraph 3 above, and subject to enforcement of this Agreement, Miri now and forever, fully and finally remises, releases, acquits and discharges MDC and/or Magna, including their employees, parent companies, affiliated companies, officers, agents, directors, representatives, insurers, sureties, 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 equity, known of unknown, whether in tort or otherwise, arising from or relating in any way to the claims and defenses that were or could have been asserted by Miri against MDC and/or Magna in the Miri Lawsuit, including any attorneys' fees and expenses.

9. **Declaration of Fidelity (Miri Lawsuit):** Fidelity declares and affirms that it has no cognizable claims against MDC and/or Magna relating to the Miri Lawsuit including any attorneys' fees and expenses. Accordingly, Fidelity further declares and affirms that it shall not file or assert any claims, damages, demands, actions, liabilities, responsibilities, causes of action, debts due, sums of money, accounts, liens, reckonings, bills, covenants, controversies, agreements, or promises against MDC and/or Magna whatsoever, in law or equity, known of unknown, whether in tort or otherwise, arising from or relating to the Miri Bond. This Agreement and document in no

way impacts Fidelity's rights relating to any matters other than the Miri Lawsuit. Nothing in this Settlement Agreement and Mutual Release shall in any way limit Fidelity's rights of indemnity with regard to Miri and/or the Miri Bond.

10. **No Adverse Action:** As a condition of this Agreement, MDC shall not: (a) commence any debarment proceedings against Magna and/or its qualifier Mitchell Tourino and (b) reject any subsequent bid/proposal Magna submits to perform work on any Miami-Dade County project as a general contractor and/or subcontractor, because of the actions and/or inactions MDC attributed to Magna in the Magna Lawsuit and/or Miri Lawsuit, which Magna expressly denied. Additionally, upon this Agreement's Effective Date referenced in Paragraph 3, MDC shall close out Contract No. 21, and shall close any outstanding permit Magna obtained related to Contract No. 21, and furthermore MDC shall close out Contract No. CF002208, and shall close any outstanding permit Miri and/or Magna obtained related to Contract No. CF002208.

11. **Dismissal of Claims and Attorneys' Fees:** Within five (5) business days of the Agreement's Effective Date referenced in Paragraph 3 above, MDC, Magna and Developers shall file a Stipulation of Dismissal of the Magna Lawsuit, with prejudice, and each party agrees to bear its own attorneys' fees and costs. The dismissal and nothing in this Agreement shall include and/or in any way affect Magna's pending Third Party Complaint against BND Engineers, Inc. ("BND") in the Magna Lawsuit. Further, Magna agrees to indemnify, defend and hold MDC harmless if BND asserts any cause of action against MDC arising out of or related to the facts at issue in Magna's Third Party Complaint and/or the Magna Lawsuit including, but not limited to, breach of contract, common law indemnification and/or contribution. Except as set forth below, if BND asserts any such cause of action against MDC, Magna is entitled and authorized to assert any and all defenses MDC could itself assert, such as sovereign immunity. Except as set forth below, if

BND asserts any such cause of action against MDC, MDC assigns to Magna its right to assert any affirmative claims MDC has, had or may have against BND to recover any damages MDC incurred due to BND's actions and/or inactions which arise out of or relate to the facts at issue in the Magna Lawsuit. If BND asserts any cause of action against MDC, MDC's assignment of defenses and claims is limited to proceedings before the trial court. Accordingly, if BND asserts any cause of action against MDC, Magna is not authorized to file any appeal, respond to any appeal or in any way act on behalf of MDC in any appellate proceeding.

As for the Miri Lawsuit, within five (5) business days of the Agreement's Effective Date referenced in Paragraph 3 above, MDC, Miri, Fidelity and Magna shall a file a Stipulation of Dismissal of the Miri Lawsuit, with prejudice, and each party agrees to bear its own attorneys' fees and costs.

12. **Binding Nature**: The Parties acknowledge, represent and warrant to the other parties 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 the Parties, and (ii) neither party has assigned any right, title or interest in or to any potential claim against any other party to any person or entity.

13. **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 constructed 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 only in the Circuit of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida.

14. **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. Nothing contained in this Agreement shall ever be construed as an admission of liability or responsibility by any Party in connection with any claim, lien, defense, demand, charge, complaint, action, or cause of action asserted against by any party under this Agreement against any other party under this Agreement.

15. **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.

16. **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.

17. **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.

18. **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 warranty, 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.

19. **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.

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

21. **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.

THE REMAINDER OF THIS PAGE WAS INTENTIONALLY LEFT BLANK

EXECUTION

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

Sworn to and subscribed before me this
___ day of _____ 2011.

_____
Notary Public
My Commission Expires on:

MIAMI-DADE COUNTY, FLORIDA

_____
By: _____
Its: _____

Sworn to and subscribed before me this
11 day of May 2011.

ZOE SANTEIRO
MY COMMISSION # DD969694
EXPIRES March 09, 2014
FloridaNotaryService.com

_____
Notary Public
My Commission Expires on:

MAGNA CONSTRUCTION, INC.

_____
By: Mitchell Tourino
Its: President.

Sworn to and subscribed before me this
___ day of _____ 2011.

_____
Notary Public
My Commission Expires on:

DEVELOPERS SURETY & INDEMNITY COMPANY

_____
By: _____
Its: _____

Sworn to and subscribed before me this
___ day of _____ 2011.

_____
Notary Public
My Commission Expires on:

MIRI CONSTRUCTION, INC.

_____
By: _____
Its: _____

Sworn to and subscribed before me this
___ day of _____ 2011.

_____
Notary Public
My Commission Expires on:

FIDELITY & DEPOSIT COMPANY OF MARYLAND

_____
By: _____
Its: _____

EXECUTION

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

Sworn to and subscribed before me this
___ day of _____ 2011.

_____
Notary Public
My Commission Expires on:

MIAMI-DADE COUNTY, FLORIDA

_____
By: _____
Its: _____

Sworn to and subscribed before me this
___ day of _____ 2011.

_____
Notary Public
My Commission Expires on:

MAGNA CONSTRUCTION, INC.

_____
By: _____
Its: _____

Sworn to and subscribed before me this
___ day of _____ 2011.

_____
Notary Public
My Commission Expires on:

DEVELOPERS SURETY & INDEMNITY COMPANY

Susan M Moore
By: SUSAN M MOORE
Its: SR VP CLAIMS

Sworn to and subscribed before me this
___ day of _____ 2011.

_____
Notary Public
My Commission Expires on:

MIRI CONSTRUCTION, INC.

_____
By: _____
Its: _____

Sworn to and subscribed before me this
___ day of _____ 2011.

_____
Notary Public
My Commission Expires on:

FIDELITY & DEPOSIT COMPANY OF MARYLAND

_____
By: _____
Its: _____

CALIFORNIA JURAT WITH AFFIANT STATEMENT

☑ See Attached Document (Notary to cross out lines 1-6 below)
☐ See Statement Below (Lines 1-5 to be completed only by document signer[s], *not* Notary)

1 _____
2 _____
3 _____
4 _____
5 _____
6 _____

Signature of Document Signer No. 1 | Signature of Document Signer No. 2 (if any)

State of California

County of Orange

Subscribed and sworn to (or affirmed) before me on this

5th (Date) day of May (Month), 2011 (Year), by

(1) Susan M. Moore (Name of Signer),

proved to me on the basis of satisfactory evidence to be the person who appeared before me (.) (,)

(and

(2) _____ (Name of Signer),

proved to me on the basis of satisfactory evidence to be the person who appeared before me .)

MARY K. RIOS
COMM. # 1809616
NOTARY PUBLIC CALIFORNIA
ORANGE COUNTY
My comm. expires Aug. 15, 2012

Place Notary Seal Above

Signature Mary K. Rios Notary Public
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

RIGHT THUMBPRINT OF SIGNER #1
Top of thumb here

RIGHT THUMBPRINT OF SIGNER #2
Top of thumb here

Further Description of Any Attached Document

Title or Type of Document: Settlemt&MuReleas DSI+Magna+Miami-Dade 53179

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

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EXECUTION

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

Sworn to and subscribed before me this
___ day of _____ 2011.

_____
Notary Public
My Commission Expires on:

MIAMI-DADE COUNTY, FLORIDA

_____
By: _____
Its: _____

Sworn to and subscribed before me this
___ day of _____ 2011.

_____
Notary Public
My Commission Expires on:

MAGNA CONSTRUCTION, INC.

_____
By: _____
Its: _____

Sworn to and subscribed before me this
___ day of _____ 2011.

_____
Notary Public
My Commission Expires on:

DEVELOPERS SURETY & INDEMNITY COMPANY

_____
By: _____
Its: _____

Sworn to and subscribed before me this
11 day of May 2011.

_____
Notary Public
My Commission Expires on:

NOTARY PUBLIC-STATE OF FLORIDA
Jean Eric Luaces
Commission # DD922621
Expires: OCT. 24, 2013
BONDED THRU ATLANTIC BONDING CO., INC.

MIRI CONSTRUCTION, INC.

_____
By: Dionisio Suarez
Its: President

Sworn to and subscribed before me this
___ day of _____ 2011.

_____
Notary Public
My Commission Expires on:

FIDELITY & DEPOSIT COMPANY OF MARYLAND

_____
By: _____
Its: _____

EXECUTION

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

Sworn to and subscribed before me this
___ day of _____ 2011.

_____
Notary Public
My Commission Expires on:

MIAMI-DADE COUNTY, FLORIDA

_____
By: _____
Its: _____

Sworn to and subscribed before me this
___ day of _____ 2011.

_____
Notary Public
My Commission Expires on:

MAGNA CONSTRUCTION, INC.

_____
By: _____
Its: _____

Sworn to and subscribed before me this
___ day of _____ 2011.

_____
Notary Public
My Commission Expires on:

DEVELOPERS SURETY & INDEMNITY COMPANY

_____
By: _____
Its: _____

Sworn to and subscribed before me this
___ day of _____ 2011.

_____
Notary Public
My Commission Expires on:

MIRI CONSTRUCTION, INC.

_____
By: _____
Its: _____

Sworn to and subscribed before me this
11 day of May 2011.

_____
Notary Public
My Commission Expires on:

FIDELITY & DEPOSIT COMPANY OF MARYLAND

_____
By: Jack A. Pesiak
Its: Senior Surety Counsel