



MEMORANDUM

Agenda Item No. 8(G)(6)

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

DATE: April 3, 2012

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

SUBJECT: Resolution approving a settlement agreement, in the amount of \$2,490.84, between Miami-Dade County and Kristi House, Inc. for a Grants-to-Green Nonprofits Program Project No. 11-G2G-KRHO and authorizing the County Mayor to execute said agreement

Resolution No. R-288-12

The accompanying resolution was prepared by the Office of Management and Budget and placed on the agenda at the request of Prime Sponsor Vice Chairwoman Audrey M. Edmonson.



R. A. Cuevas, Jr.
County Attorney

RAC/cp

Memorandum



Date: April 3, 2012

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

From: Carlos A. Gimenez
Mayor 

Subject: Resolution Approving a Settlement Agreement, in the Amount of \$2,490.84, between Miami-Dade County and Kristi House, Inc. for Grants-to-Green Nonprofits Program Project # 11-G2G-KRHO

Recommendation

It is recommended that the Board of County Commissioners (BCC) approve the attached resolution authorizing a Settlement Agreement between Miami-Dade County and Kristi House, Inc. (Kristi House) to reimburse Kristi House for expenses incurred due to an improper energy efficiency retrofit implementation involving ceiling/attic insulation, and further authorize the County Mayor or the County Mayor's designee to execute the Settlement Agreement.

Scope

The Settlement Agreement is project specific to Kristi House, which is located at 1265 NW 12th Avenue, Miami, Florida 33136, in Commission District 3.

Fiscal Impact/Funding Source

The cost of minor clean-up and repairs totals \$2,490.84 and results from improper project implementation by an independent contractor under the Grants-to-Green Nonprofits program.

The \$2,490.84 will be paid by Miami-Dade County and funded from savings in the Office of Management and Budget's FY 2011-2012 operating budget.

Background

In May 2011, Miami-Dade County's Office of Grants Coordination and Kristi House entered into a community-based organization (CBO) Agreement for the implementation of an energy retrofit project paid for under the Grants-to-Green Nonprofits (G2GN) program, funded through the County's Energy Efficiency and Conservation Block Grant (EECBG).

The energy retrofit project involved two activities that were recommendations made by Florida Power and Light after a Business Energy Survey was conducted at the facility: 1) lighting retrofits (to 44 fixtures), and 2) installation of attic/ceiling insulation.

An official and mutually agreed upon Invitation to Quote was sent out by Kristi House to a pool of pre-approved contractors (aka "local energy service providers") participating in the G2GN program. Representatives from Kristi House and the G2GN program accepted a proposal from Create Construction, Inc. requesting \$13,500 for the implementation of both energy retrofit activities. The contractor performed a pre-site visit before submitting their final proposal which was in adherence to the G2GN programmatic requirements addressing all components such as project activities; itemized costs; Davis-Bacon applicability; waste stream plan; and FPL rebate qualification.

Work commenced and was completed on the project in June 2011. Subsequent to the completion, Kristi House began to experience serious malfunctioning of the air-conditioning system. After

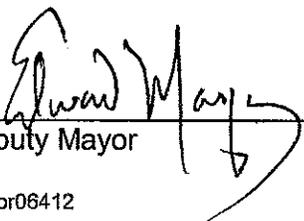
repeated visits from the HVAC maintenance provider it was determined that the source for the malfunction was the type of insulation used by the contractor.

After assessing the situation with various parties including the HVAC maintenance provider, building officials from the City of Miami, County staff from the Internal Services Department, the contractor and subcontractor (responsible for the installation), it was agreed upon that all of the insulation needed to be removed immediately. The contractor and subcontractor performed the removal and disposal of the insulation as requested.

Due to budgetary constraints within the G2GN program, seeking an alternative for the insulation was not an option and the energy retrofit activity of the insulation project was mutually cancelled by Kristi House and the County.

Based, in part, on the full cooperation and complete removal of the failed insulation by Create Construction and its subcontractor at their own expense, the County will not at this time seek claims for damages from the contractor. However, the contractor has been advised that they will not be paid for any services that involved the failed insulation activity. The primary cause for the insulation's failure was the structure's unique design and the presence of a plenum area which does not allow for blown-in insulation. The plenum area was not detected by the contractor and/or their subcontractor in spite of visual inspections made by all parties prior to the acceptance of the final proposal. The lighting retrofit activity was completed successfully and that portion of the energy efficiency retrofit project has been paid for with G2GN grant funds.

The County provides \$440,000 in FY 2011-12 through the State Attorney's Office to support functions at the Children and Special Needs Center associated with Kristi House. Because of this support and because of the cost that may be associated with further litigation, it was determined that rather than pursue legal action to exact damages from the contractor, the County would simply cover the \$2,490.84.


Deputy Mayor

Mayor06412

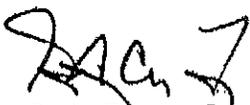


MEMORANDUM

(Revised)

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

DATE: April 3, 2012


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

SUBJECT: Agenda Item No. 8(G)(6)

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. 8(G)(6)
4-3-12

RESOLUTION NO. R-288-12

RESOLUTION APPROVING A SETTLEMENT AGREEMENT, IN THE AMOUNT OF \$2,490.84, BETWEEN MIAMI-DADE COUNTY AND KRISTI HOUSE, INC. FOR A GRANTS-TO-GREEN NONPROFITS PROGRAM PROJECT NO. 11-G2G-KRHO AND AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE SAID AGREEMENT

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

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board hereby approves the Settlement Agreement with Kristi House, Inc., in substantially the form attached hereto and made a part hereof; and further authorizes the County Mayor or the County Mayor's designee to execute the agreement for and on behalf of Miami-Dade County.

The foregoing resolution was offered by Commissioner **Rebeca Sosa**, who moved its adoption. The motion was seconded by Commissioner **Jose "Pepe" Diaz** and upon being put to a vote, the vote was as follows:

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

The Chairperson thereupon declared the resolution duly passed and adopted this 3rd day of April, 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.

A handwritten signature in black ink, appearing to be "CA", is written over a horizontal line.

SETTLEMENT AGREEMENT

This Settlement Agreement and Release ("Agreement") dated _____, 2012, is entered by and between Kristi House, Inc., a Florida corporation with FEIN #650576650 ("Kristi House") and Miami-Dade County a political subdivision of the State of Florida (the "County").

RECITALS

WHEREAS, in May 2011, Miami-Dade County's Office of Grants Coordination and Kristi House, Inc. entered into a CBO Agreement for the implementation of an energy retrofit project paid for under the Grants-to-Green Nonprofits (G2GN) program, funded through the County's Energy Efficiency and Conservation Block Grant (EECBG); and

WHEREAS, the energy retrofit project involved two activities: lighting retrofits (to 44 fixtures) and installation of attic/ceiling insulation which resulted in a mutually agreed upon Invitation to Quote sent out by Kristi House to a pool of pre-approved contractors (aka "local energy service providers") participating in the G2GN program; and

WHEREAS, Kristi House and the G2GN program accepted a proposal from Create Construction, Inc. requesting \$13,500 for the implementation of both energy retrofit activities; and

WHEREAS, the contractor performed a pre-site visit before submitting their final proposal which was in adherence to the G2GN programmatic requirements addressing all components such as project activities; itemized costs; Davis-Bacon applicability; waste stream plan; and FPL rebate qualification; and

WHEREAS, the project was commenced and completed in June of 2011; and

WHEREAS, subsequent to the completion Kristi House began to experience malfunctioning of their air-conditioning system; and

WHEREAS, the insulation was identified as the cause of the malfunction and was removed by the contractor and subcontractor; and

WHEREAS, the County, without any admission of liability wishes to reimburse Kristi House for its costs in the cleanup and removal of the insulation,

TERMS

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

1. The above recitals are incorporated by reference and are a part of this Agreement.
2. The County shall pay to Kristi House the total sum of TWO THOUSAND FOUR HUNDRED AND NINETY DOLLARS AND EIGHTY-FOUR CENTS (\$2,490.84) within 30 days of approval of this Agreement by the Board of County Commissioners.
3. Kristi House releases and forever discharges the County from any and all claims, causes of action, demands, disputes and rights of whatever nature and kind, known or unknown, past or future, related in any way to the G2GN energy retrofit project that Kristi House has or claims to have against County, and its employees, officers, agents, successors and assigns, attorneys, or otherwise, with the exception of claims and obligations arising out of this Agreement. Such release and discharge is made by Kristi House in its respective right and for its successors, executors, agents, employees, assigns, subcontractors, sureties, suppliers, and any and all other persons, firms, corporations, or other entities who may claim by or through Kristi House. Kristi House agrees that it will not, and that its legal representatives and assigns shall not, hereafter file in any court any action relating to the G2GN energy retrofit project, with the

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

4. Each party shall bear their own attorney's fees and costs relating to the G2GN energy retrofit project and this Agreement.

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

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

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

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

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

10. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, representatives, agents, attorneys, employees, officers, directors, predecessors, affiliates, successors or assigns in connection with any legal action arising out of the Agreement.

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

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

KRISTI HOUSE, INC.
1265 NW 12th AVENUE
MIAMI, FLORIDA 33136

By: *Trudy Novicki*
Name: TRUDY NOVICKI
Title: EXECUTIVE DIRECTOR
Date: 1-24-12

Attest: *Dawn Thompson*
Authorized Person OR Notary
Public

Print Name: TRUDY NOVICKI
Title: EX DIRECTOR

Corporate Seal OR Notary Seal/Stamp



DAWN G. THOMPSON
MY COMMISSION # EE 150687
EXPIRES: December 4, 2015
Bonded Thru Budget Notary Services

MIAMI-DADE COUNTY

By: _____
Name: _____
Title: _____
Date: _____

Attest: HARVEY RUVIN, Clerk
Board of County Commissioners

By: _____
Name: _____
Deputy Clerk

Approved for form and legal
sufficiency:

By: _____
Assistant County Attorney