

## MEMORANDUM

Agenda Item No. 14(A)(2)

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

**DATE:** October 7, 2014

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

**SUBJECT:** Resolution approving settlement  
agreement between Miami-Dade  
County, A-1 Construction and  
Renovation, LLC, RVL Architect  
and Design, P.A., SureTec  
Insurance Company, and Juan A.  
Fernandez-Barquin in the amount  
of \$45,100.00

Resolution No. R-918-14

The accompanying resolution was prepared by the Public Housing and Community Development Department and placed on the agenda at the request of Prime Sponsor Commissioner Audrey M. Edmonson.

  
R. A. Cuevas, Jr.  
County Attorney

RAC/cp

**Date:** October 7, 2014

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

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

**Subject:** Resolution Approving the Settlement of a Lawsuit between A-1 Construction and Renovation, LLC, RVL Architect and Design, P.A., SureTec Insurance Company, Juan A. Fernandez-Barquin and Miami-Dade County, Case No. 11-41786 CA 13

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## **RECOMMENDATION**

It is recommended that the Board of County Commissioners ("Board") approve the attached settlement agreement of the lawsuit between A-1 Construction and Renovation, LLC ("A-1 Construction"), RVL Architect and Design, P.A. ("RVL"), Juan A. Fernandez-Barquin ("JFB"), SureTec Insurance Company ("SureTec"), and Miami-Dade County (the "County") pending in the Circuit Court of the Eleventh Judicial Circuit, in and for Miami-Dade County, Case No. 11-41786 CA 13, (the "Lawsuit") in the amount of \$45,100. Suretec shall pay the County \$30,000 as full and final payment for all claims related to the construction project that is the subject of the lawsuit and RVL will allow the County to retain all funds remaining in its contract with the County which totals \$15,100. The U.S. Department of Housing and Urban Development ("HUD") approved this settlement on September 11, 2014.

## **SCOPE**

This proposed settlement stems from the termination of A-1 by the County and subsequent litigation based on claims arising out of the construction project between A-1 Construction, RVL, JFB, SureTec and the County for the Claude Pepper Renovations (HUD-FLA-5-025) (the "Project"). The Project is located in County Commission District 3 represented by Commissioner Audrey M. Edmonson.

## **FISCAL IMPACT/FUNDING SOURCE**

There is no fiscal impact to the County from entering into this settlement agreement.

## **TRACK RECORD/MONITOR**

The execution and enforcement of this settlement agreement will be overseen by Jorge R. Cibran, AIA, Director, Facilities & Development Division, Public Housing and Community Development.

## **BACKGROUND**

In 2010, the County awarded to A-1 Construction a contract for the Claude Pepper Renovations. The Project was located at 750 NW 18 Terr., Miami, FL. The value of the contract was \$216,368.90 including contingency and allowance accounts. SureTec, as the surety for A-1 Construction, issued a payment and performance bond for the Project and assumed all of A-1 Construction's rights and obligations in connection with the completion of the Project and payment to all suppliers and subcontractors. The work of the Project generally consisted of spalling concrete repairs, replacement of railings, floor painting, waterproofing, parking lot lighting and related work. RVL was the architect that was hired by the County to prepare the plans and specifications for the Project, after also having been hired to perform a 40-year recertification inspection and report for the Project. The work associated with the Project was scheduled to last 180 days.

During the course of the work, the County issued A-1 Construction a number of change orders for unforeseen conditions encountered during construction. However, the County and A-1 Construction were unable to agree on the validity and/or value of other change orders. Namely, A-1 Construction alleged it was owed additional monies for work that was outside of the plans and specifications prepared by RVL. Additionally, there were disagreements regarding contract non-performance on the part of A-1 Construction. RVL hired JFB to oversee the work performed by A-1 Construction and to prepare plans and specifications to address unforeseen conditions. The County issued five Notices to Cure to A-1 Construction which addressed project delays, inadequate project safety and lack of sufficient personnel to execute the project, quality control, schedule control, non-compliant work and abandonment of the Project. A-1 Construction failed to address four out of the five Notices to Cure including abandonment of the project and was terminated for default. At the time of termination, A-1 Construction had only completed approximately 20% of the work and was paid \$37,132.88 out of the total contract amount of \$216,368.90. The County then hired a completion contractor to complete the remaining work of the Project. The completion contractor was paid from monies remaining in the contract.

A-1 Construction filed the Lawsuit against the County, RVL and JFB for breach of contract and wrongful termination and sought damages. Specifically, A-1 Construction was seeking \$277,450.90 plus Suretec's expenses in damages. The County cross-claimed against Suretec for breach of contract for failure to perform and complete the work in accordance with the terms of the performance bond.

The parties all attended mediation and, as a result, agreed to the attached proposed mutual settlement of the Lawsuit (Exhibit A). As part of this settlement agreement, Suretec will pay the County \$30,000. Additionally, RVL agreed to complete all services covered under the professional contract, including all work necessary for the issuance of the 40 year certification, without further payment by the County. This represents an additional \$15,100 in funds to the County. The \$30,000 payment by Suretec to the County shall be the full and final payment for settlement of all claims that A-1 Construction and/or Suretec have against the County, RVL and JFB related to this matter and the Lawsuit.

The settlement also includes a "Non-Disparagement Agreement and Release Agreement" which addresses false and disparaging statements published on the internet in a series of articles (approximately 20) by A-1 Construction and/or its principals about the County and two of its employees, Jorge Cibran and Francisco Trujillo, who administered the Project on behalf of the County, as well as the architect and the engineer. A-1 agreed to make best efforts to delete all false and disparaging statements and to print a retraction indicating that the disparaging statements were false.

On September 11, 2014, HUD approved this settlement of the Lawsuit as shown in the attached concurrence letter (Exhibit B). Upon approval of this proposed agreement by the Board of County Commissioners, the parties will file a Stipulation of Dismissal of this lawsuit with Prejudice.

Attachments



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Russell Benford, Deputy Mayor



# MEMORANDUM

(Revised)

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

**DATE:** October 7, 2014

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

**SUBJECT:** Agenda Item No. 14(A)(2)

Please note any items checked.

- "3-Day Rule" for committees applicable if raised
- 6 weeks required between first reading and public hearing
- 4 weeks notification to municipal officials required prior to public hearing
- Decreases revenues or increases expenditures without balancing budget
- Budget required
- Statement of fiscal impact required
- Ordinance creating a new board requires detailed County Mayor's report for public hearing
- No committee review
- Applicable legislation requires more than a majority vote (i.e., 2/3's \_\_\_\_, 3/5's \_\_\_\_, unanimous \_\_\_\_ ) to approve
- Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved \_\_\_\_\_ Mayor  
Veto \_\_\_\_\_  
Override \_\_\_\_\_

Agenda Item No. 14(A)(2)  
10-7-14

RESOLUTION NO. R-918-14

RESOLUTION APPROVING SETTLEMENT AGREEMENT BETWEEN MIAMI-DADE COUNTY, A-1 CONSTRUCTION AND RENOVATION, LLC, RVL ARCHITECT AND DESIGN, P.A., SURETEC INSURANCE COMPANY, AND JUAN A. FERNANDEZ-BARQUIN IN THE AMOUNT OF \$45,100.00

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

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA**, that this Board approves and authorizes the County Mayor or County Mayor's designee to execute the Settlement Agreement between Miami-Dade County, A-1 Construction and Renovation, LLC, RVL Architect and Design, P.A., Juan A. Fernandez-Barquin, and SureTec Insurance Company in the amount of \$45,100.00 in favor of the County and in substantially the form attached to this resolution as Exhibit A.

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

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

The Chairperson thereupon declared the resolution duly passed and adopted this 7<sup>th</sup> day of October, 2014. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

MIAMI-DADE COUNTY, FLORIDA  
BY ITS BOARD OF  
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK



By: **Christopher Agrippa**  
Deputy Clerk

Approved by County Attorney as  
to form and legal sufficiency.

A handwritten signature in black ink, appearing to read "MR", positioned above a horizontal line.

Monica Rizo

IN THE CIRCUIT COURT OF THE 11<sup>th</sup>  
JUDICIAL CIRCUIT IN AND FOR  
MIAMI-DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO. 11-41786 CA 13

A-1 CONSTRUCTION AND RENOVATION,  
LLC, a Florida Limited Liability Corporation,

Plaintiff,

v.

MIAMI-DADE COUNTY, FLORIDA,  
RVL ARCHITECT & DESIGN, P.A., a  
Florida Corporation, and JUAN A.  
FERNANDEZ-BARQUIN, an  
individual

Defendants.

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MIAMI-DADE COUNTY, a political  
Subdivision of the State of Florida,

Third-Party Plaintiff,

v.

SURETEC INSURANCE COMPANY, a  
Texas Corporation,

Third-Party Defendant.

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**MEDIATED SETTLEMENT AGREEMENT**

A-1 CONSTRUCTION AND RENOVATION, LLC ("A-1"), MIAMI-DADE COUNTY, FLORIDA ("COUNTY"), RVL ARCHITECT & DESIGN, P.A. ("RVL"), JUAN A. FERNANDEZ-BARQUIN ("FERNANDEZ-BARQUIN"), and SURETEC INSURANCE COMPANY ("SURETEC") (collectively referred to herein as the "Parties"), hereby execute the instant *Mediated Settlement Agreement* (the "*Agreement*") including the Non-Disparagement and

Release Agreement attached hereto as **Exhibit "A"**, and by so doing, stipulate and agree to fully settle the claims by and between themselves arising out of or related to the matter set forth in the above-styled litigation, upon the following terms and conditions and subject to and contingent upon approval by the Miami-Dade County Board of County Commissioners and the execution of the *Addendum to the Agreement for Repayment of Outstanding Indemnity Obligations and Forebearance* of September 28, 2012 ("*Addendum*") hereto:

**WHEREAS**, A-1, as contractor, entered into a contract with COUNTY, as owner (the "*Contract*"), for the performance of certain enunciated work on the project commonly known as the "Claude Pepper Apartment Building" located at 750 NW 18<sup>th</sup> Terrace, Miami-Dade County, Florida (the "Project");

**WHEREAS**, RVL, as architect, entered into a contract with COUNTY, as owner, for the performance of certain professional design work relative to the Project;

**WHEREAS**, FERNANDEZ-BARQUIN, as engineer, entered into a contract with RVL, for the performance of certain professional engineering work relative to the Project;

**WHEREAS**, in connection with the *Contract*, SURETEC, as surety, issued a combined *Performance and Payment Bond* bearing no. 5096116 for the Project with a penal sum of \$216,368.90 (the "*Bond*"), on behalf of A-1, as principal, and in favor of COUNTY, as obligee;

**WHEREAS**, in connection with the Project, A-1 has filed Miami-Dade Circuit Court Case No. 11-41786 CA 13, asserting various claims against COUNTY, RVL and FERNANDEZ-BARQUIN, and COUNTY has asserted various counterclaims and third party claims against A-1 and SURETEC as relates to the Project and *Bond* (the "Lawsuit");

WHEREAS, SURETEC has made demand for collateral and indemnification upon A-1 and its corporate and individual indemnitors under the *General Agreement of Indemnity* dated November 20, 2009 (the "*Indemnity Agreement*");

WHEREAS, the Parties have collectively mediated the various pending claims and disputes, and have agreed upon the global settlement of all such claims upon the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the promises, and other good and valuable consideration, and the mutual covenants set forth herein, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

1. **Recitals.** The recitals are correct and are part of this *Agreement* as if fully set forth herein.

2. **Effect of Settlement.** The Parties hereby agree that upon execution of this *Agreement*, any and all claims which any of the Parties may have had against any other Party or Parties, which have and/or could have been asserted there against in any legal action or proceeding, shall be surrendered by and merged into this *Agreement*, except as otherwise reserved herein.

3. **Terms of Settlement.**

a. **Payment Obligations.** In full and complete satisfaction of the claims between the Parties relative to the Lawsuit, COUNTY agrees to accept the total sum of Thirty Thousand and 00/100 Dollars (\$30,000.00) payable by SURETEC, within ten (10) days after the COUNTY's written notice of the effectiveness of the approval by the Miami-Dade County Board of County Commissioners, and the exchange of executed copies of this *Agreement* and **Exhibit "A"**. All payments by SURETEC shall be made payable to Miami-Dade County, Board of

County Commissioners, and delivered via US Mail address to the Miami-Dade County Attorney's Office, attn: Monica Rizo, 111 NW 1<sup>st</sup> Street, Suite 2800, Miami, FL 33128, or as otherwise instructed in writing by COUNTY.

b. **Dismissal With Prejudice.** Within ten (10) days of receipt of the payment by the County, A-1 and the County shall file a *Joint Stipulation for Dismissal with Prejudice* relative to the Lawsuit, waiving and withdrawing any and all claims therein. Each of the Parties to the Lawsuit agree to bear their own attorneys' fees and costs, except as reserved by SURETEC as against A-1 and its individual and corporate indemnitors. The Court shall reserve jurisdiction to enforce the terms of this mediated settlement agreement, including the terms of **Exhibit "A"**.

c. **Release by COUNTY.** In material inducement for and in consideration for the Parties' collective execution of this *Agreement*, COUNTY does, for itself and for its past, present and future employees, agents, representatives, officers, directors, shareholders, members, principals, subsidiaries and affiliates, heirs, executors, administrators, successors and assigns, jointly and severally, releases SURETEC and A-1, and their respective subsidiaries and affiliates, heirs, executors, administrators, insurers, sureties, successors and assigns, from any and all actions, causes of actions, suits, demands, damages and/or claims of every kind or nature, whether at law, under statute or in equity, whether in contract or in tort, for bad faith and/or debarment, presently known or unknown, which COUNTY ever had, now have or which they hereinafter can, shall or may have against SURETEC and A-1 and, upon or by reason of any matter, action, inaction, omission, cause or thing whatsoever from the beginning of the world to the date of this *Agreement* arising out of the *Contract*, the *Bond*, the Lawsuit, and the Project.

This release shall serve to fully and completely discharge the *Bond*, rendering same null, void and of no further force and effect.

d. Release by A-1. In material inducement for and in consideration for the Parties' collective execution of this *Agreement*, A-1 does, for itself and its past, present and future employees, agents, representatives, officers, directors, shareholders, members, principals, subsidiaries and affiliates, heirs, executors, administrators, successors and assigns, jointly and severally, releases COUNTY, RVL and FERNANDEZ-BARQUIN, and their respective subsidiaries and affiliates, heirs, executors, administrators, insurers, sureties, successors and assigns, from any and all actions, causes of actions, suits, demands, damages and/or claims of every kind or nature, whether at law, under statute or in equity, whether in contract or in tort, presently known or unknown, which A-1 ever had, now has or which it hereinafter can, shall or may have against the COUNTY, RVL and FERNANDEZ-BARQUIN, upon or by reason of any matter, action, inaction, omission, cause or thing whatsoever from the beginning of the world to the date of this *Agreement* arising out of the *Contract*, the Lawsuit and the Project.

e. Release by SURETEC. In material inducement for and in consideration for the Parties' collective execution of this *Agreement*, SURETEC does, for itself and its past, present and future employees, agents, representatives, officers, directors, shareholders, members, principals, subsidiaries and affiliates, heirs, executors, administrators, successors and assigns, jointly and severally, releases COUNTY, RVL and FERNANDEZ-BARQUIN, and their respective subsidiaries and affiliates, heirs, executors, administrators, insurers, sureties, successors and assigns, from any and all actions, causes of actions, suits, demands, damages and/or claims of every kind or nature, whether at law, under statute or in equity, whether in contract or in tort, presently known or unknown, which SURETEC ever had, now has or which it

hereinafter can, shall or may have against the COUNTY, RVL and FERNANDEZ-BARQUIN, upon or by reason of any matter, action, inaction, omission, cause or thing whatsoever from the beginning of the world to the date of this *Agreement* arising out of the *Contract*, the *Bond*, the Lawsuit and the Project. Nothing herein is intended to nor shall be construed as a waiver, release and/or estoppel of any rights, claims and/or defenses available to SURETEC against A-1 and/or its corporate and individual indemnitors, all such rights being specifically reserved hereby.

f. Mutual Release Among COUNTY, RVL and FERNANDEZ-BARQUIN.

In material inducement for and in consideration for the Parties' collective execution of this *Agreement*, COUNTY, RVL and FERNANDEZ-BARQUIN do, for themselves and for their past, present and future employees, agents, representatives, officers, directors, shareholders, members, principals, subsidiaries and affiliates, heirs, executors, administrators, successors and assigns, jointly and severally, release one another, and their respective subsidiaries and affiliates, heirs, executors, administrators, insurers, sureties, successors and assigns, from any and all actions, causes of actions, suits, demands, damages and/or claims of every kind or nature, whether at law, under statute or in equity, whether in contract or in tort, presently known or unknown, which one another ever had, now have or which they hereinafter can, shall or may have against one another, upon or by reason of any matter, action, inaction, omission, cause or thing whatsoever from the beginning of the world to the date of this *Agreement* arising out of the Lawsuit, the Project, and the Project contract between the COUNTY and RVL (the "Professional Contract"). RVL agrees to complete all services covered under the Professional Contract including all work necessary for the issuance of the 40 year certification without further payment by the COUNTY.

4. **Addendum.** The *Addendum* shall be executed by SURETEC and A-1 and its corporate and individual indemnitors on or before Tuesday, July 8, 2014. SURETEC shall notify the COUNTY, in writing, that the *Addendum* has been fully executed within three (3) days of receiving the fully executed *Addendum*.

5. **Intentionally Omitted.**

6. **Litigation; Prevailing Party.** If any of the Parties breaches any term of this *Agreement*, including **Exhibit "A"** and/or the violation of any representation and warranty, and/or it becomes necessary for any of the Parties to apply to a Court of competent jurisdiction for the enforcement of this *Agreement*, the breaching Party shall be responsible for all attorneys' fees, consulting fees, engineering fees, and such other fees, expenses and costs of whatever kind or nature, incurred by the Prevailing Party, as a result of the default, at all trial and appellate levels.

7. **Miscellaneous Provisions.** (i) **No Oral Agreements.** It is agreed and understood by the Parties that there have been no oral or other agreements of any kind whatsoever as a condition precedent or to induce the execution and delivery of this *Agreement* by any Party hereto. It is further agreed that no change, addition or amendment shall be made herein or to any of the terms, covenants or conditions hereto except by writing, signed by all Parties to this *Agreement*. (ii) **Severability of Terms.** The provisions of this *Agreement* are intended to be severable. In the event that one or more provisions of this *Agreement* shall be declared or held to be invalid, illegal or unenforceable, in whole or in part, in any respect, unless such invalidity, illegality or unenforceability shall be tantamount to a failure of consideration, the validity, legality and enforceability of the remaining provisions contained in this *Agreement* shall not in any way be affected or impaired thereby. (iii) **No Third Party Beneficiaries.** It is further

agreed that this *Agreement* is solely for the benefit of the Parties hereto and shall not create any rights in any person not a party hereto, or in any way increase the rights of third persons, or increase the obligations of the Parties hereto to any third person, or increase the liability or obligations of any Party, except as may otherwise be set forth expressly in this *Agreement*. (iv) **Review of Counsel.** The Parties represent and warrant that they, along with their selected, independent counsel, have fully participated in the negotiating and drafting of this *Agreement*, that they have read and reviewed this *Agreement* and discussed the terms and conditions with their selected, independent counsel, and that as a result of their review and consultation with counsel, they understand the meaning, terms, conditions and ramifications of this *Agreement* and that they are entering into this *Agreement* freely and voluntarily without any duress or compulsion, economic or otherwise. (v) **No Presumption in Drafting.** It is further understood and agreed by the Parties that this *Agreement* shall be construed without any regard to any presumption or other rule requiring construction against the party causing this *Agreement*, or any Exhibits attached to this *Agreement*, or to be drafted. (vi) **Amendments in Writing.** No waivers, amendments or modifications of this *Agreement* shall be valid unless in writing and signed by each of the Parties. (vii) **Admissibility of Agreement.** The Parties hereby agree that this *Agreement* shall be admissible into evidence in any judicial, administrative or other forum for the purpose of establishing that the Parties are hereby barred from pursuing further litigation or administrative actions as more explicitly expressed herein. (viii) **Counterparts.** The Parties agree that this *Agreement* may be executed in counterparts.

**AGREED TO AS INDICATED BELOW.**

A-1 Construction & Renovation, LLC

Miami-Dade County, Florida

By: Neil FERNANDEZ  
Title: MANAGING MEMBER

By: \_\_\_\_\_  
Title: \_\_\_\_\_

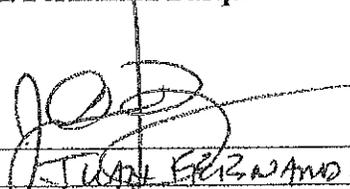
SureTec Insurance Company

RVL Architect & Design, P.A.

  
By: SCOTT OLSON  
Title: VICE PRESIDENT

 7.2.2014  
By: STEPHEN LEE  
Title: PRINCIPAL

Juan A. Fernandez-Barquin

 7/2/2014  
By: JUAN FERNANDEZ-BARQUIN  
Title: N/A

*Exhibit "A"*

**NON-DISPARAGEMENT and RELEASE AGREEMENT**

This Non-Disparagement and Release Agreement ("Agreement") is entered into July <sup>2nd</sup> 2014 ("Effective Date") by and between Miami-Dade County (the "County"), a political subdivision of the State of Florida, Jorge Cibran ("Cibran"), Francisco Trujillo ("Trujillo"), RVL Architecture + Design, P.A. ("RVL"), Segisberto Leon ("Leon"), Juan A. Fernandez-Barquin ("JFB"), A-1 Construction and Renovation ("A-1 Construction"), Craig Waltzer ("Waltzer"), Neil Hernandez ("Hernandez"), Alexis Lopez ("Lopez"), and SureTec.

**WHEREAS**, the undersigned, the County, Cibran, Trujillo, RVL, Leon, and JFB have claims against A-1 Construction, Waltzer, Hernandez, and Lopez, for statements made by A-1 Construction, Waltzer, Hernandez, and/or Lopez that the County, Cibran, Trujillo, RVL, Leon and JFB maintain are defamatory and disparaging on or about calendar years 2011-2014; and

**WHEREAS**, A-1 Construction instituted a lawsuit asserting claims against the County, Cibran, Trujillo, RVL<sup>1</sup>, Leon and JFB in the Eleventh Judicial Circuit Court in and for Miami-Dade County, Florida styled A-1 Construction and Renovation, LLC v. Miami-Dade County, et al., Case No. 11-41786 CA 13 (the "Lawsuit") and the County counterclaimed against A-1 Construction and filed a third-party claim against Suretec; and

**WHEREAS**, the parties are desirous of resolving all disputes which may exist between them as it relates to the Lawsuit and the defamatory statements; and

**NOW THEREFORE**, in consideration of the premises and mutual promises contained herein, the Parties hereby agree as follows:

1. **Settlement.**

On October 12, 2011, A-1 Construction was terminated for default by Miami-Dade Public Housing and Community Development ("PHCD") for the Claude Pepper project. The Lawsuit ensued. Subsequent to its termination, A-1 Construction and/or its principals, Hernandez, Waltzer, and Lopez made disparaging statements, some of which were contained in articles and news releases, about Miami-Dade Public Housing Agency ("MDPHA"), currently known as Miami-Dade Public Housing and Community Development ("PHCD") and its staff, including Cibran and Trujillo, as well as about RVL and its principal Leon, and JFB. A-1 Construction, Waltzer, Hernandez, and Lopez now acknowledge that the disparaging statements contained in the press releases, articles and/or otherwise distributed or disseminated by A-1 Construction, Waltzer, Hernandez, and/or Lopez about MDPHA, PHCD, Cibran, Trujillo, RVL, Leon and JFB are false. The parties hereby agree to settle and compromise all claims (including any claims for attorneys' fees or costs) which the County, Cibran, Trujillo, RVL, Leon and JFB have or may have against A-1 Construction, Waltzer, Hernandez and/or Lopez relating to the disparaging statements made by A-1 Construction, Waltzer, Hernandez and/or Lopez prior to the Effective Date.

<sup>1</sup> The Lawsuit incorrectly identified RVL as "RVL Architect + Design, P.A."

**2. Consideration.**

In consideration and exchange for the settlement and releases contained herein, A-1 Construction, Waltzer, Hernandez, and Lopez agree:

- (a) They shall use best efforts to, within thirty (30) days of this Agreement, remove and delete from all domains and locations, including, specifically, the internet and various web pages, all press releases, articles and all other disparaging statements it has published or distributed about the County, MDPHA, PHCD, Cibran, Trujillo, RVL, Leon and/or JFB.
- (b) They shall use best efforts to have all entities which have published press releases, articles and other information which contained disparaging statements concerning the County, MDPHA, PHCD, Cibran, Trujillo, RVL, Leon and/or JFB, which disparaging statements were first published and/or provided by A-1 Construction, Waltzer, Hernandez and/or Lopez, remove such disparaging statements from their websites, data bases and/or anywhere else within forty-five (45) days of this Agreement. A-1 Construction, Waltzer, Hernandez and Lopez shall require their attorney to send a cease and desist letter, in a form provided and approved by the County, to all such entities. A-1 Construction, Waltzer, Hernandez and Lopez shall not be required to file any lawsuits against any third parties in order to fulfill its commitments set forth in this Section 2(b).
- (c) To publish and distribute on PR Log or other site which is accepted in writing by the County, Cibran, Trujillo, RVL, Leon and JFB ("Alternate Site"), within thirty (30) days of the Effective Date, the following retraction:

Between 2011-2014, A-1 Construction and Renovation, LLC and/or its principals, Craig Waltzer, Neil Hernandez, and Alexis Lopez, made, published and distributed disparaging statements about the Miami-Dade Public Housing Agency (now known as Miami-Dade Public Housing and Community Development) and its employees, Jorge Cibran and Francisco Trujillo, as well as about RVL Architect + Design, P.A. and its principal Segisberto "Bert" Leon, and Juan A. Fernandez-Barquin. A-1 Construction and Renovation, LLC and its principals hereby retract all such disparaging statements, whether contained in articles, news releases, or communicated via any other medium, and now acknowledge that all such disparaging statements were and are false.

The aforementioned retraction shall be posted and maintained on PR Log or Alternate Site until the County, Cibran, Trujillo, RVL, Leon and/or JFB notify A-1 Construction, Waltzer, Lopez and Hernandez that he/it desires that such party be removed from the posted retraction.

**3. Non-Disparagement.**

Execution Copy

A-1 Construction, Waltzer, Hernandez and Lopez agree that they will not, at any time in the future, disparage: the County and/or any of its departments, agencies, instrumentalities and employees, including but not limited to MDPHA, PHCD, Cibran and Trujillo; RVL; Leon; JFB; and SureTec and its respective representatives, agents, subsidiaries and affiliates, heirs, executors, administrators, successors and assigns. For purpose of this Agreement, "disparage" means any negative statement, whether written or oral. A-1 Construction, Waltzer, Hernandez, and Lopez agree and acknowledge that this paragraph regarding non-disparagement is a material term of this Agreement and the Mediated Settlement Agreement between the parties regarding the Lawsuit, the absence of which would have resulted in the County, RVL and JFB refusing to enter into this Agreement and into the Mediated Settlement Agreement.

**4. Liquidated Damages.**

The parties agree and acknowledge that if a breach of this Agreement were to occur by A-1 Construction, Waltzer, Hernandez and/or Lopez, it would be difficult to determine actual damages. Based on what the parties presently know, they agree that: (1) for a written disparaging statement that is also published by A-1 Construction, Waltzer, Hernandez, and/or Lopez on the internet or in any printed materials distributed to three or more persons, \$10,000 per person and/or entity disparaged, for each day that the disparaging statement is and remains published, is a reasonable estimate of the damages that would accrue if a breach were to occur; and (2) for a disparaging statement that is issued orally or in writing and published to less than three persons, \$1,000 per person and/or entity disparaged, per disparaging statement, is a reasonable estimate of the damages that would accrue if a breach were to occur. All parties agree that the amount of liquidated damages is fair and reasonable and would not act as a penalty to the breaching party. A-1 Construction, Waltzer, Hernandez and Lopez agree that they shall be jointly and severally liable for any breach of this Agreement.

**5. Releases.**

In consideration of the undertakings described above, but expressly excepting the obligations created by, and the rights expressly reserved within this release, the County, Cibran, Trujillo, RVL, Leon and JFB release and discharge A-1 Construction, Waltzer, Hernandez and Lopez from any and all past or present claims, actions or demands for defamation which the County, Cibran, Trujillo, RVL, Leon and JFB ever had or now have against A-1 Construction, Waltzer, Hernandez and/or Lopez for injuries or damages resulting from the defamatory and disparaging statements made by A-1 Construction, Waltzer, Hernandez and/or Lopez as to the County, Cibran, Trujillo, RVL, Leon and/or JFB prior to the Effective Date.

**6. Integration.**

This Agreement contains the entire agreement between the parties as to the issue of disparagement, but the parties acknowledge that the Settlement is being executed as part of a the larger settlement of the Lawsuit. The terms of this Agreement are contractual and not a mere recital. All prior negotiations and understandings between the parties as to disparagement have been merged herein.

Execution Copy

**7. Authority to Enter Release**

A-1 Construction, Waltzer, Hernandez and Lopez warrant and represent that each of them have the authority to execute this release.

**8. Binding Nature.**

The provisions of this Agreement shall be binding upon and insure to the benefit of all parties hereto and their estates, heirs, legal representatives, successors and assigns. A-1 Construction, Waltzer, Hernandez and Lopez each represent and acknowledge that it/he has been given the opportunity to independently review this Agreement with legal counsel, have agreed to the particular language of the provisions hereof and have fully participated in the drafting of this Agreement. A-1 Construction, Waltzer, Hernandez and Lopez each acknowledge that it/he has read this Agreement or that same has been read to each of them, and it/he fully knows, understands and appreciates the contents and effect thereof, and that the settlement terms are made voluntarily and of it/his own free will and accord. In the event of any ambiguity in or dispute regarding the interpretation of any provision of this Agreement, such dispute shall not be resolved by any rule of construction providing for interpretation against the party who causes the ambiguity, or against the drafter. A-1 Construction, Waltzer, Hernandez and Lopez expressly agree that in the event of ambiguity or dispute regarding the interpretation of this Agreement, the document will be interpreted as if each party hereto participated in the drafting hereof which, in fact, has been the case.

**9. Attorneys' Fees and Costs.**

Each party agrees to bear its own costs and attorneys' fees relating to the Lawsuit. However, in the event that any action is instituted to enforce any term of this Agreement, to seek a declaration as to, or to assert, by way of defense, any term of this Agreement, the prevailing party in such action shall recover from the losing party its reasonable attorneys' fees and costs incurred in such action.

**10. Counterparts.** The parties agree that this Agreement may be executed in counterparts.

The "WHEREAS" clauses set forth above are an integral part of this Agreement and are hereby incorporated and made a part hereof as though fully set forth herein.

IN WITNESS WHEREOF, the undersigned duly executed the foregoing Agreement on the 2 day of JULY, 2014.

**AGREED TO AS INDICATED BELOW,**

Execution Copy

A-1 Construction & Renovation, LLC

Miami-Dade County, Florida

By: Neil Hernandez  
Title: Managing Member

By: \_\_\_\_\_  
Title: \_\_\_\_\_

Approved as to form and legal sufficiency:  
Monica Rizo  
RVL Architect & Design, P.A.

SureTec Insurance Company

By: Scott Olson  
Title: VICE PRESIDENT

By: SEGISBERTO LEON  
Title: PRINCIPAL

Juan A. Fernandez-Barquin

By: JUAN FERNANDEZ BARQUIN  
Title: N/A

Craig Waltzer

By: \_\_\_\_\_  
Title: \_\_\_\_\_

Alexis Lopez

By: \_\_\_\_\_  
Title: \_\_\_\_\_

Neil Hernandez

By: \_\_\_\_\_  
Title: \_\_\_\_\_

Segisberto Leon

By: SEGISBERTO LEON  
Title: PRINCIPAL

Execution Copy

**Francisco Trujillo**

*Francisco Trujillo*  
By: \_\_\_\_\_

**Jorge Cibran**

*Jorge Cibran*  
Rv: \_\_\_\_\_

Chali



U. S. Department of Housing and Urban Development  
Region IV, Miami Field Office  
Office of Counsel

Brickell Plaza Federal Building  
909 SE First Avenue, Rm. 500  
Miami, FL 33131-3042  
Telephone (305) 536-4563 Facsimile (305) 536-5129

SEP 11 2014.

Eduardo W. Gonzalez, Esq.  
Assistant County Attorney  
Miami-Dade County Attorney's Office  
111 NW First Street  
Suite 2810  
Miami, FL 33128

Dear Mr. Gonzalez:

RE: Request to Settle Pending Litigation  
*A-1 Construction and Renovation LLC v. Miami-Dade County et al.*  
Case Number: 11-41786 CA 13

This serves to respond to a request made by you on behalf of the Miami-Dade County Commissioners in its role as a local housing authority (the "County"). The request seeks concurrence by the Department of Housing and Urban Development ("HUD" or "Department") to settle ongoing litigation brought by A-1 Construction and Renovation, ("A-1") against the County arising from the termination of a contract to repair spalling concrete, replace railings, perform floor paints as well as other necessary work at the Claude Pepper Apartments. The Claude Pepper Apartments is a project owned by the County and subject to an Annual Contributions Contract between the County and the Department. The request was submitted pursuant to applicable guidance set forth in the Department's *Litigation Handbook*, 1530.1 REV-5, which requires that no settlement arising out of litigation shall be accepted by a Public Housing Authority (PHA) without the prior written concurrence of HUD.

Based on the information provided to this office, we concur with the terms of the settlement as set forth in the *Mediated Settlement Agreement* dated July 2, 2014, entered into by the parties to this lawsuit. You are hereby notified however that HUD's concurrence is not a representation that HUD agrees to fund any of the parties' costs or fees associated with this lawsuit nor does this concurrence obligate HUD in any way from taking any action or from refraining from taking any action in the ordinary course of its dealings with the County in regard to the Claude Pepper Apartments.

Should you have any questions or concerns, please contact Chali Roché Garcia at 305-520-5102.

Sincerely,

Gail A. Dotson  
Associate Regional Counsel

*HUD's mission is to create strong, sustainable, inclusive communities and quality, affordable homes for all.*

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