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OF COUNTY COMMISSIONERS
MIAMI-DADE COUNTY, FLORIDA

MEMORANDUM

Agenda Item No. 8(K)(3)

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

DATE: December 2, 2014

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

SUBJECT: Resolution approving the settlement agreement between Miami-Dade County, Zurqui Construction Services, Inc., and Great American Insurance Company in the amount of $96,250.00 and authorizing the County Mayor to enforce all terms contained therein

Resolution No. R-1050-14

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

Memorandum

MIAMI-DADE COUNTY

Date: December 2, 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 Zurqui Construction Services, Inc., Great American Insurance Company, and Miami-Dade County, Case No. 12-20823 CA 02, in the Amount of $96,250.00

RECOMMENDATION

It is recommended that the Board of County Commissioners ("Board") approve the attached settlement agreement of the lawsuit between Zurqui Construction Services, Inc. ("Zurqui Construction"), Great American Insurance Company ("Great American"), and Miami-Dade County (the "County") pending in the Circuit Court of the Eleventh Judicial Circuit, in and for Miami-Dade County, Case No. 12-20823 CA 02, (the "Lawsuit") in the amount of $96,250.00 as full compensation for all claims related to the construction projects that are the subject of this lawsuit.

SCOPE

This proposed settlement stems from litigation based on claims arising out of the construction projects between Zurqui Construction, Great American and Miami-Dade County for Newberg Phase I (HUD-FLA-5-031) and Newberg Phase II (HUD-FLA-5-031) (the "Projects"). The Projects are located in County Commission District 3 represented by Commissioner Audrey M. Edmonson.

FISCAL IMPACT/FUNDING SOURCE

The fiscal impact to the County is $96,250.00 and shall be paid from the retainage withheld by the County on the Projects. Currently the retainage withheld by the County is $185,283.06. From this amount the County will release the $96,250.00 settlement amount. These funds are part of the Public Housing and Community Development Department's ("Department") Capital Fund Program.

TRACK RECORD/MONITOR

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

BACKGROUND

In 2010, the County awarded to Zurqui Construction contracts for the comprehensive modernization of the Newberg Apartments, Phases I and II located at 7217 NE Miami Court, Miami, Florida. The value of the contract for Phase I was approximately $1,123,400.00 including contingency and allowance accounts. The value of the contract for Phase II was approximately $1,350,000.00 including contingency and allowance accounts. Great American, as the surety, issued payment and performance bonds on both projects and has assumed all of Zurqui Construction's rights and obligations in connection with this lawsuit. The work generally consisted of parking lot renovations, accessible ramps and sidewalk renovations, concrete spalling repairs, concrete stair and concrete column repairs, installation of new

doors and windows, replacement of security screens, installation of new kitchen cabinets, sinks and faucets, water proofing of exterior galleries and walkways, repainting of exterior and interior of buildings, replacement of parking lot lighting, and the installation of new emergency exit lights and a new fire alarm system. The work associated with each contract was scheduled to last 180 days each.

During the course of the work, the County issued Zurqui Construction a number of change orders adding work and time to the contracts. However, the County and Zurqui Construction were unable to agree on the validity and/or value of several change orders. Nevertheless, pursuant to the contract documents, the County ordered the work to be performed and Zurqui Construction performed the work but claimed that it was owed additional sums. Additionally, there were disagreements regarding contract non-performance on the part of Zurqui Construction. The County issued two Notices to Cure to Zurqui Construction which included its abandonment of the project sites when the Projects were almost completed. Zurqui Construction did not return to the project sites to complete the Project. The County and Zurqui Construction were unable to resolve their disagreements and, as a result, Zurqui Construction was terminated for default by the County on December 8, 2011. The County then hired a completion contractor to complete the remaining work and the Projects were completed within the original budgeted amount.

Zurqui Construction filed this lawsuit against the County on June 22, 2012, seeking moneys owed for the value of work completed for the County. Zurqui Construction claimed that the County wrongfully terminated the company and was in material breach of the contract by failing to pay the disputed amounts related to the change order and contract work. Specifically, Zurqui Construction was seeking $526,580.83 in damages related to Phase I and $387,429.06 in damages related to Phase II. Including interest, Zurqui Construction claimed a total of $1,051,036.14 in damages.

The County and Zurqui Construction agreed to refer this matter to formal mediation and, after mediation, the parties have agreed to the attached proposed mutual settlement of this matter. As part of this settlement agreement, the County will pay to Great American $96,250.00 from the retainage which was withheld from Zurqui Construction by the County and represents the value of the change order work performed by Zurqui Construction for which it has not been compensated. This amount is approximately half of the retainage amount withheld by the County for work completed by Zurqui Construction, and shall constitute full and final payment by the County of all claims that Zurqui Construction and Great American have against the County related to this matter. Upon approval of this proposed agreement by the Board, the parties will file a Stipulation of Dismissal of this lawsuit with Prejudice.

Attachment

Russell Benford, Deputy Mayor

MEMORANDUM
(Revised)

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

DATE: December 2, 2014

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

SUBJECT: Agenda Item No. 8(K)(3)

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. 8(K)(3)
12-2-14

RESOLUTION NO. R-1050-14

RESOLUTION APPROVING THE SETTLEMENT AGREEMENT BETWEEN MIAMI-DADE COUNTY, ZURQUI CONSTRUCTION SERVICES, INC., AND GREAT AMERICAN INSURANCE COMPANY IN THE AMOUNT OF $96,250.00 AND AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO ENFORCE ALL TERMS CONTAINED THEREIN

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: (1) approves the settlement agreement by and between Miami-Dade County, Zurqui Construction Services, Inc., a Florida corporation, and Great American Insurance Company, an Ohio Corporation, in the amount of $96,250.00, attached hereto as Exhibit A and incorporated herein by this reference, as settlement of the lawsuit pending in the Circuit Court of the 11th Judicial Circuit, in and for Miami-Dade County, Florida, Case No. 12-20823 CA02; and (2) authorizes the County Mayor or County Mayor's designee to enforce all terms contained therein.

The foregoing resolution was offered by Commissioner **Esteban L. Bovo, Jr.**, who moved its adoption. The motion was seconded by Commissioner **Sally A. Heyman** and upon being put to a vote, the vote was as follows:

Rebeca Sosa, Chairwoman			**aye**
Bruno A. Barreiro	**absent**	Esteban L. Bovo, Jr.	**aye**
Daniella Levine Cava	**aye**	Jose "Pepe" Diaz	**aye**
Audrey M. Edmonson	**aye**	Sally A. Heyman	**aye**
Barbara J. Jordan	**aye**	Jean Monestime	**absent**
Dennis C. Moss	**absent**	Sen. Javier D. Souto	**absent**
Xavier L. Suarez	**aye**	Juan C. Zapata	**aye**

The Chairperson thereupon declared the resolution duly passed and adopted this 2nd day of December, 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. D.F.

Daniel Frastai

Exhibit A

IN THE CIRCUIT COURT OF THE 11TH
JUDICIAL CIRCUIT, IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

ZURQUI CONSTRUCTION SERVICES, INC.
a Florida corporation

Plaintiff,

vs.

MIAMI-DADE COUNTY, FLORIDA, a political subdivision of the State of Florida,

Defendant.

CASE NO.:12-20823 CA 02
CONSOLIDATED

MIAMI-DADE COUNTY, FLORIDA,
a political subdivision of the State of Florida,

Plaintiff,

v.

GREAT AMERICAN INSURANCE
COMPANY, an Ohio Corporation.

Defendant.

SETTLEMENT AGREEMENT

This *Settlement Agreement* ("*Agreement*") is made and entered into this 27th day of March, 2014, by and between the Plaintiff, ZURQUI CONSTRUCTION SERVICES, INC. ("ZURQUI"), Defendant/Counter-Plaintiff, MIAMI-DADE COUNTY, FLORIDA ("COUNTY"), and Counter-Defendant, GREAT AMERICAN INSURANCE COMPANY ("GAIC") (collectively, the "Parties"), subject to and contingent on approval by the Miami-Dade County Board of County Commissioners.

PURPOSE

The parties to this *Agreement* memorialize the resolution of all disputes of whatever nature asserted by and between the above-stated Parties arising out of or relating to the consolidated litigation styled above (the "Action").

AGREEMENT

The Parties agree as follows:

1. **SETTLEMENT SUM.** COUNTY agrees to pay to GAIC, within forty five (45) days after approval of this Agreement by the Miami-Dade County Board of County Commissioners, the sum of **ninety six thousand two hundred and fifty Dollars ($96,250.00)** (the "Settlement Sum") as full and final settlement of the Action. The Settlement Sum shall be made payable to GAIC, and delivered to Timothy D. Martin, Great American Insurance Group, PO Box 2119, Cincinnati, Ohio, 45201.

2. **DISMISSAL WITH PREJUDICE.** Within ten (10) days of clearance of the Settlement Sum, the Parties shall file a *Stipulation of Voluntary Dismissal with Prejudice* of the Action, with each Party to bear its own attorneys' fees and costs.

3. **RELEASE.** Upon the execution of this *Agreement*, GAIC's receipt and clearance of the Settlement Sum, and in consideration of the Parties' performance as specified herein, the Parties do hereby expressly RELEASE, ACQUIT and FOREVER DISCHARGE each of other, together with their members, officers, directors, servants, heirs, administrators, executors, insurers, sureties, successors and/or assigns, all parent, subsidiary, or affiliated corporations or entities, predecessors in interest, successors in interests, divisions, consultants, and attorneys, of and from any and all claims, rights, demands and/or causes of action of whatsoever kind or nature which the Parties have or may ever claim to have against the other, whether previously asserted or unasserted, arising under and/or by reason of the above-

referenced Action, the bonded contract, the Project and/or the Performance Bond issued by GAIC referenced in the above-referenced Action. IT IS SPECIFICALLY UNDERSTOOD AND AGREED THAT BY OPERATION OF THIS RELEASE, THE PERFORMANCE BOND ISSUED BY GAIC, WITH ZURQUI AS PRINCIPAL AND COUNTY AS OBLIGEE, IS HEREBY DISCHARGED AND RENDERED OF NO FURTHER FORCE AND EFFECT.

4. **LIMITED EXCLUSION FROM RELEASE**. Notwithstanding anything to the contrary herein, the instant release shall not in any act to waive, release, estop, alter and/or amend the any existing rights available to GAIC against ZURQUI, as more fully memorialized in the *Settlement Agreement* reached in the separate action styled *Great American Insurance Company v. Zurqui Construction Service, Inc. et al.*, United States District Court, Southern District Of Florida Case No. 1:12-cv-24501-KMW.

5. **AGREEMENT COMPROMISES DISPUTED CLAIMS**. This *Agreement* is made and entered by the Parties as a compromise of disputed claims between them. None of this *Agreement*, the payment provided by it, nor any document, pleading or paper prepared and signed pursuant to the provisions of this *Agreement* shall constitute or be construed or asserted as an admission of liability on the part of any Party. The Parties expressly acknowledge and agree that all claims asserted or unasserted between them have been fully and amicably resolved.

6. **GOVERNING LAW**. This *Agreement* shall be governed and construed in accordance with the laws of the State of Florida.

7. **JURISDICTION AND VENUE**. Any and all legal actions arising from or relating to this *Agreement* shall be commenced in the Court of this Action.

8. **DRAFTING OF THE AGREEMENT**. The Parties participated in the drafting of this *Agreement* and/or had it reviewed by competent counsel. Accordingly, no presumption

shall be given in favor of, or against, any Party in interpreting this *Agreement* and the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this *Agreement*.

9. **SEVERABILITY**. If any provision of this *Agreement* is found to be unenforceable, the remaining provisions hereof shall nevertheless be carried into effect.

10. **ENTIRE AGREEMENT**. This *Agreement* constitutes the entire agreement and understanding of the parties hereto, supersedes any prior agreement between the parties, whether written or oral, and may not be changed, altered or modified except in writing and executed by the parties hereto. Each Party acknowledges that no representation, inducement, promises or agreements, orally or otherwise, was made by any Party, or anyone acting on behalf of any Party, unless such representation, inducement, promises or agreements are embodied in this *Agreement*.

11. **REPRESENTATION BY COUNSEL**. Each Party was represented by independent counsel in this matter or had the opportunity to consult with independent counsel. Furthermore, the Parties obtained advice from said counsel concerning the meaning, scope and effect of this *Agreement*, or voluntarily waived such an opportunity.

12. **AUTHORIZATION AND AUTHORITY**. Each Party represents and warrants to the other that: (a) it is duly authorized and competent to execute this *Agreement*, (b) it has all necessary corporate power and authority to enter into this *Agreement* and to perform the agreements contained in this *Agreement*, and (c) the person signing this *Agreement* on behalf of such party is authorized to execute and deliver this *Agreement* on behalf of such party. This *Agreement* may be signed in one or more counterparts, may be transmitted by facsimile or scanned email transmission and all counterparts together shall constitute this *Agreement*. This Agreement is subject and contingent on approval by the Miami-Dade County Board of County Commissioners.

AGREED AND CONSENTED to this 27th day of March, 2014.

ZURQUI CONSTRUCTION SERVICES, INC.

By: 4.1.14
Title: President

MIAMI-DADE COUNTY, FLORIDA

By: JORGE R. CIBRIAN
Title: DIRECTOR, FACILITIES AND DEVELOPMENT DIVISION
PUBLIC HOUSING + COMMUNITY DEVELOPMENT.

GREAT AMERICAN INSURANCE COMPANY

By: Timothy D. Maerzo
Title: Assistant Vice President

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