

MEMORANDUM

Agenda Item No. 14(A)(1)

TO: Honorable Chairman Jose "Pepe" Diaz
and Members, Board of County Commissioners

DATE: June 1, 2022

FROM: Geri Bonzon-Keenan
County Attorney

SUBJECT: Resolution approving the terms of the settlement and mutual release agreement between the County and Siltek Group, Inc. ("Siltek"), Hartford Casualty Insurance Company ("Hartford"), 123 Roofing, Inc. ("123 Roofing"), and CertainTeed LLC ("CertainTeed"), to resolve all claims pertaining to certain new roof construction work and roofing related materials installed at Gran Via Apartments in an amount of \$170,000.00 payable to the County by Siltek, \$30,000.00 payable to the County by 123 Roofing, and \$200,000.00 payable to the County by CertainTeed, for a total of \$400,000.00; and authorizing the County Mayor to execute the settlement agreements and to exercise all rights and enforce all provisions contained therein

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 Joe A. Martinez.



Geri Bonzon-Keenan
County Attorney

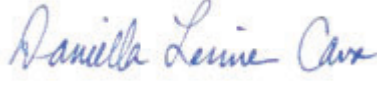
GBK/uw

Memorandum



Date: June 1, 2022

To: Honorable Chairman Jose “Pepe” Diaz
and Members, Board of County Commissioners

From: Daniella Levine Cava
Mayor 

Subject: Resolution Approving the Settlement and Mutual Release Agreement between the County and Siltek Group, Inc., Hartford Casualty Insurance Company, 123 Roofing, Inc., and CertainTeed LLC

Executive Summary

This item recommends approving the Settlement between the County and the Defense Parties. The Settlement will resolve a contract dispute between the County and the Defense Parties over a defective roof that was installed in 2014 as part of the construction of Gran Via Apartments. After multiple attempts to obtain relief from the Defense Parties, the County filed legal proceedings against the Defense Parties and replaced the roof at its own expense to ensure the safety of the Gran Via residents. The roof replacement was completed in February 2021. The cost of the replacement was \$629,480.50. During the proceedings, the County reached the attached Settlement with the Defense Parties. Pursuant to the terms of the Settlement, the Defense Parties will pay the County an amount totaling \$400,000.00. The difference between the recommended settlement amount (\$400,000.00) and the roof replacement cost (\$629,480.50) is explained in part by the increased costs associated with the cool roof (tapered insulation) features of the new roof which were not included or legally required in the original roof. The \$400,000.00 settlement amount also accounts for the fact that the original roof had a useful lifespan of more than five (5) years. Given these factors, and the uncertainties and costs associated with the legal proceedings, a \$400,000.00 payment to the County is a reasonable settlement of this dispute.

Recommendation

It is recommended that the Board of County Commissioners (“Board”) approves the settlement and mutual release agreement (“Settlement”) between the County and Siltek Group, Inc. (“Siltek”), Hartford Casualty Insurance Company (“Hartford”), 123 Roofing, Inc. (“123 Roofing”), and CertainTeed LLC (“CertainTeed”), (collectively, the “Defense Parties”).

The Settlement will resolve the ongoing contract dispute between the County and the Defense Parties pertaining to new roof construction work and roofing related materials installed at Gran Via Apartments, which was completed in 2014. Pursuant to the terms of the Settlement, Siltek will pay the County \$170,000.00, 123 Roofing will pay the County \$30,000.00, and CertainTeed will pay the County \$200,000.00, for a total of \$400,000.00. All parties have finalized negotiations and the negotiated Settlement is attached as Exhibit 1.

Scope

Gran Via Apartments is located at 12700 SW 8th St, Miami, FL 33184, within Commission District 11, which is represented by Commissioner Joe A. Martinez.

Delegation of Authority

This item authorizes the County Mayor or County Mayor’s designee to execute the settlement agreement and to exercise all rights and enforce all provisions contained in the settlement agreement.

Fiscal Impact/Funding Source

Under the terms of the Settlement, Siltek will pay the County \$170,000.00, 123 Roofing will pay the County \$30,000.00, and CertainTeed will pay the County \$200,000.00, for a total of \$400,000.00.

Track Record/Monitor

Michael Liu, Director, Public Housing and Community Development Department, will oversee implementation of the Settlement on behalf of the County.

Background

Gran Via Apartments is a five-story elderly housing community containing 104 affordable units. Miami-Dade Public Housing and Community Development (PHCD) is the user department for the property. The Board approved this project on June 5, 2012, through Resolution R-458-12. The construction contract was awarded to Siltek. The Certificate of Completion was obtained on September 13, 2014.

This case centered around a defective roof installed as part of the construction of Gran Via Apartments. In January 2016, less than 2 years after the project was completed, the County learned of several latent defects in the roofing system that resulted in water ponding in certain parts of the roof. A separate third-party inspection confirmed the roof deficiencies and determined that the roof was beyond repair and must be replaced. The County was forced to replace the roof to ensure the safety of the Gran Via residents. The roof replacement contract was awarded to Z Roofing, Inc. in the amount of \$629,480.50. Construction on the new roof is completed and a final inspection was approved on February 9, 2021.

After multiple attempts to obtain relief from CertainTeed (the warrantor of the roof), Siltek (the general contractor), and Hartford (the bonding company for the project), the County simultaneously filed suit against Siltek and Hartford for breach of warranty, breach of contract, and breach of bond and, because of an arbitration provision in the warranty, filed a demand for arbitration against CertainTeed. Siltek and Hartford agreed to participate in the arbitration so all parties were in the same forum and the circuit court case was stayed pending the arbitration. Following some discovery, including the exchange of documents, the depositions of party representatives and fact witnesses and the exchange of expert reports, the County has reached a settlement with the defendants in both the arbitration and the lawsuit whereby the defendants are paying the County the sum total of \$400,000.00. The recommended settlement amount is less than the full replacement cost of the new roof for several reasons. First, the new roof cost is more than the original roof because it is a cool roof with tapered insulation. The cool roof component is approximately \$70,000.00. The original roof was not required to be installed as a cool roof and did not have tapered insulation. Second, the settlement amount includes an approximate 25% depreciation from the cost of the new roof to account for the fact that the original roof had a useful lifespan of five years. Lastly, the settlement amount accounts for the

Honorable Chairman Jose "Pepe" Diaz
and Members, Board of County Commissioners
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uncertainties inherent in any litigation or arbitration proceeding and the increased costs to the County including additional expert witness costs and fees and arbitrator fees associated with completing the pending legal proceedings. Taken all factors into account, a \$400,000.00 payment to the County is a reasonable settlement for the County.



Morris Copeland
Chief Community Services Officer



MEMORANDUM
(Revised)

TO: Honorable Chairman Jose "Pepe" Diaz
and Members, Board of County Commissioners

DATE: June 1, 2022

FROM: 
Gen Bonzon-Keenan
County Attorney

SUBJECT: Agenda Item No. 14(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
- Statement of social equity 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 present ____, 2/3 membership ____, 3/5's ____, unanimous ____, CDMP 7 vote requirement per 2-116.1(3)(h) or (4)(c) ____, CDMP 2/3 vote requirement per 2-116.1(3)(h) or (4)(c) ____, or CDMP 9 vote requirement per 2-116.1(4)(c)(2) ____) 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)(1)
6-1-22

RESOLUTION NO. _____

RESOLUTION APPROVING THE TERMS OF THE SETTLEMENT AND MUTUAL RELEASE AGREEMENT BETWEEN THE COUNTY AND SILTEK GROUP, INC. (“SILTEK”), HARTFORD CASUALTY INSURANCE COMPANY (“HARTFORD”), 123 ROOFING, INC. (“123 ROOFING”), AND CERTAINTEED LLC (“CERTAINTEED”), TO RESOLVE ALL CLAIMS PERTAINING TO CERTAIN NEW ROOF CONSTRUCTION WORK AND ROOFING RELATED MATERIALS INSTALLED AT GRAN VIA APARTMENTS IN AN AMOUNT OF \$170,000.00 PAYABLE TO THE COUNTY BY SILTEK, \$30,000.00 PAYABLE TO THE COUNTY BY 123 ROOFING, AND \$200,000.00 PAYABLE TO THE COUNTY BY CERTAINTEED, FOR A TOTAL OF \$400,000.00; AND AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR’S DESIGNEE TO EXECUTE THE SETTLEMENT AGREEMENTS AND TO EXERCISE ALL RIGHTS AND ENFORCE ALL PROVISIONS 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 approves the settlement and mutual release agreement, in substantially the form attached to the accompanying memorandum as Exhibit 1, between the County and Siltek Group, Inc. (“Siltek”), Hartford Casualty Insurance Company (“Hartford”), 123 Roofing, Inc. (“123 Roofing”), and CertainTeed LLC (“CertainTeed”), to resolve all claims pertaining to certain new roof construction work and roofing related materials installed at Gran Via Apartments in an amount of \$170,000.00 payable to the County by Siltek, \$30,000.00 payable to the county by 123 Roofing, and \$200,000.00 payable to the County by CertainTeed, for a total of \$400,000.00; and authorizing the County Mayor or County Mayor’s designee to execute the settlement agreement and to exercise all rights and enforce all provisions contained in the settlement agreement.

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

Jose "Pepe" Diaz, Chairman	
Oliver G. Gilbert, III, Vice-Chairman	
Sen. René García	Keon Hardemon
Sally A. Heyman	Danielle Cohen Higgins
Eileen Higgins	Joe A. Martinez
Kionne L. McGhee	Jean Monestime
Raquel A. Regalado	Rebeca Sosa
Sen. Javier D. Souto	

The Chairperson thereupon declared this resolution duly passed and adopted this 1st day of June, 2022. This resolution shall become effective upon the earlier of (1) 10 days after the date of its adoption unless vetoed by the County Mayor, and if vetoed, shall become effective only upon an override by this Board, or (2) approval by the County Mayor of this resolution and the filing of this approval with the Clerk of the Board.

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

HARVEY RUVIN, CLERK

By: _____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.



Eduardo W. Gonzalez
Angela F. Benjamin

SETTLEMENT AND MUTUAL RELEASE AGREEMENT

This Settlement and Release (“Agreement”) is entered into the 1st day of April, 2022 between Miami-Dade County (“the County”), Siltek Group, Inc., (“Siltek”), Hartford Casualty Insurance Company (“Hartford”), 123 Roofing, Inc., (“123 Roofing”) and CertainTeed LLC, successor to certain assets and liabilities, including any liabilities arising from the claims asserted in this action against an entity that no longer exists named “CertainTeed Corporation” (“CertainTeed”), (collectively, the “Defense Parties”) and County and the Defense Parties together are the Parties (“Parties”).

RECITALS:

WHEREAS, the County is the owner of certain property named the Gran Via Apartments located in Miami, Florida (“Property”);

WHEREAS, Siltek and 123 Roofing performed certain new construction work on the roof at the at the Property, CertainTeed manufactured certain roofing related materials installed at the Property and Hartford provided a performance bond (“Project”);

WHEREAS, the County claims damages for, among other things, the alleged improper building materials and the preparation and installation of roofing materials at the Property;

WHEREAS, the County filed a lawsuit in Miami-Dade Circuit Court Case No. 19-022894 (“Lawsuit”) naming Siltek and Hartford as Defendants, and a demand for Arbitration with the American Arbitration Association (“AAA”) Case Number 01-19-0002-3987 (“Arbitration”) naming Siltek, Hartford and CertainTeed as respondents;

WHEREAS, Siltek added third-party respondent 123 Roofing, among other third-party respondents, to the Arbitration;

WHEREAS, the County and the Defense Parties, in the best interest of all the Parties, wish to resolve all disputes in the Lawsuit and Arbitration;

WHEREAS, all claims the County may have as to the Defense Parties in the Arbitration, and any claims the Defense Parties may have among themselves, are hereinafter collectively referred to as the “Claims”; and

WHEREAS the Parties desire to resolve the Claims;

NOW, THEREFORE, in consideration of the covenants and agreements set forth herein, the payment of the sums set forth herein, and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the County, and the Defense Parties, hereby agree as follows:

AGREED TERMS

1. **Payment:** The Defense Parties will pay to County, the sum of Four Hundred Thousand Dollars (\$400,000.00) within thirty (30) days of the execution of this Agreement by all Parties (“Settlement Amount”). The payment under the Settlement Amount will be made payable to the County by wire transfer at the below instructions:

Wells Fargo Bank, NA

Miami, FL

ABA: 121-000-248

Miami Dade Public Housing and Community Development

Acct: 2696206699012

Attn: Revenue Accounting

Ref: (Insert what the payment is for)

The payment will consist of funds provided as follows: Siltek \$170,000.00; 123 Roofing \$30,000.00; and CertainTeed \$200,000.00 for a total of \$400,000.00. Once the Settlement Agreement is signed by all parties, the parties making payment pursuant to the Settlement Agreement will put all funds into escrow with Holland & Knight LLP in care of Kenneth R. Richie, to be held until each paying party's funds are received. At that time, the Settlement Amount will be released to the County. The payment obligations of Siltek, 123 Roofing, and CertainTeed are several and not joint.

2. **Mutual Release:** In consideration of the payment described in Section 1 above, the County and the Defense Parties, on behalf of themselves and their respective successors, parents, affiliates, attorneys, assigns, predecessors, agents, officers, directors, employees, shareholders, representatives, insurers, reinsurers and any other person or entity claiming by or through them, whether named or unnamed (hereafter "Releasers"), do hereby release, acquit and forever discharge all other Parties and their successors, assigns, predecessors, agents, employees, representatives, agents, officers, directors, shareholders, owners, subsidiaries, parents, affiliates, attorneys, assigns and insurers, reinsurers, whether named or unnamed (hereafter, "Released Parties"), from and against any and all past, present or future known and unknown charges, complaints, claims, grievances, liabilities, obligations, promises, agreements, controversies, demands, damages, actions, causes of action (including claims of others), suits, costs (including court costs), rights, losses, debts, penalties, fees, wages, medical costs, pain and suffering, mental anguish, emotional distress, expenses (including attorneys' fees and costs actually incurred), judgments, liens, and punitive damages, of any kind or nature whatsoever, in law or in equity, in contract or in tort by reason of, relating to, growing out of, resulting from or in connection with the Lawsuit, Arbitration, and installation of or materials used on the roof at the Property and on the Project. The release contained herein shall become effective for each Defense Party upon the receipt by the County of the respective settlement payment made by each Defense Party. The failure of any Defense Party to make the required settlement payment shall not impair the effectiveness of the release of other Defense Parties that have fulfilled their settlement payment obligation.

Notwithstanding the foregoing mutual release between the Parties, the release does not apply to or include claims of any kind by and between Hartford and Siltek as set forth in the lawsuit styled, *Hartford Casualty Insurance Company v. Siltek Affordable Housing, LLC*, in the United States District Court for the Southern District of Florida, Case No. 20-CV-25118-DLG. Hartford and Siltek hereby preserve, reaffirm and continue to maintain all rights and obligations as set forth pursuant to their General

Indemnity Agreements and their legal and equitable surety/principal relationship.

Within five (5) business days of receipt by the County of the Settlement Amount, the County shall dismiss with prejudice the state court action in the Eleventh Judicial Circuit in and for Miami Dade County, *Miami-Dade County v. Siltek Group, Inc. et al.*, Case No. 19-022894 CA 22 and this instant Arbitration as well. The County's obligation to dismiss either matter shall only accrue once the Settlement Amount has been paid to the County.

3. **No Admission of Liability:** It is understood and agreed by the Parties that this Agreement is entered into as a compromise of disputed Claims, and is not intended to, nor shall it be construed as, an admission of any negligence, culpability, liability, wrongdoing, or breach on the part of any party or person of any kind whatsoever by any of the Released Parties nor as a confession of judgment by the Parties and/or the Parties' respective carriers.

4. **Representations and Warranties:** The Parties represent and warrant the following:
 - a. The person executing this Agreement on its behalf is authorized to do so;
 - b. Each has an interest in and ownership of the Claims being released sufficient to grant the releases of those claims contemplated hereby, and that they have not assigned, or in any conveyed, transferred or encumbered all or any portion of the Claims discharged by this Agreement, and that they have the exclusive right, capacity and authority to execute this Agreement;
 - c. This Agreement is executed without duress, and without reliance upon any statement, inducement, or representation of any of the Released Parties or their respective representatives concerning the nature and extent of any damages or injuries and/or legal liability therefore and each Party has had the opportunity to discuss this Agreement with a lawyer of its choice, if so desired;
 - d. The Settlement Amount described in Section 1 is a fair and reasonable settlement and fully and finally resolves all disagreements and matters relating to the Claims;
 - e. Each has completely read and fully understands all the terms and conditions in this Agreement, that they fully agree to each and every provision thereof, and hereby acknowledge receipt of a copy hereof.

5. **Enforcement of Settlement:** If any party is required to enforce the terms of this Agreement, it shall be through the AAA, using the same Arbitrator as was appointed to hear and resolve the Claims.

6. **Amendments:** This Agreement may be modified or amended only in writing signed by all Parties to be bound. A waiver by either party of any provision of this Agreement shall not waive any other provision of this Agreement.

7. **Entire Agreement:** This Agreement constitutes the entire understanding among the Parties hereto with respect to the subject matter hereof and supersedes any prior agreements, written or oral, with respect thereto. No covenants, agreements, representations or warranties of any kind whatsoever have been made by any party, except as specifically set forth in this Agreement. All prior discussions and

negotiations with respect to the settlement have been and are merged and integrated into, and are superseded by, this Agreement.

8. **Successors and Assigns:** This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.
9. **Severability:** In the event that any provision of this Settlement Agreement shall be held to be void, voidable or unenforceable in a particular instance and such provision does not affect the basis of the bargain of the Parties hereunder, such provision shall be severed in such instance and the remaining portions hereof shall remain in full force and effect. Furthermore, in lieu of such severed provision, there shall be added automatically in any such instance as part of this Settlement Agreement, a provision as similar to the severed provision as may be possible and be legal, binding and enforceable.
10. **Effect of Recitals:** The recitals set forth above under the Agreed Terms of this Agreement are true and correct and incorporated by reference into this Agreement.
11. **Governing Law and Choice of Forum:** This Agreement shall be construed and controlled by the laws of the State of Florida as construed and applied by courts having jurisdiction therein. In the event that any conflict of law or choice of law principle would otherwise in any way cause the laws of another state to apply to any issue, such conflict of law or choice of law principle shall not apply.
12. **Execution in Counterparts:** This Agreement may be executed by any of the Parties by signing any one of the multiple copies of this Agreement or by electronic signature. Any copy of this Agreement, when signed by any of the Parties, shall be deemed an original. All of the signed copies shall together constitute one Agreement.
13. **Paragraph Headings, Interpretation:** Paragraph headings contained in this Settlement Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Settlement Agreement. No provision of this Settlement Agreement is to be interpreted for or against any party because that party or its legal representative drafted such provision.

IN TESTIMONY WHEREOF, the undersigned have entered into and executed this agreement on the date set forth below under the signature of each.

Miami-Dade County

123 Roofing, Inc.

By: _____

By: _____

Printed Name: _____

Printed Name: _____

Its: _____

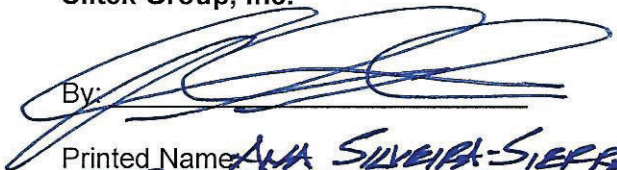
Its: _____

Date: _____

Date: _____

Siltek Group, Inc.

Hartford Casualty Insurance Company

By: 

By: _____

Printed Name: ANA SIERRA-SIERRA

Printed Name: _____

Its: PRESIDENT

Its: _____

Date: 4/5/2022

Date: _____

CertainTeed LLC

By: _____

Printed Name: _____

Its: _____

Date: _____

Siltek Group, Inc.

By: _____
Printed Name: _____
Its: _____
Date: _____

Hartford Casualty Insurance Company

By: _____
Printed Name: _____
Its: _____
Date: _____

CertainTeed LLC

By: *Carmen Bodden* _____
Printed Name: *Carmen Bodden* _____
Its: *Vice President* _____
Date: *Apr 6, 2022* _____

- 11. **Governing Law and Choice of Forum:** This Agreement shall be construed and controlled by the laws of the State of Florida as construed and applied by courts having jurisdiction therein. In the event that any conflict of law or choice of law principle would otherwise in any way cause the laws of another state to apply to any issue, such conflict of law or choice of law principle shall not apply.
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IN TESTIMONY WHEREOF, the undersigned have entered into and executed this agreement on the date set forth below under the signature of each.

Miami-Dade County

By: _____
 Printed Name: _____
 Its: _____
 Date: _____

123 Roofing, Inc.

By: Iris Gonzalez
 Printed Name: IRIS GONZALEZ
 Its: _____
 Date: 3-21-22

iltek Group, Inc.

By: _____
 Printed Name: _____
 Its: _____
 Date: _____

Hartford Casualty Insurance Company

By: _____
 Printed Name: _____
 Its: _____
 Date: _____

tainTeed LLC

By: _____
 Printed Name: _____
 Its: _____
 Date: _____

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IN TESTIMONY WHEREOF, the undersigned have entered into and executed this agreement on the date set forth below under the signature of each.

Miami-Dade County

123 Roofing, Inc.

By: _____

By: _____

Printed Name: _____

Printed Name: _____

Its: _____

Its: _____

Date: _____

Date: _____

Siltek Group, Inc.

Hartford Casualty Insurance Company

By: _____

By:  _____

Printed Name: _____

Printed Name: Maribel Luzunaris

Its: _____

Its: SR. Rep Claim Bond

Date: _____

Date: 3-16-2022

CertainTeed LLC

By: _____

Printed Name: _____

Its: _____

Date: _____