

MEMORANDUM

Agenda Item No. 8(N)(4)

TO: Honorable Chairman Oliver G. Gilbert, III
and Members, Board of County Commissioners

DATE: September 6, 2023

FROM: Geri Bonzon-Keenan
County Attorney

SUBJECT: Resolution approving Settlement Agreement in ABC Construction, Inc. v. Miami-Dade County, Case No. 2019-14985 CA (01) in the amount of \$153,070.63 to resolve any and all claims between the parties; and authorizing the County Mayor to execute the Settlement Agreement and exercise all provisions contained therein

Resolution No. R-761-23

The accompanying resolution was prepared by the Transportation and Public Works Department and placed on the agenda at the request of Prime Sponsor Commissioner Raquel A. Regalado.



Geri Bonzon-Keenan
County Attorney

GBK/uw

Memorandum



Date: September 6, 2023

To: Honorable Chairman Oliver G. Gilbert, III
and Members, Board of County Commissioners

From: Daniella Levine Cava
Mayor 

Subject: Resolution Approving Settlement Agreement in *ABC Construction, Inc. v. Miami-Dade County, Case No. 2019-14985 CA (01)* and Authorizing the County Mayor to Execute the Settlement Agreement

Executive Summary

The attached resolution seeks approval of a Settlement Agreement between Miami-Dade County (the "County") and ABC Construction, Inc. ("ABC"). ABC filed a complaint in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida, *Case No. 2019-14985 CA (01)*. The County contracted ABC to construct a pedestrian overpass over US-1 by the University Metrorail Station in Coral Gables (*MCC 7360 Plan RPQ No. 265910-R*). ABC's complaint alleged breach of contract after the County assessed liquidated damages of \$750 per day for a total of \$160,500.

The parties have agreed to amicably settle all claims and disputes arising from the contract, which ABC asserted or could have asserted in the lawsuit, with the County agreeing to release \$39,750 of the total \$160,500 liquidated damages assessed. The contract balance for work to be performed was \$74,306.38. The parties agreed that the County will take a \$48,618.12 credit from said \$74,306.38 for work not performed by ABC. As such, the amount to be released to ABC from the \$74,306.38 balance will be \$25,688.26.

The contract requires the release of any withheld retainage upon contract close-out. Approval of this Settlement and Release Agreement will constitute contract close-out resulting in the release of \$87,632.37 in retainage. The combined amount of the liquidated damages released, payment of work performed, and release of retainage totals \$153,070.63.

Recommendation

It is recommended that the Board approve the attached Settlement and Release Agreement between the County and ABC. The Agreement, which is attached to the resolution, resolves all claims brought by ABC against the County for alleged breach of contract for \$153,070.63.

Scope

The work performed under the contract included the construction of a pedestrian overpass bridge over U.S-1 at the University Metrorail Station, which is in Commission District 7, represented by Commissioner Raquel Regalado.

Delegation of Authority

This item authorizes the County Mayor or the County Mayor's designee to execute the Settlement and Release Agreement on behalf of the County and to carry out all obligations and exercise all rights contained therein.

Fiscal Impact/Funding Source

Under the terms of the Settlement Agreement, the County will release to ABC \$153,070.63 as full and final settlement of all disputes relating to the issues arising from the litigation. The settlement will be paid from Grant Code MTX04701/Fund Code ET005 (\$78,953.73), Grant Code MTQ44501/Fund Code ET005 (\$8,678.64) and PTP Fund Code ET062 (\$65,438.26) as PTP dollars were used to fund the original project. No additional PTP funds beyond that which were already approved by the CITT and the Board for the underlying project will be used.

Track Record/Monitor

German A. Arenes-Oliva, P.E., Chief of Construction and Structural Inspection, Department of Transportation and Public Works, will oversee the administration of the Settlement and Release Agreement.

Background

The Department of Transportation and Public Works issued the Notice to Proceed ("NTP") on May 5, 2015 for *MCC 7360 Plan RPQ No. 265910-R* for the construction of a pedestrian overpass extending over US-1, adjacent to the University Metrorail Station. The contract amount was \$3,837,900 with a duration of 379 calendar days. A total of 219 non-compensable calendar days was added via a Change Order. Based on the NTP date and the added time, the adjusted new completion date was December 29, 2016. However, substantial completion of the project was achieved on August 2, 2017, which was 214 days past the contracted completion date. A dedication ceremony was held in December 2017. Accordingly, the County assessed liquidated damages of \$160,500.

On May 5, 2017, ABC filed a complaint in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida, alleging breach of contract against the County. The parties have agreed to amicably settle all claims and disputes arising out of the contract, which ABC asserted or could have asserted in the lawsuit, with the County agreeing to release \$39,750 of the total \$160,500 liquidated damages assessed and payment for work performed (pay items less credits due) of \$25,688.26 plus release of all retainage in the amount of \$87,632.37 for a total amount of \$153,070.63.



Jimmy Morales
Chief Operations Officer



MEMORANDUM

(Revised)

TO: Honorable Chairman Oliver G. Gilbert, III
and Members, Board of County Commissioners

DATE: September 6, 2023

FROM: 
Gen Bonzon-Keenan
County Attorney

SUBJECT: Agenda Item No. 8(N)(4)

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. 8(N)(4)
9-6-23

RESOLUTION NO. R-761-23

RESOLUTION APPROVING SETTLEMENT AGREEMENT IN *ABC CONSTRUCTION, INC. V. MIAMI-DADE COUNTY, CASE NO. 2019-14985 CA (01)* IN THE AMOUNT OF \$153,070.63 TO RESOLVE ANY AND ALL CLAIMS BETWEEN THE PARTIES; AND AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE THE SETTLEMENT AGREEMENT AND EXERCISE ALL PROVISIONS CONTAINED THEREIN

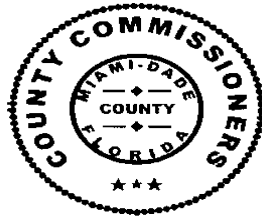
WHEREAS, this Board desires to accomplish the purpose outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board approves the Settlement Agreement in *Miami-Dade County v. ABC Construction, Inc., Case No. 2019-14985 CA (01)*, in substantially the form attached hereto as Exhibit 1, in the amount of \$153,070.63 to resolve any and all claims between the parties. This Board further authorizes the County Mayor or County Mayor's designee to execute the Settlement Agreement for and on behalf of Miami-Dade County, and to exercise all provisions contained therein.

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

Oliver G. Gilbert, III, Chairman	aye	
Anthony Rodríguez, Vice Chairman	aye	
Marleine Bastien	aye	Juan Carlos Bermudez aye
Kevin Marino Cabrera	aye	Sen. René García aye
Roberto J. Gonzalez	aye	Keon Hardemon aye
Danielle Cohen Higgins	aye	Eileen Higgins aye
Kionne L. McGhee	aye	Raquel A. Regalado aye
Micky Steinberg	aye	

The Chairperson thereupon declared this resolution duly passed and adopted this 6th day of September, 2023. 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

JUAN FERNANDEZ-BARQUIN, CLERK

By: Basia Pruna
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

D.P.C

Dale P. Clarke

SETTLEMENT AND RELEASE AGREEMENT

THIS SETTLEMENT AND RELEASE AGREEMENT (the "Agreement") is made and voluntarily entered into on this 13 day of April, 2023, by and between MIAMI-DADE COUNTY (the "County"), a political subdivision of the State of Florida, and ABC CONSTRUCTION, INC. ("ABC"), a Florida corporation. County and ABC are each referred to herein as a "Party" and collectively as the "Parties."

RECITALS

WHEREAS, ABC and County entered into a contract, MCC 7360 Plan-RPQ No.: 265910-R (the "Contract") for the construction of a pedestrian overpass over US-1 by the University Metrorail Station in Coral Gables, Florida (the "Project"); and

WHEREAS, on April 22, 2015, County issued a Notice to Proceed ("NTP"); and

WHEREAS, substantial completion of the Project was obtained after the contractually specified end date; and

WHEREAS, the County assessed liquidated damages; and

WHEREAS, ABC contends that it is not responsible for all or portions of the delays to the completion of the Project; and

WHEREAS, on May 25, 2019, ABC filed a Complaint, in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida, alleging breach of contract against the County in the matter styled: *ABC Construction, Inc. v. Miami-Dade County*, Case No. Case No. 2019-14985 CA (01) (the "Lawsuit"); and

WHEREAS, the County and ABC desire to amicably settle all claims and disputes arising out of, related to, or in connection with the Contract which ABC asserted or could have asserted in the Lawsuit,

NOW, THEREFORE, in consideration of the covenants, obligations, payments, promise of release, and dismissal, the receipt, sufficiency, and adequacy of all such consideration being expressly acknowledged, the Parties hereby agree as follows:

AGREED TERMS

1. **Incorporation:** The foregoing recitals of fact were made and shall be a part of this Agreement to the same extent as if fully set forth herein.
2. **Condition; Effective Date:** the "Effective Date" of this Agreement shall be the effective date of the resolution of the Board of County Commissioners of Miami-Dade County, Florida (the "BCC") approving this Agreement.
3. **Payment:** The County agrees to pay ABC **ONE HUNDRED AND FIFTY-THREE THOUSAND AND SEVENTY DOLLARS AND SIXTY-THREE CENTS (\$153,070.63)** within thirty (30) days of the Effective Date of this Agreement to resolve all claims and disputes arising out of, related to, or in connection with the Contract which ABC asserted or could have asserted in the Lawsuit ("Settlement Amount").
4. **Release:** The Parties hereby release and discharge each other, and their respective past, present, and future officers, directors, employees, shareholders, agents, servants, attorneys, successors, assigns, affiliates, parents, subsidiaries, partners and insurers, from any and all action and actions, cause and causes of action, lawsuits, suits and

debts, dues, sums of money, accounts, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, warranties, vacancies, damages, judgments, executions, claims, demands for defense and indemnity, demands for attorneys' fees and costs, statutory and contractual claims for attorneys' fees, judgments and liabilities in law or equity, pre and post judgment interest, obligations, losses, debts, statutory and common law claims against each other that they ever had, now have or may have in the future or hereafter can, past or presently existing, accrued or not yet accrued, known or unknown, foreseen or unforeseen, latent or patent, manifested or unmanifested, without limitation, indemnity claims, third-party claims, assigned claims, that the Parties shall or may have in connection with, that arise from, or in any way relate to the Contract, or which were or could have been raised in the Lawsuit.

5. **Dismissal of the Lawsuit with Prejudice:** Within five (5) business days of receipt by ABC of the Settlement Amount, ABC shall file or caused to be filed a Notice of Settlement and Proposed Order of Dismissal of subject Lawsuit, with prejudice, each Party to pay their own fees and costs and the Court to retain jurisdiction only to enforce the terms of this Agreement.
6. **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 Parties nor as a confession of judgment by the Parties.
7. **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 the Released Party or its 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 3 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.
8. **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.
9. **Entire Agreement:** This Agreement constitutes the entire understanding between 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.

10. **Successors and Assigns:** This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.
11. **Severability:** In the event that any provision of this 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 Agreement, a provision as similar to the severed provision as may be possible and be legal, binding and enforceable.
12. **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.
13. **Execution in Counterparts:** This Agreement may be executed by 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.
14. **Paragraph Headings, Interpretation:** Paragraph headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. No provision of this 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.

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

Miami-Dade County

By: _____

Printed Name: _____

Its: _____

Date: _____

**Approved as to form
and legal sufficiency**

Assistant County Attorney

ABC Construction, Inc.

By: _____

Printed Name: JORGE GONZALEZ

Its: PRESIDENT.

Date: 4/13/23