

STIPULATION AND SETTLEMENT AGREEMENT

This STIPULATION AND SETTLEMENT AGREEMENT (hereinafter referred to as "Agreement") is by and between Broward County, a political subdivision of the State of Florida (hereinafter referred to as "County"), and Liberty Mutual Insurance Company (hereinafter referred to as "Surety") (collectively, the County and Surety are referred to herein as the "Parties").

WITNESSETH:

WHEREAS, R.C. Aluminum Industries, Inc. ("RCAI") and the County previously entered into an agreement, approved by the Board of County Commissioners (hereinafter referred to as the "Construction Contract"), for the Broward County Main Library Wind Mitigation, Bid/Project No. P0865207C1 (hereinafter referred to as the "Project"); and

WHEREAS, RCAI and Surety made, executed, and delivered to the County both a payment and a performance bond, identified as Bond No. 964 114 984 (collectively, the "Bond") in the penal sum of \$8,058,043.00 (which was later increased by rider to \$10,020,951.05); and

WHEREAS, the County, by letter dated November 13, 2013, informed RCAI that the County had terminated RCAI on the Project, which took the prosecution of the work out of the hands of RCAI before full and final completion of the work on the Project. The County demanded that Surety complete the Project under the terms and conditions of the Bond; and

WHEREAS, in response to the County's demand, Surety promptly investigated the County's assertions; and

WHEREAS, Surety entered into a Takeover Agreement with the County for the completion of the work called for in the Construction Contract, and as a result, Surety engaged a completion contractor, PRM Engineering & Contracting, Incorporated ("PRM"), to complete the Construction Contract; and

WHEREAS, the County confirms that: (a) Surety (via PRM and others) has satisfactorily completed the "Completion Work" as that term is defined in the Takeover Agreement, and the work complies in full with the Construction Contract; (b) the County accepts and has previously accepted the work performed on the Project pursuant to the Construction Contract and Takeover Agreement in full; and (c) no additional construction work remains under the Construction Contract or Takeover Agreement; and

WHEREAS, the Parties have negotiated the various claims and issues regarding their alleged respective rights for reimbursement for claims and damages related to the Project over the course of numerous meetings and communications; and

WHEREAS, the Parties have agreed to amicably resolve all matters between them and reach a full and complete resolution of all claims, issues, rights, and obligations related in any way to the Project, the Construction Contract, the Bond, and the Takeover Agreement; and

WHEREAS, the Parties desire to reduce their negotiations and discussions to writing so that it is binding upon them;

NOW, THEREFORE, in consideration of the foregoing representations and mutual covenants, promises, and considerations hereinafter set forth, and with the intent to be legally bound, it is hereby agreed between the Parties as follows:

1. Representations: The foregoing representations and recitals are true and correct and are incorporated as necessary and substantive provisions of this Agreement.

2. No admission: Surety's agreement to make the Settlement Payment is as a business decision and not with admission that it is liable for the amounts paid, or any amounts whatsoever. Neither the payment nor the acceptance of the Settlement Proceeds shall be deemed as an admission of any fact or liability by any party or concession of liability of any kind or nature by Liberty or the County.

3. Settlement Proceeds:

- a. Surety agrees to pay \$205,000.00 to the County (the "Settlement Proceeds") to settle any and all claims that the County has or may have on account of the Project, the Construction Contract, the Bond, and the Takeover Agreement against Surety, and thereby satisfying Surety's obligations pursuant to those matters in full, in exchange for the terms and conditions contained in this Agreement.
- b. Surety shall pay the Settlement Proceeds to the County within 20 days after receipt of written notification of the Broward County Board of County Commissioners' ("County Commission") approval of this Agreement. Should the County Commission not approve this Agreement, the terms and conditions hereof shall automatically become null and void and shall have no binding effect upon the Parties and this Agreement or drafts thereof shall not be admissible nor used in any legal proceeding including litigation.
- c. The County will submit a W-9 to Surety before Surety is required to make payment of the Settlement Proceeds to the County.

4. Representations and Warranties: The warranties, expressed or implied, for materials, equipment, and work furnished by contractors or material suppliers in accordance with the Construction Contract or by law, to the extent they still exist, are not modified by this Agreement and survive. Surety has not provided, and is not obligated for, any such warranties.

5. Assignment: Because a portion of Surety's alleged liability to the County related to the Project, the Construction Contract, and the Bond are due to the actions, inactions, and representations of RCAI, the County hereby does sell, assign, transfer, and set over unto Surety all rights, title, interest in and to actions, causes, causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, covenants, contracts, controversies, agreements, warranties, promises, variances, trespasses, damages, judgments, executions, claims, and demands whatsoever in law or in equity, from the beginning of the world to the date hereof by the County against RCAI, its employees, officers, agents, subconsultants, and successors arising from the Project. The County shall fully cooperate with Surety in the prosecution and defense of any action relating to this Agreement including, but not limited to, providing Surety reasonable access to Project records and employees with knowledge of the Project. The County shall make its employees available upon request by Surety for testimony at depositions and trials as well as any preparation related thereto. In consideration for County's obligations herein, Surety shall indemnify and hold harmless County, its officers and employees, from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorney's fees, for any claim made or alleged by RCAI related to or arising from the County's assignment to Surety in this paragraph. The provisions of this indemnification and hold harmless obligation shall survive the term of this Agreement.

6. Mutual Final Releases: Upon the County's receipt and clearance of the Settlement Proceeds, it shall be deemed to have released, acquitted, and forever discharged the Bond. More specifically, and in addition, the County and Surety, and their respective agents, officers, directors, shareholders, partners, parents, affiliated, or sibling companies, employees, attorneys, successors, and assigns (the "Releasing Parties"), hereby remise, release, and forever discharge each other of and from any and all, and all manner of, action and actions, cause and causes of action, suits, debts, breaches of fiduciary duty, other breaches, notes, dues, sums of money, accounts, reckonings, undertakings, bonds, bills, specialties, covenants, contracts, controversies, agreements, guarantees, indemnifications, promises, liens, variances, trespasses, damages, attorneys' fees, judgments, taxes, interest, penalties, assessments, extents, executions, expenses, claims, demands, and liabilities whatsoever, of every kind and nature, whether or not well-founded in fact or in law, and whether in law or equity or otherwise, which the Releasing Parties ever had, now have, or can, shall or may have, and which arise directly or indirectly from, concern, relate to, or are by reason of: (1) the Project; (2) the Construction Contract; (3) the Bond; (4) the Takeover Agreement; (5) any and all claims for statutory or common law "bad faith" against Surety that relate to the manner or timelines in which Surety reviewed, handled, investigated, or settled the County's claims against the Bond, and (6) any and all claims arising under Chapter 624 or 626, Florida Statutes, that relate to the County's claim against the Bond regardless of when such claim(s) arose or accrued.

Further, the Releasing Parties acknowledge, agree, and covenant, and irrevocably bind themselves, from making any claim or demand, or to commence, cause, or permit to be prosecuted, any claim or action in law or equity against the other or any of them on account of or in any relating to, the Project, the Construction Contract, the Bond, or the Takeover Agreement.

7. Representations and Warranties: The County represents and warrants that all submittals that the Construction Contract requires were made in accordance with the requirements of the Construction Contract, or were made to comply with the Parties' stipulations as reflected in this Agreement (see subsection that follows), or as otherwise stipulated between the Parties after signing this Agreement (collectively, the "Required Submittals"). Specifically, the Parties agree to the following:

- a. Surety ensured that all Required Submittals were made. Surety did not submit any Required Submittals of its own (i.e. Surety did not sign or submit any warranties, maintenance agreement, or other documents). Third parties, such as PRM, RCAI, and others, signed the Required Submittals. Surety ensured that those submittals were submitted to comply with either the Construction Contract, or in a form that the County deemed acceptable.
- b. Product Warranties: The Construction Contract requires numerous product warranties, such as a 15 year warranty for the carpet (*see* Section 09680). However, certain manufacturers of the various products used to complete the Project would not submit warranties that comply with the duration or start date listed in the Construction Contract. As a result, the County agreed that the submittal requirements for the product warranties contained in the Construction Contract are satisfied if PRM and RCAI revised their respective warranties to the County to include the following language: "[Contractor name] further agrees that all products that [Contractor name] installed or caused to be installed at the Project are warranted in accordance with the terms and conditions of the Construction Contract for the specific product at issue, including the start date and duration of the required warranties." PRM and RCAI revised their respective warranties accordingly, and those warranties are attached to this Agreement as Exhibit "A."
- c. The warranties PRM and RCAI signed that are attached hereto as Exhibit "A" become effective when this Agreement is fully executed.
- d. The County further represents and warrants that Surety has complied with all obligations relating to submittals pursuant to the Construction Contract, Bond, and Takeover Agreement.

8. Default: In the event of a default of any of the covenants and conditions set forth herein, any provision as to release of the defaulting party is null and void.

9. Binding Effect: The undersigned represent that they have been empowered by the respective parties to enter into, on behalf of the Parties, and to bind the Parties to the commitments and undertakings contained herein. The provisions, conditions, terms, and covenants contained herein shall be of a binding effect. The benefits and advantages hereof shall inure to the respective parties, and the respective successors, assigns, trustees, receivers, and personal representatives of the parties hereto.

10. Full Disclosure: The Parties acknowledge and agree that each is releasing certain rights and assuming certain duties and obligations which, but for this Agreement, would not have been released or assumed. Accordingly, the Parties agree that this Agreement is fully and adequately supported by consideration and is fair and reasonable, that the Parties have had the opportunity to consult with and have in fact consulted with such experts of their choice as they may have desired, and that they have had the opportunity to discuss this matter with counsel of their choice.

11. Law & Venue: Surety and the County acknowledge and agree that this Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any controversies or legal problems arising out of this Agreement and any action involving the enforcement or interpretation of any rights hereunder shall be submitted to the jurisdiction of the State courts of the Seventeenth Judicial Circuit of Broward County, Florida, the venue situs, and shall be governed by the laws of the State of Florida. To encourage prompt and equitable resolution of any litigation that may arise hereunder, each party hereby waives any rights it may have to a trial by jury of any such litigation.

12. Severability: Surety and the County acknowledge and agree that if any part, term or provision of this Agreement is determined by the courts to be invalid, illegal or in conflict with any law of the State, the validity of the remaining portions or provisions shall not be affected thereby.

13. Merger: This document incorporates, includes, and supersedes all prior negotiations, correspondence, conversations, agreements or understandings applicable to the matters contained herein; and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements whether oral or written.

14. Joint Preparation: The Parties acknowledge that they have sought and received whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this Agreement has been their joint effort. The language agreed to expresses their mutual intent and the resulting document shall not, as a matter of judicial construction, be construed more severely against one of the parties than the other.

15. Counterparts: This Agreement may be executed in any number of counterparts each of which, when executed and delivered, shall be an original, but such counterparts shall together constitute one and the same instrument. Facsimile and scanned copies of this Agreement shall be considered originals for all purposes.

16. Captions: The captions of the sections of this Agreement are for convenient reference only, and shall not affect the construction nor interpretation of any of the terms and provisions set forth herein.

17. Further Assurance: The Parties agree to execute all such further instruments, and to take all such further actions that may be reasonably required by any party to fully effectuate the terms and provisions of this Agreement and the transactions contemplated herein.

18. Modification: No change or modification of this Agreement shall be valid unless in writing and signed by all Parties. No waiver of any of the provisions of this Agreement shall be valid unless in writing and signed by the party against whom it is sought to be enforced.

19. Survival of Provisions: All covenants, warranties, and representations contained in this Agreement, and all documents to be delivered by the Parties in connection with the consummation of the transaction contained herein, shall survive the consummation of said transaction.

20. Full Execution Required for Enforcement: In addition to any other conditions precedent provided for in this Agreement, the terms, conditions, covenants, and documents attached to this Agreement are not binding, controlling, or effective, and therefore cannot be enforced, unless and until the Agreement is fully executed by all Parties.

**REMAINDER OF PAGE INTENTIONALLY LEFT BLANK
SIGNATURES BEGIN ON FOLLOWING PAGE**

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement: BROWARD COUNTY through its BOARD OF COUNTY COMMISSIONERS, signing by and through its Mayor or Vice-Mayor, authorized to execute same by Board action on the ____ day of _____, 2016, and LIBERTY MUTUAL INSURANCE COMPANY, signing by and through Robert O'Brien, Vice President, its authorized representative, duly authorized to execute same.

COUNTY:

ATTEST:

BROWARD COUNTY, by and through
its Board of County Commissioners

Broward County Administrator, as
Ex-officio Clerk of the Broward County
Board of County Commissioners

By: _____
Mayor

_____ day of _____, 2016

Approved as to form by
Joni Armstong Coffey
Broward County Attorney
Governmental Center, Suite 423
115 South Andrews Avenue
Fort Lauderdale, FL 33301
Telephone: (954) 357-7600
Telecopier: (954) 357-7641

By:  1/21/16

Michael J. Kerr
Deputy County Attorney

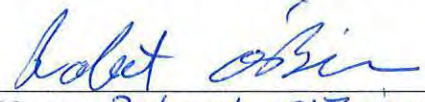
SETTLEMENT AGREEMENT AMONG BROWARD COUNTY AND LIBERTY MUTUAL
INSURANCE COMPANY

SURETY:

ATTEST:

LIBERTY MUTUAL INSURANCE COMPANY


Witness

By: 
Print Name: Robert O'Brien
Title: Vice President


Witness

18th day of Dec., 2015

(Corporate Seal)

Exhibit “A”

PRM ENGINEERING & CONTRACTING, INC.
729 Northwest 1st Street
Ft. Lauderdale, Florida 33311
Warranty / Guarantee

TO: Broward County

**Project: Broward County Main
Library Wind Mitigation**

In accordance with the terms of the contract agreement between Broward County and R. C. Aluminum Industries, Inc., the following is our warranty/guarantee covering all materials and services provided to the project by PRM Engineering & Contracting, Inc.

PRM Engineering & Contracting, Inc. guarantees all work done under our contract with Liberty Mutual Insurance Co. against any defects in workmanship, materials, finish, and leakage which may appear within a period of one (1) year following the October 27, 2014 date of substantial completion.

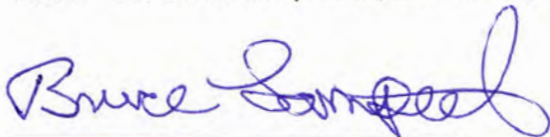
PRM Engineering & Contracting, Inc. further guarantees all ceramic tile work done by PRM Engineering & Contracting, Inc. against any defects in workmanship and material which may appear within a period of two (2) years following the October 27, 2014 date of substantial completion.

PRM Engineering & Contracting, Inc. further guarantees all curtain wall work done under our contract with Liberty Mutual Insurance Co. against any defects in workmanship, materials, finish, and leakage which may appear within a period of ten (10) years following the October 27, 2014 date of substantial completion.

PRM Engineering & Contracting, Inc. further guarantees the factory applied finish on all curtain wall work done under our contract with Liberty Mutual Insurance, Co. against color fading, chalking, cracking, checking, peeling, or failure of paint to adhere to bare metal within a period of twenty (20) years following the October 27, 2014 date of substantial completion. Allowed color fading and chalking to be as noted in the project specifications, Section 08441, Glazed Aluminum Curtain Walls, Item 1.10B.

This warranty/guarantee applies only to items provided and installed by PRM Engineering & Contracting, Inc. that have been subjected to normal usage and have been properly maintained and cleaned as recommended by the manufacturer. Replacement of broken glass, repair of damaged paint finishes, or repair of any damage resulting from vandalism or acts of God in excess of project requirements and project standards are excluded from this warranty/guarantee.

PRM Engineering & Contracting, Inc. further agrees that all products that PRM Engineering & Contracting, Inc. installed or caused to be installed at the project are warranted in accordance with the terms and conditions of the Prime Contract for the specific product at issue, including the start date of substantial completion, October 27, 2014, and the duration of the required warranties.



PRM Engineering & Contracting, Inc.

By Bruce Lampert, V.P.

**RC ALUMINUM
INDUSTRIES, INC.**

Warranty / Guarantee

TO: Broward County

Project: Broward County Main
Library Wind Mitigation

In accordance with the terms of the contract agreement between Broward County and R. C. Aluminum Industries, Inc., the following is our warranty / guarantee covering all materials and services provided to the project by R. C. Aluminum Industries, Inc.

R. C. Aluminum Industries, Inc. guarantees all work done under our contract with Broward County against any defects in workmanship, materials, finish, and leakage which may appear within a period of one (1) year following the October 27, 2014 date of substantial completion.

R. C. Aluminum Industries, Inc. further guarantees all glazed aluminum curtain walls, aluminum framed entrances, and aluminum framed storefronts provided under our contract with Broward County against any defects in workmanship, materials, finish, and leakage which may appear within a period of ten (10) years following the October 27, 2014 date of substantial completion.

R. C. Aluminum Industries, Inc. further guarantees the factory applied finish on all glazed aluminum curtain walls, aluminum framed entrances, aluminum framed storefronts, and impact rated sliding automatic entrances provided under our contract with Broward County against color fading, chalking, cracking, checking, peeling, or failure of paint to adhere to bare metal within a period of twenty (20) years following the October 27, 2014 date of substantial completion. Allowed color fading and chalking to be as noted in the project specifications, Section 08441, Glazed Aluminum Curtain Walls, Item 1.10B.

R.C. Aluminum Industries, Inc. further guarantees the impact rated sliding doors for two years following the October 27, 2014 date of substantial completion as required by the two year special warranty provisions.

This warranty / guarantee applies only to items provided and installed by R. C. Aluminum Industries, Inc. that have been subjected to normal usage and have been properly maintained and cleaned as recommended by the manufacturer. Replacement of broken glass, repair of damaged paint finishes, or repair of any damage resulting from vandalism or acts of God in excess of project requirements and product standards are excluded from this warranty / guarantee.

R.C. Aluminum Industries, Inc. further agrees that all products that R.C. Aluminum Industries, Inc. installed or caused to be installed at the project are warranted in accordance with the terms and conditions of the Prime Contract for the specific product at issue, including the start date of substantial completion, October 27, 2014, and the duration of the required warranties.

Manoel Dias V. Pres.
R. C. Aluminum Industries, Inc. /