

Meeting Date
November 21, 2017



AGENDA	
Section	CONSENT
Item No.	II.D.1.

AGENDA REPORT
BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS

SUBJECT:	Settlement Agreement between Brevard County Board of County Commissioners, Jimmie Crowder Excavating and Land Clearing, Inc. and Allied Property and Casualty Insurance Company
DEPT/OFFICE:	County Attorney's Office: Christine Valliere, Asst. County Attorney/Scott Knox, County Attorney 633-2090

Requested Action:
It is requested that the Board consider and approve the Settlement Agreement between Brevard County Board of County Commissioners, Jimmie Crowder Excavating and Land Clearing, Inc. and Allied Property and Casualty Insurance Company.

Summary Explanation & Background:

On July 11, 2017, in a regular public meeting, the Board authorized the County Attorney's Office to file a breach of contract claim against Jimmie Crower Excavating and Landscaping, Inc., for the failure to satisfactorily perform services required pursuant to a contract for mulching vegetative debris at county solid waste sites. A claim against the performance bond was filed with the surety and a settlement proposal was offered.

On November 7, 2017, in executive session, the Board considered a settlement proposal to settle all breach of contract claims in exchange for \$25,479.11(\$5,000 performance bond, plus \$20,479.11 retainage). The terms of the settlement are set forth in the attached settlement agreement.

Clerk to the Board Instructions: **Please return originals to the County Attorney's Office.** XTRA

Exhibits Attached: Proposed Settlement Agreement

Contract /Agreement (If attached): Reviewed by County Attorney Yes **X** No PR

County Manager Frank Abbate <i>YBA</i>	Assistant County Manager John Denninghoff	Department Director / Extension Scott L. Knox, County Attorney <i>[Signature]</i>
	Interim Assistant County Manager Jim Liesenfelt	



Tammy Rowe, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

Telephone: (321) 637-2001
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Tammy.Rowe@brevardclerk.us

November 22, 2017

M E M O R A N D U M

TO: Scott Knox, County Attorney Attn: Christine Valliere

RE: Item II.D.1., Settlement Agreement and Release Between Brevard County, Jimmie Crowder Excavating and Land Clearing, Inc., and Allied Property and Casualty Insurance Company for Breach of Contract

The Board of County Commissioners, in regular session on November 21, 2017, approved the Settlement Agreement and Release between Brevard County, Jimmie Crowder Excavating and Land Clearing, Inc., and Allied Property and Casualty Insurance Company for breach of contract claims. Enclosed is fully-executed Settlement Agreement and Release for your action.

Your continued cooperation is greatly appreciated.

Sincerely yours,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Tammy Rowe

Tammy Rowe, Deputy Clerk

/ds

Encl. (1)

cc: Contracts Administration
Finance
Budget

H.D.1.

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release is entered into this 21 day of November, 2017, by the Board of County Commissioners of Brevard County, Florida, (hereinafter referred to as "Board"), Jimmie Crowder Excavating and Land Clearing, Inc. (hereinafter referred to as "Crowder") and Allied Property and Casualty Insurance Company (hereinafter referred to as "Allied").

RECITALS:

1. On or about June 9, 2015, the Board and Crowder entered into Mulching and Disposal Services contract B-2-15-67. Allied issued a performance bond, BDC 748586, in the amount of \$5,000.00 to secure satisfactory performance. The contract expired on June 8, 2017.

2. On June 1, 2017, the Board filed a notice of claim against the performance bond based on Crowder's failure to promptly and faithfully provide services required in the contract. Specifically, the Board claims Crowder failed to timely process vegetation at the Sarno facility and failed to process vegetation at the CDF and Mocking Bird Way facilities prior to demobilization.

3. The Parties hereto desire to enter into a Settlement Agreement and Release in order to provide for payment in full, settlement and discharge of all claims against Crowder and Allied which are or might have been the subject of the claim, upon the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and promises herein below set forth, and in consideration of the benefits to accrue to each of the Parties, the receipt and sufficiency of which are hereby acknowledged, the parties hereby represent and agree as follows:

AGREEMENT:

1. In consideration for the payment called for herein, the Board completely releases and forever discharges Crowder and Allied and past, present and future officers, directors, stockholders, attorneys, agents, servants, representatives, employees, subsidiaries, affiliates, partners, predecessors and successors in interest, and assigns, and all other persons, firms or corporations with whom any of the former might have been, or now, or may hereinafter be affiliated, of and from any and all past, present or future claims, demands, obligations, actions, causes of action (including derivative causes of action), rights, damages, costs, loss of services, expenses and compensation of any nature whatsoever, whether based on tort, contract, or other theory of recovery, and from compensation, which the Board now has, or which may hereafter accrue, or otherwise be acquired, on account of, or in any way growing out of or which are the subject of the claim.

2. This release shall be a fully binding and complete settlement between the Board, Crowder and Allied, their assigns and successors save only the executory provisions of this

Settlement Agreement.

PAYMENTS:

IN CONSIDERATION of the release set forth above, Crowder and Allied hereby agree to the payment of the following sums in the following manner:

Upon execution of this Agreement by all Parties, the Board shall be entitled to keep the full amount of retainage held on this contract, in the amount of Twenty Thousand, Four Hundred, Seventy-Four Dollars and Eleven Cents (\$20,479.11).

Within 30 days of execution of this Agreement by all Parties, Crowder and Allied shall submit payment to the Board in the amount of Five Thousand Dollars and No Cents (\$5,000.00) by execution of a check made payable to the Board of County Commissioners of Brevard County, Florida .

INTENT AND VOLUNTARINESS:

1. It is understood and agreed that this Settlement Agreement and Release is a compromise of all disputed claims and that the settlement is intended merely to avoid litigation. This Settlement Agreement and Release relates to all known claims arising out of contract B-2-15-67 and bond BDC 748586 with respect to the Board, Crowder and Allied. However, nothing herein shall be construed to be a release of any other person, party or entity which is not a named party to this Settlement Agreement and Release.

2. This Release is fully and voluntarily executed by the Board after having been apprised of all relevant information and data furnished by its legal counsel. The Board, in executing this Release, does not rely on any inducements, promises or representations made by Crowder or Allied, or any of Crowder's or Allied's representatives, other than this Settlement Agreement and Release being effective only upon receipt of funds herein described above by the Board's legal counsel. Furthermore, no promises, inducements, or agreements not herein set forth have been made to the Board. This Settlement Agreement and Release contains the entire agreement between the Parties related to the above-referenced claim, and the terms of this Release are contractual and not merely a recital.

3. In the event of litigation or arbitration connected with the enforcement or interpretation of this Settlement Agreement and Release, the prevailing party shall be entitled to the payment of attorney fees, costs and expenses incurred in connection therewith.

THE UNDERSIGNED HAVING READ THIS SETTLEMENT AGREEMENT AND RELEASE AND UNDERSTAND THE PURPOSE, CONTENT, AND EFFECT OF THIS RELEASE. IT CONTAINS AND SETS FORTH THE ENTIRE AGREEMENT BETWEEN THE PARTIES HERETO, AND THERE IS NO PART OF THIS SETTLEMENT AGREEMENT AND RELEASE WHICH IS NOT FULLY, COMPLETELY, ACCURATELY AND TRULY SET

FORTH HEREIN.

THE BOARD HAS READ AND FULLY UNDERSTANDS THE FOREGOING RELEASE AND AGREES THAT ALL DOUBTS AND AMBIGUITIES IN CONNECTION WITH THE RELEASE OF ALL KNOWN CLAIMS BE CONSTRUED IN FAVOR OF THIS SETTLEMENT AGREEMENT AND RELEASE.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their undersigned officials as duly authorized.

**BOARD OF COUNTY COMMISSIONERS
BREVARD COUNTY, FLORIDA**

By: 

Rita Pritchett, Chair

As approved by the Board on November 21, 2017

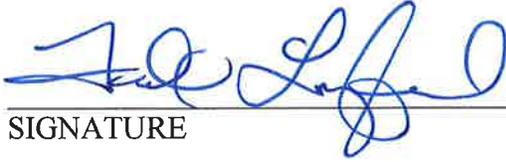
ATTEST:
By: 

Scott Ellis, Clerk

Reviewed for legal form and content by:


Christine Valliere, Assistant County Attorney

**Jimmie Crowder Excavating and Land
Clearing, Inc.**


SIGNATURE

Todd Langford
PRINTED NAME

DATED:
11/14/17

Kim Crawford
WITNESS

Kim Crawford
PRINTED NAME

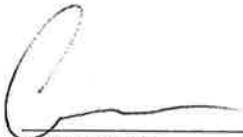
DATED:
11/14/17

Allied Property and Casualty Insurance Company


SIGNATURE

MICHAEL SFRIS
PRINTED NAME

DATED: 11/15/2017


WITNESS

Angela Hackbarth
PRINTED NAME

DATED: 11/15/17