



To: Cynthia Birdsill, Leonard Roberts, Keith Kleiman

From: Craig E. Leen, City Attorney for the City of Coral Gables 

RE: Legal Opinion Regarding Azul Amendment to Settlement Agreement

Date: June 5, 2015

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This matter originated as a settlement to avoid business loss and potential condemnation for Azul (“Azul Settlement”) relating to the prior settlement between the City and FPL (“FPL Settlement”). The ultimate outcome of the present Azul Settlement (relocation of Azul; passport center for City) is the same under both the original Azul settlement and under the new Azul amendment, with the City benefitted by the Azul amendment as it will decrease time and decrease the City’s legal obligations (i.e., the City will no longer have legal responsibility to do the build out). Although the expense will go up, it is to cover the costs of Azul having to do the build out, and staff believes in good faith that the ultimate expense to the City will be less (Azul is also uniquely situated to oversee the build out, as they are in possession of the property). In these circumstances, I would normally opine that the original approval of the settlement and outcome was sufficient, and the City Attorney could approve the modification to facilitate the settlement (as long as the City Manager was fine with the amendment from an operational perspective) pursuant to section 2-201(e)(6) of the City Code. Of course, it is always acceptable to bring the matter back to the Commission if staff prefers. I am issuing this opinion pursuant to sections 2-201(e)(1) and (8) of the City Code, and section 2-584 of the Procurement Code.es.

## Herbello, Stephanie

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**From:** Leen, Craig  
**Sent:** Friday, June 05, 2015 6:20 PM  
**To:** Herbello, Stephanie  
**Cc:** Ramos, Miriam; Figueroa, Yanneris; Chen, Brigitte  
**Subject:** FW: Azul Amendment to Settlement Agreement

Please publish this opinion.

**Craig E. Leen, City Attorney**  
*Board Certified by the Florida Bar in  
City, County and Local Government Law*  
City of Coral Gables  
405 Biltmore Way  
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*Celebrating 90 years of a dream realized.*

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**From:** Leen, Craig  
**Sent:** Friday, June 05, 2015 6:00 PM  
**To:** Birdsill, Cynthia; Roberts, Leonard; Kleiman, Keith  
**Cc:** Pounds, Michael; Gomez, Diana; Ramos, Miriam  
**Subject:** RE: Azul Amendment to Settlement Agreement

This matter originated as a settlement to avoid business loss and potential condemnation for Azul ("Azul Settlement") relating to the prior settlement between the City and FPL ("FPL Settlement"). The ultimate outcome of the present Azul Settlement (relocation of Azul; passport center for City) is the same under both the original Azul settlement and under the new Azul amendment, with the City benefitted by the Azul amendment as it will decrease time and decrease the City's legal obligations (i.e., the City will no longer have legal responsibility to do the build out). Although the expense will go up, it is to cover the costs of Azul having to do the build out, and staff believes in good faith that the ultimate expense to the City will be less (Azul is also uniquely situated to oversee the build out, as they are in possession of the property). In these circumstances, I would normally opine that the original approval of the settlement and outcome was sufficient, and the City Attorney could approve the modification to facilitate the settlement (as long as the City Manager was fine with the amendment from an operational perspective) pursuant to section 2-201(e)(6) of the City Code. Of course, it is always acceptable to bring the matter back to the Commission if staff prefers. I am issuing this opinion pursuant to sections 2-201(e)(1) and (8) of the City Code, and section 2-584 of the Procurement Code.

**Craig E. Leen, City Attorney**  
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CORAL GABLES  
HEALTHY COMMUNITY

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**From:** Birdsill, Cynthia  
**Sent:** Friday, June 05, 2015 10:13 AM  
**To:** Roberts, Leonard; Kleiman, Keith  
**Cc:** Leen, Craig; Pounds, Michael; Gomez, Diana  
**Subject:** RE: Azul Amendment to Settlement Agreement

Still would be good to have Craig's thoughts on the matter.

Cynthia Birdsill  
Economic & Cultural Development Director  
City of Coral Gables  
1 Alhambra Plaza, Ste 617  
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**From:** Roberts, Leonard  
**Sent:** Friday, June 5, 2015 8:07 AM  
**To:** Kleiman, Keith  
**Cc:** Leen, Craig; Pounds, Michael; Gomez, Diana; Birdsill, Cynthia  
**Subject:** Re: Azul Amendment to Settlement Agreement

Keith, Cindy is preparing the settlement agreement that we plan on presenting to the June 16th commission

Sent from my iPhone

On Jun 5, 2015, at 7:48 AM, Kleiman, Keith <[kkleiman@coralgables.com](mailto:kkleiman@coralgables.com)> wrote:

Hey Craig,

In your opinion do we need to go back to the Commission to have this revision authorized. The previous resolution specified a dollar amount. The revision seems a significant change in my eyes. Please let me know what you think.

Thanks,

KK :o)

**Keith R. Kleiman**  
**Management & Budget Director**  
*City of Coral Gables*  
405 Biltmore Way  
Coral Gables, FL 33134  
Office: 305-460-5393  
Cell: 954-770-6567  
<image001.png>

*We're here to help each department fulfill its goals!*

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**From:** Leen, Craig  
**Sent:** Thursday, June 04, 2015 8:50 PM  
**To:** Roberts, Leonard  
**Cc:** Pounds, Michael; Gomez, Diana; Kleiman, Keith; Birdsill, Cynthia  
**Subject:** RE: Azul Amendment to Settlement Agreement

Yes. Just as clarification for point 1, the City should allow Azul to receive consideration for taking on this additional responsibility (in other words, the City cannot require Azul to simply pass through the contractor's cost to ensure they are the bona fide responsible party for the build out; also, the pre-existing duty principle generally requires some consideration for the modification).

**Craig E. Leen, City Attorney**  
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**From:** Roberts, Leonard  
**Sent:** Thursday, June 04, 2015 4:31 PM  
**To:** Leen, Craig  
**Cc:** Pounds, Michael; Gomez, Diana; Kleiman, Keith; Birdsill, Cynthia  
**Subject:** RE: Azul Amendment to Settlement Agreement

Craig, thank you for confirming that we should proceed as planned. Based on our discussion, you are in agreement that Azul & Company can do the build out as long as:

1. Azul receives consideration;
2. they take full responsibility for the build out;
3. the City's role would be to consent to the GC but Azul will ultimately choose the company.

Thanks,

Leonard Roberts, CPA  
Economic & Cultural Development Assistant Director  
The City of Coral Gables  
1 Alhambra Plaza  
Suite 617  
Coral Gables, FL 33134  
305-460-5314  
305-445-9623 (fax)

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**From:** Birdsill, Cynthia  
**Sent:** Thursday, June 04, 2015 10:41 AM  
**To:** Leen, Craig  
**Cc:** Pounds, Michael; Roberts, Leonard; Gomez, Diana; Kleiman, Keith  
**Subject:** FW: Azul Amendment to Settlement Agreement  
**Importance:** High

Hi Craig, we have been discussing the procurement issues for amending the settlement agreement with Azul, and we need some guidance.

Originally, the tenant was going to do an interior design plan for us.

We are doing the construction documents based on that – I am assuming with one of the firms we have on continuing contract.

Now we would like to add to the settlement agreement that the Tenant will hire a general contractor to construct the plans.

We just want to confirm that this arrangement is okay under the procurement code. Should we be structuring this a different way?

Cynthia Birdsill  
Economic & Cultural Development Director  
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**From:** Birdsill, Cynthia  
**Sent:** Wednesday, June 3, 2015 5:21 PM  
**To:** Pounds, Michael  
**Subject:** FW: Azul Amendment to Settlement Agreement

Mike, can we discuss this sometime tomorrow? I want to make sure it is okay for us to structure this this way under the procurement requirements. Thanks!

Cindy

Cynthia Birdsill  
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**From:** Roberts, Leonard  
**Sent:** Wednesday, June 3, 2015 11:07 AM  
**To:** Birdsill, Cynthia  
**Subject:** Azul Amendment to Settlement Agreement

Cindy, as part of the settlement agreement approved at the May 12<sup>th</sup> Commission meeting, the City would like to have the tenant renovate 4520 Ponce de Leon instead of the City. The terms would include:

1. Tenant will provide the general contracting services to renovate the space according to approved plans by the City. (Work to include all materials, supervision, labor, tools & equipment necessary to complete the work)
  - a. The City to review and approve the GC contract
2. The cost to renovate will not exceed \_\_\_\_\_?
  - a. The cost shall be all inclusive (e.g. including cost of all permits, taxes, licenses, bonds, inspections and performance test)
  - b. Any change orders must be approved by the City.
3. The timing of renovation shall not exceed 3 month, and shall commence upon the City's Notice to Proceed.
  - a. The City will provide architectural and engineered plans necessary to pull permits

Since this is an amendment to the settlement agreement vs. GC contract I'm not sure how much detail we should include. Below is a list of items M.Pounds believe are important to include in the settlement

agreement. The GC agreement will be another agreement that will need to be approved by the City, as noted in 1(a) above.

**From:** Pounds, Michael  
**Sent:** Thursday, May 28, 2015 8:39 AM  
**To:** Roberts, Leonard  
**Subject:** DMV Building

Leonard:

You should consider including the following:

Scope of Work  
How contractor will be paid?  
How will additional work be handled?  
Duration of Project  
Inspections by City  
Required Permits  
Warranty  
Indemnification & Hold Harmless (Check with Yaneris)  
Insurance (Check with David)  
Resolution of Disputes/Governing Law and Venue  
Independent Contractor & Compliance with Laws

Please find attached a copy of the City's construction agreement template.

Mike Pounds  
Chief Procurement Officer  
City of Coral Gables  
2800 SW 72<sup>nd</sup> Avenue  
Miami, FL 33155  
Phone (305) 460-5101

Thanks,

Leonard Roberts, CPA  
Economic & Cultural Development Assistant Director  
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1 Alhambra Plaza  
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305-460-5314  
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