

Memorandum



Date: November 30, 2004

To: Honorable Chairperson Barbara Carey-Shuler, Ed.D.
and Members, Board of County Commissioners

From: George M. Burgess
County Manager

A handwritten signature in black ink, appearing to read "G. Burgess", written over the printed name of the County Manager.

Agenda Item No. 7(J)(1)(G)

Subject: Settlement Agreement for Design Back-Charges between MDC and Earth Tech Consulting, Inc. regarding the Design of Additional Tracks to Service the Rail Shop at the William Lehman Center

RECOMMENDATION

It is recommended that the Board approve a settlement agreement in the amount of \$24,644 between Miami-Dade County and Earth Tech Consulting, Inc. for back-charges related to the design services performed in connection with the additional tracks to service the rail shop at the William Lehman Center.

BACKGROUND

On September 19, 2003, Change Order No. 1 to Contract TA00-MR20 in the amount of \$144,583.33 was approved by the County Manager pursuant to the Expedite Ordinance (Ordinance No. 00-104). On June 8, 2004, Change Order No. 2 to the same contract in the amount of \$16,951.80 was approved as Resolution No. R-728-04. Both of these change orders were due in part to alleged errors and omissions in the design developed by Earth Tech Consulting. These alleged errors and omissions did not become apparent until the contractor requested construction permits. The County sent two demand letters dated July 14, 2003, and January 20, 2004, to Earth Tech Consulting, Inc. advising of the County's intent to recover \$62,997.86 in back-charges for alleged errors and omissions.

The scope of work included the construction of a new parking lot at the William Lehman Center. The errors and omissions resulted from the inadequate design of the parking lot drainage system and the omission of additional handicapped spaces and additional landscaping. Miami-Dade Transit (MDT) staff made numerous attempts to recover the back-charges from the consultant. A demand letter was sent on July 14, 2003, and then a negotiation meeting was held on August 14, 2003. A response was received from the consultant on September 23, 2003 stating that the alleged errors and omissions had no merit. MDT staff contacted the consultant on several occasions from September 2003 to January 2004 and on January 20, 2004 a second demand letter was sent to the consultant followed by another negotiation meeting held on March 23, 2004. In March 2004, MDT staff, in consultation with the County Attorney's Office, reached a settlement agreement with the consultant in the amount of \$24,644. Staff believes that this is a fair and reasonable settlement given the uncertain nature of this type of litigation and the cost of protracted litigation.

Attached is the Release Settlement Agreement executed by Earth Tech Consulting, Inc. as well as Check No. 306974 in the amount of \$24,644. Both the County Manager's Office and the County Attorney's Office believe that this agreement is in the best interest of the County and recommend its approval.

FISCAL IMPACT

This Settlement Agreement between the County and Earth Tech Consulting, Inc. for design back-charges related to the Additional Tracks to service the rail shop at William Lehman Center Project represents a positive fiscal impact to the County in the amount of \$24,644.

APPROVED AS TO LEGAL SUFFICIENCY:


Assistant County Attorney 
Date



Surface Transportation Manager



Date



MEMORANDUM

(Revised)

TO: Hon. Chairperson Barbara Carey-Shuler, Ed.D.
and Members, Board of County Commissioners

DATE: November 30, 2004

FROM: Robert A. Ginsburg
County Attorney

SUBJECT: Agenda Item No. 7(J)(1)(G)

Please note any items checked.

- "4-Day Rule" ("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
- Bid waiver requiring County Manager's written recommendation
- Ordinance creating a new board requires detailed County Manager's report for public hearing
- Housekeeping item (no policy decision required)
- No committee review

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 7(J)(1)(G)
11-30-04

RESOLUTION NO. _____

RESOLUTION APPROVING SETTLEMENT AGREEMENT
IN THE AMOUNT OF \$24,644 BETWEEN MIAMI-DADE
COUNTY AND EARTH TECH CONSULTING, INC. FOR
ALLEGED ERRORS AND OMISSIONS UNDER CONTRACT
TA97-TPS2 ADDITIONAL TRACKS TO SERVICE RAIL
SHOP AT WILLIAM LEHMAN CENTER; AND
AUTHORIZING COUNTY MANAGER TO EXECUTE
SETTLEMENT AGREEMENT

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 agreement in the amount of \$24,644 between Miami-Dade County and Earth Tech Consulting, Inc. for alleged design errors and omissions under Contract No. TA00-MR20 Additional Tracks to service the rail shop at the William Lehman Center, in substantially the form attached hereto and made a part thereof; and authorizes the County Manager to execute same for and on behalf of Miami-Dade County.

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:

Dr. Barbara Carey-Shuler, Chairperson	
Katy Sorenson, Vice-Chairperson	
Bruno A. Barreiro	Jose "Pepe" Diaz
Carlos A. Gimenez	Sally A. Heyman
Barbara J. Jordan	Joe A. Martinez
Dennis C. Moss	Dorin D. Rolle
Natacha Seijas	Rebeca Sosa
Sen. Javier D. Souto	

The Chairperson thereupon declared the resolution duly passed and adopted this 30th day of November, 2004. This Resolution and contract, if not vetoed, shall become effective in accordance with Resolution No. R-377-04.

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

HARVEY RUVIN, CLERK

Approved by County Attorney as
to form and legal sufficiency. 

Bruce Libhaber

By: _____
Deputy Clerk

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INVOICE DATE	INVOICE NUMBER	DESCRIPTION	DISCOUNT	CHECK NO.	GROSS AMOUNT	NET AMOUNT
VENDOR	73661			CHECK		306974
JUN-2004	Settlement	JUN04	0.00		24644.00	24644.00

VOUCHER TOTALS 0.00 24644.00 24644.00

AN ARTIFICIAL WATERMARK IS PRESENT ON THE REVERSE SIDE

EARTH TECH

VILLA PARK III
7870 VILLA PARK DRIVE, SUITE 400
RICHMOND, VA 23228

MELLON BANK, N.A.
THREE MELLON BANK CENTER
PITTSBURGH, PA 15259

60-160
433

306974

CHECK 306974

PAY ONLY: Twenty-Four Thousand Six Hundred and Four
Four Dollars And 00 Cents**

00-000-2000 24644.00

PAY TO THE ORDER OF:
MIAMI-DADE COUNTY
11805 S.W. 26 STREET
SUITE 150
MIAMI, FL 33175

Robert H. ...
Robert H. ...

TWO SIGNATURES REQUIRED OVER \$10,000.00

THE FACE OF THIS DOCUMENT IS A COLORED BACKGROUND ON WHITE PAPER AND CONTAINS A MICROPRINT SIGNATURE LINE

⑈ 306974 ⑈ ⑆043301601⑆ 030⑈8662⑈

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RELEASE & SETTLEMENT AGREEMENT

WHEREAS, MIAMI-DADE COUNTY, FLORIDA and EARTH TECH CONSULTING INC. are parties to a Professional Services Agreement (TA 97-TPS 2 – WORK ORDER # 10) for the design of “Additional Tracks to service the rail shop at the William Lehman Center (Contract TA00 – MR 20).”

WHEREAS, MIAMI DADE COUNTY has brought two claims for alleged errors and omissions in connection with the above mentioned design services.

WHEREAS, the parties wish to settle their differences on the terms and conditions below.

NOW THEREFORE, in consideration of the mutual covenants expressed herein and other good and valuable consideration, the sufficiency of which is hereby acknowledged the parties agree as follows:

This settlement is premised upon payment from Earth Tech Consulting Inc to Miami-Dade County in the amount of \$ 24,644. The settlement covers the two demand letters of reimbursement sent by Miami Dade County to Earth Tech Consulting Inc. on July 14, 2003 and January 30, 2004. Miami Dade County and Earth Tech Consulting Inc mutually resolve, discharge, and generally release one another, their employees, agents, servants, successors, heirs, executors, administrators of and from, any and all claims, causes of action, issues, demands, disputes, matters or controversies, of any nature or kind whatsoever, known or unknown, that Earth Tech Inc and/ or Miami Dade County has or may have to or arising out of Professional Services Agreement TA 97-TPS-2 Work Order # 10 or otherwise arising out of or related to the TA00 – MR 20 Project.

Seal:

SIGNED

Charles Robert
CONSULTANT

Recommended

J. Amen
Project Manager

Recommended

Carla Kowalick 6/28/04
Assistant Director

Recommended

Ernest J. Gully
Director

Approved

County Manager

Approved for legal sufficiency:

Bruce Libhaber
Bruce Libhaber