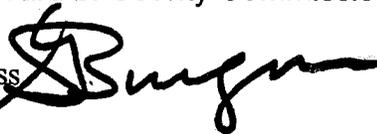


Date: January 20, 2005

To: Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners

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

From: George M. Burgess
County Manager



Subject: Settlement Agreement for Design Backcharges between Miami-Dade County and DMJM+Harris, Inc. (fka Frederic R. Harris, Inc.) related to the Metrorail Extension to the Palmetto Expressway and Multi-Modal Facility.

RECOMMENDATION

It is recommended that the Board approve a settlement agreement in the amount of \$450,000 between Miami-Dade County and DMJM+Harris, Inc. (fka Frederic R. Harris, Inc.) for backcharges related to the design services performed in connection with the Metrorail Extension to the Palmetto Expressway and Multi-Modal Facility.

BACKGROUND

Several Change Orders related to the station, transitway and systems contracts for the Metrorail Extension to the Palmetto Expressway and Multi-Modal Facility were approved by the Board during the period from March, 2001 to July, 2004. Eleven of these change orders were due in part to alleged errors and omissions in the design developed by DMJM+Harris, Inc. The County sent demand letters dated October 11, 2001, November 18, 2002 and January 9, 2004 to DMJM+Harris, Inc., advising of the County's intent to recover backcharges for alleged errors and omissions.

The errors and omissions resulted from the inadequate guideway girder camber design and inadequate design of dewatering for the transitway, as well as numerous minor design errors and omissions related to the station contract. The systems contract errors and omissions resulted from inadequate grounding for the traction power conduits. On October 11, 2001, Miami-Dade Transit (MDT) sent an initial demand letter to DMJM+Harris, Inc., due to girder camber design errors and omissions. The letter further stated that as additional damages were identified, MDT would amend this demand letter. Subsequently, via correspondence dated November 18, 2002, MDT informed DMJM+Harris, Inc., that additional damages due to a dewatering claim had been identified.

Several meetings were held between MDT staff and the consultant during the period from October, 2001 and May, 2004 to discuss the alleged errors and omissions. The first negotiation meeting between MDT and DMJM+Harris, Inc., was held on May 7, 2004. At this meeting, DMJM+Harris, Inc., offered \$300,000 comprised of a \$225,000 cash payment and \$75,000 in in-kind services to settle the claim. MDT did not accept this offer and a follow up negotiation meeting was held on June 11, 2004. DMJM+Harris, Inc. revised their previous settlement offer to \$500,000 comprised of a \$400,000 cash payment and \$100,000 in in-kind services. In August 2004, MDT requested DMJM + Harris, Inc., to reconsider their June 11, 2004, settlement and offer only a cash payment. In September 2004, DMJM + Harris, Inc.

offered MDT \$450,000 in cash payment as their best and final offer. MDT staff, in consultation with the County Attorney's Office, accepted the all-cash offer in the amount of \$450,000. 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 DMJM+Harris, Inc. 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 DMJM+Harris, Inc., for design back-charges related to the Metrorail Extension to the Palmetto Expressway and Multi-Modal Facility Project represents a positive fiscal impact to the County in the amount of \$450,000.

APPROVED AS TO LEGAL SUFFICIENCY:

Bruce Libhaber
Assistant County Attorney

10/29/04
Date

[Signature]
Surface Transportation Manager

10/21/04
Date



MEMORANDUM

(Revised)

TO: Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners

DATE: January 20, 2005

FROM: Robert A. Ginsburg
County Attorney

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

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)(A)

01-20-05

RESOLUTION NO. _____

RESOLUTION APPROVING SETTLEMENT AGREEMENT IN THE AMOUNT OF \$450,000 BETWEEN MIAMI-DADE COUNTY AND DMJM+HARRIS, INC., FOR ALLEGED ERRORS AND OMISSIONS UNDER CONTRACTS TA97-MR10-1R, TA97-MR10-2 AND TA97-MR10-4 METRORAIL EXTENSION TO THE PALMETTO EXPRESSWAY AND MULTI-MODAL FACILITY; 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 \$450,000 between Miami-Dade County and DMJM+Harris, Inc. to be paid to the County by DMJM+Harris, Inc. for alleged design errors and omissions under Contracts TA97-MR10-1R, TA97-MR10-2 and TA97-MR10-4, Metrorail Extension to the Palmetto Expressway and Multi-Modal Facility, 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:

Joe A. Martinez, Chairman
Dennis C. Moss, Vice-Chairman

Bruno A. Barreiro
Jose "Pepe" Diaz
Sally A. Heyman
Dorrin D. Rolle
Katy Sorenson
Sen. Javier D. Souto

Dr. Barbara Carey-Shuler
Carlos A. Gimenez
Barbara J. Jordan
Natacha Seijas
Rebeca Sosa

The Chairperson thereupon declared the resolution duly passed and adopted this 20th day of January, 2005. 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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RELEASE & SETTLEMENT AGREEMENT

WHEREAS, MIAMI-DADE COUNTY, FLORIDA and DMJM+HARRIS, Inc. (fka Frederic R. Harris, Inc.) are parties to a Professional Services Agreement (TA95-MR10) for the final design of the "Metrorail Extension to the Palmetto Expressway and Multi-Modal Facility" project related to Contract Numbers TA97-MR10-1R (Transitway), TA97-MR10-2 (Station) and TA97-MR10-4 (Systems).

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

WHEREAS, DMJM+HARRIS, Inc. denies liability with respect to those claims.

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 DMJM+HARRIS, Inc. to Miami-Dade County in the amount of \$450,000 by valid legal tender made within sixty (60) days of execution of this agreement. Miami-Dade County and DMJM-HARRIS, 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 DMJM+HARRIS, Inc. and/or Miami-Dade County has or may have to or arising out of

Professional Services Agreement (TA95-MR10) or otherwise arising out of or related to Contract Numbers TA97-MR10-1R, TA97-MR10-2 and TA97-MR10-4.

DMJM+HARRIS, Inc. claims that it is owed retainage presently estimated to be in the sum of \$156,016.53. By executing this Specific Release, DMJM+HARRIS, Inc. is not releasing its right to payment of said retainage.

Seal:

SIGNED 
Consultant - DMJM+HARRIS, Inc.

Name: Elise Greenspan

Position: V.P. & General Counsel

Recommended  10/20/04
Project Manager, MDT

Recommended  10/20/04
Acting Assistant Director, MDT

Recommended 
Director, MDT

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

By: _____
George M. Burgess, County Manager

ATTEST:

By: _____
Harvey Ruvlin, County Clerk

Approved for legal
Sufficiency:


Bruce Libhaber
Assistant County Attorney