

Memorandum

MIAMI-DADE
COUNTY

DATE: December 12,, 2006

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

FROM: George M. Burgess
County Manager 

SUBJECT: Resolution Authorizing Execution of Settlement Agreement between
Miami-Dade County and The Haskell Company for the sum of \$2,447,000

CEERC

Agenda Item No. 4(E)

RECOMMENDATION

It is recommended that the Board approve the accompanying resolution authorizing the execution of a settlement agreement between Miami-Dade County and The Haskell Company for the sum of \$2,447,000, resolving Haskell construction claims arising from the Seaport Redevelopment Program.

BACKGROUND

On July 24, 2001, the Board approved Resolution R-925-01, which among other things, authorized the execution of a master development agreement with P&O Ports Florida, Inc (P&O). This agreement, which designated P&O as the Master Developer of certain Port infrastructure improvement projects, required P&O to competitively procure an architectural/engineering firm (A/E) and general contractor to design and construct multiple phases of the Port's capital development program (project). The overall program contemplated 33 individual project elements (phases) that were to be completed in a certain logical order as described in a program schedule. Among others, these elements included various road improvements, paving and drainage improvements, an 1145' wharf extension, construction of a new Port maintenance building and multi-level parking deck, and demolition of several older structures. It was originally anticipated that the project would be completed by December 31, 2004.

Following a competitive selection process, P&O hired Tetra Tech, Inc. to perform architectural and engineering services and hired The Haskell Company as the project's construction manager. In July 2004, the County, through the Seaport Department, released P&O as master developer and assumed these functions. As part of the Port's replacement of P&O as the master developer, P&O assigned both the A/E Contract with Tetra Tech and the Construction Manager Contract with Haskell to the County. As a result, claims asserted under either the A/E Contract or the Haskell Construction Manager Contract were reviewed and administered by Port staff.

During the course of the overall project, several elements were changed for some projects, including delivery method, design and budget, and some were delayed by late or deficient designs or construction errors. When the overall period of construction was extended by over two years, Haskell asserted several claims for additional compensation, delay, and additional general condition costs. In aggregate, Haskell's unresolved extra work and delay claims against the County amount to approximately \$5 million. As part of the Port's evaluation of Haskell's claims, the Port retained the services of GREYHAWK North America, L.L.C., a construction claims expert consultant.

Representatives from the Port and Haskell have negotiated a proposed settlement of all Haskell claims for the sum of \$2,447,000, in return for which the County will be released from all actual and potential Haskell claims asserted against either the County or P&O, or which could have been asserted, and the County will release Haskell from potential liquidated damages arising prior to the end of 2006.

However, Haskell may seek additional compensation for extended general conditions costs incurred, in accordance with contract requirements, but only to the extent the project is not completed by certain milestone dates through no fault of Haskell or any of its subcontractors or suppliers. Similarly, should the project not be completed by such milestones, due to non-concurrent delays caused by Haskell, its subcontractors or suppliers, applicable liquidated damages under the contract could be assessed by the County against Haskell.

A handwritten signature in black ink, appearing to read 'Susanne M. Torriente', with a long horizontal line extending to the right.

Susanne M. Torriente
Chief of Staff/Assistant County Manager



MEMORANDUM

(Revised)

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

DATE: December 5, 2006

FROM: Murray A. Greenberg
County Attorney

SUBJECT: Agenda Item No.

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**

Agenda Item No.

RESOLUTION NO. _____

RESOLUTION AUTHORIZING COUNTY MANAGER TO EXECUTE A SETTLEMENT AGREEMENT BETWEEN MIAMI-DADE COUNTY AND THE HASKELL COMPANY FOR THE SUM OF \$2,447,000; AND TO EXERCISE ALL RIGHTS CONFERRED THEREIN

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 authorizes the County Manager to execute a settlement agreement between Miami-Dade County and The Haskell Company for the sum of \$2,447,000, in substantially the form attached and after review by the County Attorney's Office; and to exercise all rights conferred therein.

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
Audrey M. Edmonson	Carlos A. Gimenez
Sally A. Heyman	Barbara J. Jordan
Dorrin D. Rolle	Natacha Seijas
Katy Sorenson	Rebeca Sosa
Sen. Javier D. Souto	

The Chairperson thereupon declared the resolution duly passed and adopted this
5th day of December, 2006. This resolution shall become effective ten (10) days after
the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become
effective only upon an override by this Board.

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

HARVEY RUVIN, CLERK

Approved by County Attorney as
to form and legal sufficiency. SAB

By: _____
Deputy Clerk

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**Change Order No. __ to Miami-Dade County Construction
Management (CM) Contract with The Haskell Company**

Miami-Dade County ("Owner") and The Haskell Company hereby enter into this Change Order No. __ to the December 10, 2001 CM Contract between P&O Ports Florida, Inc. ("P & O") (predecessor in interest to Miami-Dade County) and The Haskell Company (hereinafter "Contract") in settlement of certain claims asserted, and which could have been asserted, against the County and/or P & O, in accordance with the terms set forth below.

Pursuant to this Change Order No. __ to the Contract, the parties agree as follows:

1. The parties to this Agreement are The Haskell Company ("Haskell") and Miami-Dade County ("County"). Miami-Dade County is the successor in interest to the interests of P&O Ports Florida, Inc.(P & O) in and to the subject Contract.
2. Pursuant to the Contract, the County or P & O issued various Guaranteed Maximum Price ("GMP") amendments to the Contract to provide for the construction of various specified construction projects and improvements at the Port of Miami to be performed by Haskell pursuant to the Contract for the lump sum prices set forth in the GMPs. Pursuant to these various GMPs, Haskell has been serving in the role of a construction manager or a design/build contractor, as applicable, for these various projects.
3. To date, Haskell has submitted several Requests for Equitable Adjustment ("REAs") under the Contract seeking additional compensation on a variety of theories. Pursuant to these REAs, Haskell maintains, among other things, it was delayed in the performance of its work and was required to perform extra services, all without compensation. Haskell asserts that it has expended, or will expend, approximately \$4.8 million in unreimbursed costs and claims it is entitled to recover all or a substantial majority of these costs. In addition, since the filing of these REAs, Haskell has asserted that additional project delays and disruptions have occurred to date that have caused Haskell to incur additional costs.
4. **Haskell Release.** Haskell and the County have met several times to review and negotiate Haskell's various asserted claims. As a result of these meetings, the County and Haskell agree to this Change Order No. __, to, resolve, among other things, any and all claims that Haskell has asserted, or could have asserted, to date, that arise from or relate to this Contract or otherwise arise from or relate to any improvements being undertaken at the Port of Miami excepting only those claims expressly excluded in the following paragraph no.5. By execution of this Change Order, and conditioned upon the receipt of the settlement funds of \$2,447,000 to be paid by the County to Haskell hereunder, Haskell hereby irrevocably releases and discharges the County, its agents, employees, consultants, independent contractors, and P & O, its employees, agents, independent contractors, and consultants (hereafter, collectively referred to as the "County and P & O Releasees"), on behalf of Haskell, and its agents, assigns, successors, subcontractors and consultants (of any tier), and suppliers, from any and all claims,

demands, and causes of action that Haskell has asserted, or could have asserted, against any of the County and P & O Releasees that in any way arise from, are connected with, or relate to the Contract as amended or any construction, design, or construction management services performed or provided by Haskell or any of its agents, employees, consultants, contractors or subcontractors (of any tier) relating to any work or improvements performed, or to be performed, at the Port of Miami, including, without limitation, any claims of Haskell or any of its contractors, subcontractors (of any tier), suppliers, agents, or employees (whether asserted or unasserted, known, or unknown, choate, or inchoate) for additional compensation, delay damages, extended general conditions, inefficiencies, extra work, lost profit, or any other loss or damage incurred or arising on or prior to the "Effective Date" of this Change Order (as defined in Section 16 below), with the exception only of the claims expressly excluded in the following paragraph no. 5.

5. Haskell's releases contained herein and required hereby do not include and specifically exclude only the following claims:
 - i. Any claims (otherwise allowable under the Contract) that (i) arise from and relate solely to projects 13 or 17 and (ii) are based solely on events occurring after November 27, 2006, provided, however, that any such claims, or portions thereof, for time related or delay damages are not excluded, and are therefore irrevocably released, as to any alleged delays or time related damages, or portions thereof, occurring prior to February 28, 2007; and
 - ii. Payment required from the County to Haskell for the base-work performed or to be performed by Haskell pursuant to the various executed GMPs other than and excluding any and all claims occurring or arising prior to November 27, 2006 for extra work related compensation, delay, inefficiency, price adjustments for increased cost of labor or materials, and/or time extension, all of which remain irrevocably released.
6. Subject to review and approval by the Board of County Commissioners of Miami-Dade County (the "Board"), and subsequent written approval of the County Manager, the County shall pay Haskell, pursuant to the terms of this Settlement Agreement and upon satisfaction of Haskell's obligations hereunder, including, without limitation, satisfaction of each of the pre-conditions enumerated in section 9 hereof, an additional two million four hundred and forty seven thousand dollars (\$2,447,000) in exchange for the above referenced Release in favor of the County. The above-enumerated Haskell release is subject only to the excluded claims expressly set forth in the paragraph 5 above.
7. **Limited County Release of Certain LD Claims.** The County, in exchange for Haskell's above-set forth release, and other consideration provided herein, hereby releases any Contract claims it has against Haskell for liquidated delay damages ("LD") related to any project component completion delays from the inception of the project through and including December 31, 2006, except, as to Project Nos. 13 and 17, for which the County releases LD claims through and including February 28, 2007, provided, however, the

County fully reserves all rights and claims to seek liquidated damages for any completion delays either commencing after or extending beyond December 31, 2006, or, as to Project Nos. 13 and 17, for any completion delays either commencing after or extending beyond February 28, 2007, as provided in the following paragraph 8, and further provided that the County fully reserves all other claims it has against Haskell and third parties arising under the Contract or otherwise.

8. All current work under the scope of the Contract as amended shall be completed by December 31, 2006, except the work covered by project phase nos. 13 (parking control systems) and 17 (cargo gate complex) (project phases 13 and 17 shall be collectively referred to herein as the "Delayed Phases"), which Delayed Phases shall be completed by February 28, 2007. To the extent that Haskell's work is not completed by these respective dates, Haskell and the County agree as follows:
 - i. To the extent any Project critical delays extending beyond December 31, 2006 (other than those delays relating to the Delayed Phases) are concurrently caused by Haskell and the County, Haskell shall not be entitled to any additional general conditions costs or any other time or delay related costs and the County shall not be entitled to assess liquidated delay damages for such periods of concurrent critical delay. With respect to the Delayed Phases work, to the extent any critical delays beyond February 28, 2007 are concurrently caused by Haskell and the County, Haskell shall not be entitled to any additional general conditions costs or any other time or delay related costs and the County shall not be entitled to assess liquidated delay damages for such periods of concurrent critical delay
 - ii. To the extent that Haskell or any of its employees, agents, subcontractors or suppliers (of any tier) is/are solely responsible for any critical delay in completing its work by December 31, 2006 (other than delays relating to the Delayed Phases), the County will be permitted to assess liquidated damages in accordance with the individual project GMPs, resulting solely from such critical delays beyond December 31, 2006, and, with respect to the Delayed Phases, to the extent that Haskell or any of its employees, agents, subcontractors or suppliers (of any tier) is/are solely responsible for any critical delay in completing such phases by February 28, 2007, then the County may assess liquidated damages in accordance with those individual project GMPs. Additionally, in such cases (as applicable), Haskell shall use its best efforts to promptly complete all remaining work and fulfill all Contract requirements, without entitlement to any additional extended general condition compensation or any other delay or time based damages, or any other additional compensation, and no such costs or damages shall be charged or assessed against the County.
 - iii. To the extent that the County is solely responsible for any critical delay in Haskell completing its work beyond December 31, 2006 (other than

delays relating to the Delayed Phases), and neither Haskell nor any of its suppliers or subcontractors of any tier have any responsibility for such delays, then Haskell will be permitted to seek recovery of its reasonable and verifiable extended general conditions costs resulting solely from such County critical delays beyond December 31, 2006. With respect to the Delayed Phases work, to the extent that the County is solely responsible for any critical delay in Haskell completing its Delayed Phases work beyond February 28, 2007, and neither Haskell nor any of its suppliers or subcontractors of any tier have any responsibility for such delays, then Haskell will be permitted to seek recovery of its reasonable and verifiable extended general conditions costs resulting solely from such County critical delays beyond February 28, 2007.

9. The County shall pay Haskell, by check, \$2,447,000 within ten (10) business days of the last to occur of the following four (4) pre-conditions: (i) approval of this Change Order by the County Commission; (ii) the 10-day veto period expires without any Mayoral veto being exercised; (iii) proper execution and delivery of this Change Order by both Haskell and the County (in the case of the County, following approval of the County Commission); and (iv) delivery by Haskell to the County of executed general releases and releases of lien in favor of the County and P & O Releasees (as defined above, and in forms acceptable to the County) from Haskell and each Haskell subcontractor and supplier (of any tier), other than the following excepted subcontractors: SAIC (but only with respect to work performed on project 17); Quality Communications (but only with respect to work performed on project 33); Highpower Electric (but only with respect to work performed on project 17); Integrated Security Systems; and Miller Electric (but only with respect to work performed on project 13). Notwithstanding the above, Haskell shall remain obligated to provide the County with executed general releases and releases of lien (in favor of the County and P & O Releasees) from Haskell and each of the above-listed excepted subcontractors prior to Haskell being entitled to receive Final Payment under the Contract or final release of Contract retainages, and prior to Haskell being entitled to seek or receive any shared project savings to which it may be entitled under the Contract.
10. In addition to the above, the parties acknowledge and agree to the following terms and conditions:
 - i. Haskell excludes from the purview of its release in favor of the County (as set forth in paragraph 5 above) future claims of Haskell (arising after the execution date hereof) for additional general conditions but only for that portion of such delay related general condition costs occurring after February 28, 2007, and only to the limited extent permitted under paragraph 8 above.
 - ii. The Haskell Company will be at risk for program general condition cost through February 28, 2007 and will provide on-site staffing through February 28, 2007 until all of the work is substantially complete. At a minimum, a full time project manager will be assigned to the project 50% of his/her time.

- iii. There shall be no further additive adjustments or compensation for bond and insurance costs, unless the project completion date extends beyond February 28, 2007, and then only as provided in paragraph 8 above. In such situation, if applicable, Haskell may seek additional bond and insurance costs to the extent otherwise compensable in the CM Contract, but only for that increment of extra bond and insurance costs arising after February 28, 2007 (and for work occurring after February 28, 2007), and only to the extent the Project incurs critical delays beyond February 28, 2007 that are solely the responsibility of the County and do not arise, in whole or in part, from any acts or omissions of Haskell or any of its suppliers or subcontractors of any tier. This Haskell waiver of actual and potential bonds and insurance fees will not apply in the event the County materially increases the scope of the Contract, as amended through this change order, in the future, i.e. in the event the Port adds a new building. Haskell shall be entitled to additional bonds and insurance for the SAIC work as provided in the previously agreed to change order for this work.
11. It is expressly agreed that this Global Settlement Agreement, and the payment of \$2,447,000 made by the County to Haskell shall represent a full accord and satisfaction of all claims and demands that were raised by Haskell in any of its REAs, or related amendments or updates, or which could have been raised by Haskell therein or otherwise (either on behalf of itself or any of its agents, employees, contractors or subcontractors (of any tier) or suppliers) at anytime prior to the Effective Date hereof, including, without limitation, all claims for delay and/or extended general conditions damages or any other additional compensation under the Contract or otherwise, with the exception only of the claims expressly excluded in paragraph 5 above.
12. It is further agreed that after the execution of this Change Order by all parties hereto Haskell has no obligation to accept any additional work (other than corrective, punch list, or warranty work required under the Contract) if such work would adversely impact the February 28, 2007 completion date. Any request for additional work shall be made in writing by the Owner. Within two working days of receipt of a written request for additional work from the Owner or its designated representative, Haskell shall notify the County if the additional work will impact the February 28, 2007 completion date. If Haskell fails to provide such timely written notice, it shall be obligated to accept and complete the requested additional work.
13. The County will submit this Change Order and Global Settlement Agreement to the Board for its consideration and approval and will request that the consideration of this Global Settlement Agreement be promptly placed on an upcoming Board Agenda. This Change Order and Global Settlement Agreement shall only take effect upon approval by the Board and execution by the County Manager and neither of the parties shall have any rights or obligations under this Global Settlement Agreement unless and until the Board approves this Global Settlement Agreement and if thereafter executed by the County Manager.

- 14. Except as expressly modified herein, or by any release executed herein or in furtherance hereof, the terms of the parties' underlying construction Contract remain in full force and effect.
- 15. Exclusive Venue/Choice of Law. Venue for any suit or action to enforce or construe any term of this Global Settlement Agreement shall lie exclusively in Miami-Dade County, Florida. This Global Settlement Agreement shall be governed by and construed in accordance with Florida law.
- 16. Counterparts. This Global Settlement Agreement may be signed in any number of counterparts, each of which shall be an original and all of which shall represent but one agreement. This Change Order shall become effective on the date (or latest date) that it is executed by all parties hereto, following County Commission approval, and executed originals or counterparts are delivered to the respective parties (the "Effective Date").
- 17. Severability. In case any one of the provisions contained in this Global Settlement Agreement, or any application thereof, shall be invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained herein, and any other application thereof, shall not in any way be affected or impaired thereby.
- 18. Successors and Assigns. This Global Settlement Agreement shall inure to the benefit of and shall be binding upon the parties hereto, their successors, and permitted assigns.

Agreed and Accepted:

Miami-Dade County

By: _____¹

The Haskell Company

By: _____ 11/06/06
John H. Patton
President-Civil/Public Facilities

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¹ As stated above, the County's approval of this Global Settlement Agreement is subject to, and dependent upon, obtaining approval hereof by the Board (via resolution) and subsequent execution hereof by the County Manager.