Memorandum

MIAMI-DADE COUNTY

Date: March 6, 2007

To: Honorable Chairman Bruno A. Barreiro and Members, Board of County Commissioners

From: George M. Burgess
County Manager

Murray A. Greenberg
County Attorney

Subject: International Fidelity Settlement Memo

Agenda Item No. 12(A)(7)

RECOMMENDATION

It is recommended that the attached resolution be approved which authorizes the execution of a settlement agreement between International Fidelity Insurance Co. and Miami-Dade County to settle various claims in connection with County Contract number DERM 01-7AveSSD-B.

BACKGROUND

In 2001, Miami-Dade County executed a design-build contract with Barnes Ferland and Associates ("BFA") to construct sewer facilities serving Northwest 7th Avenue. The original value of this contract was $2,619,619, with work to be completed by March 10, 2003. In the event that the work was not completed by that date, the County was contractually obligated to retain one thousand dollars ($1,000.00) per day in liquidated damages. As a result of delays, the County has held back $66,000 from final payment; the County additionally is holding $112,000 in retainage.

International Fidelity Insurance Co ("International") provided BFA with the statutorily required performance and payment bond for the project. At some point during the prosecution of the work, BFA became unable to complete the work, and International was forced to intervene to ensure completion of the project. As such, International assumed BFA's right to further payments under the contract.

BFA and International asserted various claims against the County following the completion of the work. These claims asserted a right to recovery of extra time and compensation due to alleged County actions in changing the scope of the design, and due to alleged utility conflicts with the existing design. County staff disagreed that International was due any extra time or compensation. This

disagreement resulted in International filing the instant lawsuit, in which International sought recovery of $240,129.29.

Analysis of the complaint, as well as information brought forth during the litigation to date, has caused WASD to conclude that it is appropriate to make a final contract payment to International of $117,866.04. This payment is comprised of the following elements: (1) $70,865, which WASD considers to be proper payment for contract work performed, (2) $28,168.10 in extra work which was performed by International, and which WASD agrees was the result of unforeseen conditions, and (3) $18,900.00 to settle the remainder of the claims on this project. Payment of this amount will result in the total payments under this contract being $2,590,651.24; this amount is approximately $29,000 less than the awarded contract amount.

The County Attorney considers this a fair settlement, given the risks and expenses of litigation and the information currently known.

Roger M. Carlton
Assistant County Manager

MEMORANDUM
(Revised)

TO: Honorable Chairman Bruno A. Barreiro
and Members, Board of County Commissioners

DATE: March 6, 2007

FROM: Murray A. Greenberg
County Attorney

SUBJECT: Agenda Item No. 12(A)(7)

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. 12(A)(7)
3-6-07

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE COUNTY MAYOR OR HIS DESIGNEE TO EXECUTE A SETTLEMENT AGREEMENT BETWEEN MIAMI-DADE COUNTY AND INTERNATIONAL FIDELITY INSURANCE COMPANY

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 the County Mayor or his designee is authorized to execute the Settlement Agreement between Miami-Dade County and International Fidelity Insurance Company, in substantially the form attached hereto.

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:

Bruno A. Barreiro, Chairman
Barbara J. Jordan, Vice-Chairwoman

Jose "Pepe" Diaz
Carlos A. Gimenez
Joe A. Martinez
Dorrin D. Rolle
Katy Sorenson
Sen. Javier D. Souto
Audrey M. Edmonson
Sally A. Heyman
Dennis C. Moss
Natacha Seijas
Rebeca Sosa

The Chairman thereupon declared the resolution duly passed and adopted this 6th day of March, 2007. 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

By:_____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

David M. Murray

SETTLEMENT AGREEMENT BETWEEN

INTERNATIONAL FIDELITY INSURANCE COMPANY

AND

MIAMI-DADE COUNTY, BY AND THROUGH MIAMI-DADE WATER AND SEWER DEPARTMENT, A DEPARTMENT OF MIAMI-DADE COUNTY

This Settlement Agreement is made and entered into on this _____ day of _____, 20__, by and between Miami-Dade County ("the County") and International Fidelity Insurance Company ("International");

WHEREAS, the County and Barnes Ferland and Associates ("BFA"), an entity engaged in providing design, consulting, and engineering services for public works projects, are parties to a contract for a project known as the design/build of the Northwest 7th Avenue Sanitary Sewer Improvement Project, Phase II (revised), WASD Project Number DERM01-7AveSSD-B ("the Contract"); and

WHEREAS, International, as surety, issued Surety Performance and Payment Bonds No. SEIFSU 0318049 (hereinafter collectively referred to as the "Bonds"), on behalf of BFA, as a co-principal, for the project, as required under § 255.05, Fla. Stat. and the Contract; and

WHEREAS, the Bonds guaranteed, pursuant to their terms, the performance of BFA's contractual obligations on the project, as well as payment to those providing labor and/or materials for the Project; and

WHEREAS, pursuant to the Contract, BFA was to complete or achieve substantial completion of both the design phase and the construction phase for the project within time specified in the Contract and any approved time extensions; and

WHEREAS, the County alleges BFA was unable to complete the work within the times specified in the Contract; and

WHEREAS, BFA contends these delays were beyond its control; and

WHEREAS, the County has, as a result of BFA's alleged failure to timely complete the work, retained as liquidated damages Contract funds to which International contends it is lawfully entitled under the Contract; and

WHEREAS, due to BFA's and/or its sub-contractors' failure to pay those providing labor and materials for the Project, International has paid numerous claims pursuant to the Bonds; and

WHEREAS, International, by virtue of its rights of equitable subrogation and assignment, is entitled to all remaining contract funds due BFA held by the County; and

WHEREAS, by letter dated July 15, 2004, BFA, a copy of which is attached hereto, has authorized and instructed the County to make all remaining contract funds, including retainage and increases due to approved change orders (including time extensions) on the Project to be paid directly to International; and

WHEREAS, the County, and International desire to completely resolve and settle all issues arising from the performance of the Contract, including all

claims for damages, penalties, or costs of any nature incurred, including both direct and indirect costs incurred by the County, and International;

NOW THEREFORE, in consideration of the mutual covenants and agreements set forth below, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, International and the County agree as follows:

1. Pursuant to the execution of this Agreement, the County shall pay to International a total payment of $116,900, which is comprised of (a) $70,000, which represents monies for work actually performed on the project; (b) $18,900, which represents the interest on the Contract balance and (c) $28,000 for extra work performed; the sum of these numbers represents full compensation for all claims of any kind which have been asserted or which could be asserted by International as a result of the performance of the County related to the Contract. The County is expressly authorized to retain any contract amounts as may remain after payment of the above

2. International, and the County waive any and all claims at law or equity each party has or may accrue against the other, its agents, employees, and officials, arising out of the performance of the Contract on or before the effective date of this Agreement. The County does not waive any claims it may have against International or BFA as a result of latent defects in the work, or that the County may have resulting from any warranty provided for in the Contract. The County represents, however, that as of the date of this Agreement, the

County is aware of no such latent defects for which it may have a claim against International or BFA.

3. Neither International, nor the County admit any liability or wrongdoing in the performance of the Contract.

4. This Agreement is complete and contains the full understanding of International, and the County. This Agreement may not be modified without the express written consent of International and the County. This Agreement supersedes all other terms, provisions, or specifications of any prior documentation or agreement as may exist between International and the County.

5. This Agreement shall be interpreted under Florida law. Venue for any litigation relating to this Agreement shall be in Miami-Dade County, Florida.

6. This Agreement, and each and every term herein, shall be presented to the Miami-Dade County Board of County Commissioners. This Agreement shall become effective eleven (11) days after approval by the Miami-Dade County Board of County Commissioners. If, however, the Board of County Commissioners does not ratify this Agreement, or if the Mayor of Miami-Dade County vetoes said ratification or if this Agreement is not fully executed, ratified and approved by all parties within 10 days, then this Agreement shall be void and of no legal effect. The County Manager shall execute this Agreement for Miami-Dade County only if this Agreement is approved by the Board of County Commissioners and is not vetoed.

7. Payment by the County to International shall be no later than two weeks after the execution of this Agreement.

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement on the day and year first above written.

Witnesses:

INTERNATIONAL FIDELITY INSURANCE COMPANY

_____

_____

By:_____

Print Name:_____

Title: _____

Attest:
Harvey Ruvin, Clerk

MIAMI-DADE COUNTY
By Its Board of County Commissioners

By: _____
Deputy Clerk

By: _____
Mayor

Approved as to form and
Legal sufficiency:

_____
Assistant County Attorney