

Memorandum

MIAMI-DADE
COUNTY

Date: July 24, 2007

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

From: George M. Burgess
County Manager

R. A. Cuevas, Jr.
Acting County Attorney

Subject: Execution of Settlement Agreement between Sinha, Inc.
(MDWASD Contract S-775) and Miami-Dade County

Agenda Item No. 12(A)(5)

RECOMMENDATION

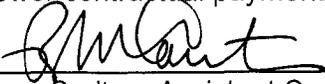
It is recommended that the Board of County Commissioners (Board) approve and adopt the attached resolution which authorizes the execution of a settlement agreement between Sinha, Inc. (Sinha) and Miami-Dade County to settle a claim in connection with Contract No. S-775.

BACKGROUND

On January 4, 2005 Sinha, Inc. was awarded construction Contract No. S-775 for the Replacement of Pre-Treatment Building Sluice Gates at the North District Wastewater Treatment Plant ("the Plant") located at 2575 NE 151 Street, City of North Miami, in Miami-Dade County. The contract amount authorized for this project was \$750,000 which includes a 10 percent contingency allowance of \$72,051.80 for a contract period of 150 days. Sinha was to replace eight existing gates that had corroded and provide all materials, labor and equipment. At the same time, Sinha was also performing work at the Plant under a different County contract, Contract No. S-765 for furnishing and installing a self cleaning filter screen system, including appurtenances. Contract S-765 had numerous difficulties such as with the hiring of personnel and subcontractors, lengthy job delays, delays in the procurement of materials for the project, and faulty construction which resulted in the inability of Sinha to proceed with Contract S-775 at the same time. To date, the issues surrounding Contract S-765 have been resolved, the work was completed and the project was closed out. Given the issues occurring on S-765, then Director, William Brant, agreed to the termination of Contract No. S-775 at the convenience of the County, and prior to the commencement of any work on that contract.

The termination provision in the Contract provides for payment of actual costs incurred at the time of termination. After termination, the County offered to pay for the minimal costs incurred by Sinha prior to termination, which were mostly related to preparation of initial drawings, these costs were approximately \$12,000. Sinha argued that it was due \$65,000 which amount includes various pre-bid monies allegedly spent by Sinha. The County does not believe it is legally obligated to pay those amounts to Sinha. Unable to resolve this dispute, Sinha filed an action in court alleging breach of contract and denial of due process. After litigation, Sinha has agreed to resolve this matter for \$12,000, which was the amount originally offered by Miami-Dade County.

Staff in both the County Manager's Office and in the County Attorney's Office believe that this settlement is fair and reasonable, and reflects payment of actual costs incurred by Sinha, which payment Sinha is entitled to pursuant to the contract. Further litigation of this matter would not result in a lower contractual payment to Sinha, and would result in additional cost and expense to the County.


Roger Carlton, Assistant County Manager



MEMORANDUM

(Revised)

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

DATE: July 24, 2007

FROM: R.A. Cuevas, Jr.
Acting County Attorney

SUBJECT: Agenda Item No. 12(A) (5)

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

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Approved _____ Mayor

Agenda Item No. 12(A)(5)

Veto _____

07-24-07

Override _____

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE COUNTY
MAYOR OR HIS DESIGNEE TO EXECUTE A
SETTLEMENT AGREEMENT IN THE AMOUNT OF
\$12,000 BETWEEN MIAMI-DADE COUNTY AND
SINHA, INC. IN CONNECTION WITH CONTRACT
NO. S-775 FOR THE NORTH DISTRICT
WASTEWATER TREATMENT PLANT
REPLACEMENT OF PRE-TREATMENT BUILDING
SLUICE GATES

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 hereby approves the Settlement Agreement in the amount of \$12,000 between Miami-Dade County, and Sinha, Inc., in connection with Contract No. S-775 for the North District Wastewater Treatment Plant Replacement of Pre-treatment Building Sluice Gates; in substantially the form attached hereto and made a part hereof; and authorizing the County Mayor or his designee to execute same for and on behalf of Miami-Dade County and to exercise provisions contained 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:

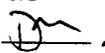
Bruno A. Barreiro, Chairman	
Barbara J. Jordan, Vice-Chairwoman	
Jose "Pepe" Diaz	Audrey M. Edmonson
Carlos A. Gimenez	Sally A. Heyman
Joe A. Martinez	Dennis C. Moss
Dorrin D. Rolle	Natacha Seijas
Katy Sorenson	Rebeca Sosa
Sen. Javier D. Souto	

The Chairperson thereupon declared the resolution duly passed and adopted this 24th day of July, 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. 

Dave Murray

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SETTLEMENT AGREEMENT BETWEEN

Sinha Corporation

AND

MIAMI-DADE COUNTY,

This Settlement Agreement is entered into on this 15th day of June, 2007, by and between Miami-Dade County ("the County") and Sinha Corporation ("Sinha")

WHEREAS, the County and Sinha are party to a contract known as S-775 ("the Contract"); and

WHEREAS, the County, pursuant to the terms of that contract, terminated same for convenience; and

WHEREAS, the County is contractually obligated to pay for work performed by Sinha prior to the date of termination; and

WHEREAS, Sinha and the County have not agreed on the amount of compensation due Sinha, which disagreement is the base of the instant action; and

WHEREAS, the County and Sinha 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 Sinha;

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, Sinha and the County agree as follows:

1. Pursuant to the execution of this Agreement, the County shall pay to Sinha the sum of \$12,000.00, said amount to be full compensation for all claims of any

kind which have been asserted or which could be asserted by Sinha as a result of the contract between Sinha and the County.

2. Sinha 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.

3. Neither Sinha nor the County admit of any liability or wrongdoing in the performance of the contract.

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

5. This agreement shall be interpreted under Florida law. Venue for any litigation relating to this Agreement shall be had 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 become effective eleven (11) days after approval by the Miami-Dade County Board of County Commissioners, but if the Board of County Commissioners does not ratify this agreement, or if the Mayor of Miami-Dade County veto's 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, and in such circumstances no payments made by the County to Sinha shall be construed as waiving or voiding any rights as may be held by the County pursuant to the performance of the Contract. The County Mayor shall execute this agreement for Miami-Dade County only if this agreement is approved by the Board of County Commissioners and is not vetoed.

Payment by the County to Sinha shall be no later than four 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:

N. Sinha Corporation

By: Vicenta Sinha

Print Name: Vicenta Sinha

Title: Secretary, Officer of the Corporation
N Sinha Corporation

MIAMI-DADE COUNTY

By Its Board of County Commissioners

By: _____
Deputy Clerk

By: _____
County Manager

argelo
Swoen to and subscribed
before me this 15th day of
June 2009 Argelo Torres



Argelio Torres
Commission # DD277Q14
Expires: Jan, 23, 2008
Bonded Thru
Bonds Co., Inc.
Notary Clerk

Approved as to form and
Legal sufficiency:



Assistant County Attorney