Memorandum

MIAMI-DADE COUNTY

Date: December 4, 2007

Agenda Item No. 8(R)(1)(E)

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

From: George M. Burgess
County Manager

Subject: Execution of a Settlement Agreement for Contract No. E98-DERM-01: WASD-NLE EAST, MDWASD Contract No. S-784 between BND Engineers, Inc. and Miami-Dade County

RECOMMENDATION

The Miami-Dade Water and Sewer Department (MDWASD) is conducting an internal review of its construction contracts and preparing change orders or settlement agreements as required with the intent of resolving all outstanding construction issues. Furthermore, new polices and procedures are being implemented department-wide to reduce the risk of future change orders and settlement agreements.

It is recommended that the Board of County Commissioners (Board) approve the attached settlement agreement between BND Engineers, Inc. (BND) and Miami-Dade County. BND and Miami-Dade County through MDWASD is looking to settle claims in the amount of $714,881.41 for the above referenced contract. The settlement amount of $714,881.41 is approximately 12.74% above the revised contract amount of $5,613,187.72. The settlement also includes a time extension of 320 days.

BACKGROUND

On July 14, 2003, the Department of Environmental Resources Management (DERM) issued a work order to BND for the WASD-NLE EAST project in the original amount of $5,226,480 with a total contract time of 448 days. The scope of work required BND to supply the design and permitting and to construct approximately 8,300 linear feet of 54-inch sewer force main along the south side of the Opa-Locka Airport, east of NW 42 Avenue, east to NW 37 Avenue in Miami, Florida.

This project, WASD-NLE EAST is related to another project, WASD-NLE WEST, wherein 9,100 linear feet of 54-inch sewer force main was installed along the south side of Opa-Locka Airport, west of NW 57 Avenue, east to NW 42 Avenue connecting to project WASD-NLE EAST at NW 42 Avenue. Both projects were certified and placed in service on August 19, 2005, at which time sewage began flowing through both sewer force mains.

Numerous project delays took place under WASD-NLE EAST which accounts for the time extension of 320 days. From the onset, an additional amount of $386,707.72 was added to the original contract amount to cover costs associated with the relocation of the drainage swale, making for a revised contract amount of $5,613,187.72. BND alleges they incurred additional costs attributable to these delays which they contend were beyond their control such as costs associated with idle equipment and the escalating prices of materials. After BND presented a claim against the County in the amount of $961,690.55, MDWASD staff entered into negotiations with BND resulting in a time extension of 320 days and a settlement of $714,881.41 for the delays and the change in the scope of work performed.

The County believes that this settlement is fair and reasonable and reflects payment of actual costs incurred by BND. The County Attorney's Office has reviewed this settlement agreement and concurs with this action.

Assistant County Manager

MEMORANDUM
(Revised)

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

DATE: December 4, 2007

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

SUBJECT: Agenda Item No. 8(R)(1)(E)

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. 8(R)(1)(E)
12-04-07

RESOLUTION NO. _____

RESOLUTION APPROVING SETTLEMENT AGREEMENT BETWEEN BND ENGINEERS, INC. AND MIAMI-DADE COUNTY IN THE AMOUNT OF $714,881.41 RELATING TO DESIGN AND INSTALLATION OF 54-INCH SEWER FORCE MAIN AT OPA-LOCKA AIRPORT

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 between BND Engineers, Inc. and Miami-Dade County in the amount of $714,881.41, relating to the design and installation of a 54-inch sewer force main at Opa-Locka Airport, in substantially the form attached hereto and made a part hereof; and authorizes the County Mayor or his designee 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:

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 4th day of December, 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.

Henry N. Gillman

SETTLEMENT AGREEMENT BETWEEN

BND ENGINEERS, INC.

AND

MIAMI-DADE COUNTY

This Settlement Agreement is entered into on this _____ day of _____, 2007, by and between Miami-Dade County ("the County") and BND Engineers, Inc. ("BND").

WHEREAS, the County and BND are party to a contract known as E-98-DERM01-WASD-NLE EAST ("the Contract"); and

WHEREAS, the contract required BND to supply all design, permitting, installation and start-up services and activities to construct and put into service approximately 8,300 linear feet of a 54-inch sewer force main along the south side of Opa-Locka Airport, east of NW 42nd Avenue east to NW 37th Avenue; and

WHEREAS, BND contends that it incurred additional costs due to delays beyond its control and the County agrees that additional costs were incurred beyond BND's control; and

WHEREAS, the County and BND desire to completely resolve and settle all issues which were, or could have been, raised on account of the services, labor and materials provided, and work done, and all damages or costs of any nature incurred, including both direct and indirect by BND and its subcontractors, suppliers, and material suppliers for the design, permitting, installation and start-up services of the 54-inch sewer force main as fully set forth below.

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, BND and the County agree as follows:

1. Within twenty-one (21) days from the effective date of this settlement agreement and subject to the receipt of all documentation required by the contract including, but not limited to, certified payrolls, releases of lien, and contractor affidavits, the County shall pay to BND the amount of $714,881.41 ("settlement payment"); such settlement payment shall be final payment for the contract work relating to the design, permitting, installation and start-up services of the 54-inch sewer force main.

2. Payment of said sum of $714,881.41 shall constitute full satisfaction of any and all claims of which BND or any of its subcontractors or material suppliers had knowledge of or reasonably should have had knowledge of in connection with any of the work performed or damages or cost incurred in connection with the contract or the services and construction, including both direct, indirect and pass-through claims, damages, actions and causes of action.

3. Nothing in this settlement agreement constitutes an admission by any party of any wrongdoing or liability of any kind.

4. In consideration of the mutual covenants contained in this settlement agreement, BND hereby releases, discharges and acquits the County and its officials, employees and agents from and against, and also waives and relinquishes any and all rights to, all claims, direct and indirect costs, damages, liability, interest, disputes or causes of action of whatever nature or kind it has or may have, whether known or unknown, against the County and its officials, employees and agents arising out of or relating to the settlement payment, contract, work or project for the design, permitting, installation and start-up services of the 54-inch sewer force main.

5. The County hereby releases, discharges, and acquits BND, its officers, employees, agents, its subcontractors and material suppliers from any and all liquidated damages and other damages or costs arising out of or related to delays in connection with the design, permitting, installation and start-up services of the 54-inch sewer force main. The County does not waive any claims it may have against BND as a result of latent defects in the work.

6. In consideration of the payment by the County to BND of the settlement payment, BND shall defend, hold harmless, and indemnify the County and its officials, employees, agents and representatives, from any and all claims, liability, losses or damages, direct or indirect, including without limitation attorney's fees and costs of defense, arising out of or related to work performed under the contract, of which BND or any of its subcontractors or material suppliers had knowledge or reasonably should have had knowledge. BND shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the County, where applicable, including appellate proceedings, and shall pay all costs, judgments and attorney's fees which may issue thereon.

7. This settlement agreement is complete and contains the full understanding of BND and the County. This agreement may not be modified without the express written consent of BND and the County.

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

9. This settlement agreement, and each and every provision herein, shall be subject to the express approval of the Miami-Dade County Board of County Commissioners. This agreement becomes effective eleven (11) days after approval by the Miami-Dade County Board of County Commissioners, unless vetoed by the Mayor. In the event the Mayor vetoes the Commission action, the Commission action shall not be effective in the absence of an override of the Mayor's veto at the next regularly scheduled meeting of the Board after the veto occurs. The actions of the Commission and the Mayor in connection with the approval or rejection of this agreement rests within their sole discretion.

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

Witnesses:

BND ENGINEERS, INC.

_____

_____

By: Kevin A Keane

Print Name: KEVIN A. KEANE

Title: VICE-PRESIDENT

Attest:
Harvey Ruvin, Clerk

MIAMI-DADE COUNTY
By Its Board of County Commissioners

By: _____
Deputy Clerk

By: _____
County Mayor

Approved as to form and
Legal sufficiency:

_____
Assistant County Attorney