Memorandum

MIAMI-DADE COUNTY

Agenda Item No. 8(Q)(1)(B)

Date: December 4, 2007

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

From: George M. Burgess
County Manager

Subject: Resolution Authorizing Execution of an $800,000 Settlement Agreement and Release between Miami-Dade County and Tetra Tech EC., Inc.

RECOMMENDATION

It is recommended that the Board approve the accompanying resolution authorizing the execution of an $800,000 settlement agreement and release between Miami-Dade County (County) and Tetra Tech EC, Inc. (Tetra Tech), resolving Tetra Tech claims arising from the Seaport Redevelopment Program.

SCOPE

The Port of Miami is located within District 5 – Chairman Bruno Barreiro. The impact of this agenda item is countywide as the Port of Miami is a regional asset and generates employment for residents throughout all of Miami-Dade County.

FISCAL IMPACT/FUNDING SOURCE

Funding for the $800,000 settlement amount will be paid from the upcoming Sunshine State loan proceeds.

TRACK RECORD/MONITOR

The Seaport Department staff member responsible for monitoring this agreement is Lance Llewelyn, Interim Assistant Director for Engineering and Development, Port of Miami.

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 a construction manager 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, the elements included various road improvements, paving and drainage improvements, an 1145' wharf extension, construction of a new Port maintenance building, parking garage C, and demolition of several older structures. It was originally anticipated that the project would be completed by December 31, 2003.

Following a competitive selection process, P&O (as the Port's Master Developer) hired Tetra Tech to perform architectural and engineering services and hired The Haskell Company (Haskell) 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. In March of this year, the Board approved a settlement agreement with Haskell resolving construction claims arising from the Seaport Redevelopment Program.

On October of 2003, Tetra Tech submitted a claim to P&O for unpaid A/E services totaling $739,569.00. As the overall project's duration increased by several years, Tetra Tech's claim increased to include additional claims for alleged extra work and unpaid work. Ultimately, Tetra Tech filed a claim against the County with the American Arbitration Association (AAA) seeking almost $1,778,390 in damages, including claims for unpaid work, reimbursable expenses, contract retainage, allegedly owed remaining contract balances, additional construction oversight costs, permitting costs, out of scope work and interest costs. The County responded by filing an answer, affirmative defenses and counterclaim with the AAA. The parties through extensive negotiations tentatively agreed to settle the dispute for $800,000, subject to Board approval.

Under the terms of the proposed settlement and release, if approved, the County will pay Tetra Tech the sum of $800,000 to resolve all claims asserted, or which could have been asserted by either Tetra Tech or any of its sub-consultants in connection with the project. Tetra Tech will be required to complete its A/E responsibilities under the subject contract and will release all claims against the County, including claims for contract retainage and remaining contract balances. The County will release certain delay and other claims against Tetra Tech and certain of its subconsultants, excluding, among other things, claims and potential claims for patent or latent design defects or deficiencies or breach of actual or implied warranties. Further, as part of the Settlement Agreement, the parties have agreed to nullify the arbitration requirements contained in their professional services agreement.

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(Q)(1)(B)

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(Q)(1)(B)
12-04-07

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE EXECUTION OF AN $800,000 SETTLEMENT AGREEMENT AND RELEASE BETWEEN MIAMI-DADE COUNTY AND TETRA TECH EC., INC.; 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:

Section 1. Approves the execution of a settlement agreement and release between Miami-Dade County and Tetra Tech EC., Inc., in substantially the form attached hereto and made a part hereof.

Section 2. Authorizes the County Mayor or his designee to execute the settlement agreement and release after review and approval 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:

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. SBB

Steven B. Bass

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (the "Agreement") is entered into by and between Tetra Tech EC., Inc. ("Tetra Tech") and Miami-Dade County (the "County") in accordance with the terms set forth below:

WHEREAS, Foster Wheeler Environmental Corporation ("FWENC"), as Architect, and P&O Ports, Florida, Inc. ("P&O") entered into a professional services agreement, entitled Standard Form of Agreement between Owner and Architect dated December 21, 2001 and a Standard Form of Architect's Services: Design and Contract Administration (collectively referred to as the "Contract");

WHEREAS, the parties subsequently entered into a series of Supplemental Agreements which supplemented the terms of the Contract;

WHEREAS, Miami-Dade County and Dante B. Fascell Port of Miami-Date (the "Port") were using P&O as the County's Master Developer with respect to the Contract and the County was the actual fee owner of the project which was the subject of the Contract;

WHEREAS, under the terms of the Contract, FWENC was to have provided services including, but not limited to, programming, program management, design and construction phase services relating to the Miami Seaport Redevelopment Program at the Dante B. Fascell Port of Miami-Dade in Miami-Dade County, Florida (the "Project");

WHEREAS, P&O was subsequently replaced as Master Developer for the County and the Port with respect to this Project;

WHEREAS, Section 1.3.7.9 of the Contract provides that P & O could, without the consent of and upon notice to FWENC, assign the Contract to the County, which P & O did on or about April 1, 2004;

WHEREAS, Tetra Tech FW, Inc., now known as Tetra Tech EC, Inc. ("Tetra Tech") was the successor in interest to FWENC with respect to FWENC's rights, duties, responsibilities, and liabilities under the Contract;

WHEREAS, Tetra Tech initiated an arbitration proceeding against the County which was initially styled: *Tetra Tech FW, Inc., Successor in Interest to Foster Wheeler Environmental v. P&O Ports Florida, Inc.*; American Arbitration Association Case No. 32 110 Y 00428 06 (the "Arbitration Proceeding") asserting claims against the County relating to amounts which Tech Tech contended were owing to Tetra Tech under the Contract as well as for additional work which was allegedly performed on the Project;

6

WHEREAS, the County asserted a counterclaim against Tetra Tech asserting claims against Tetra Tech arising out of the Contract and relating to acts or omissions of Tetra Tech and certain of its subconsultants on the Project (the "Counterclaim");

WHEREAS, the parties to this Agreement, desire to settle all claims in the Arbitration Proceeding or which arise from or relate to the Contract or Project, except as otherwise provided herein below.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, Tetra Tech and the County agree as follows:

1. Agreement Subject to Approval by the County Commission. This Agreement is subject to the approval of the Commission of Miami-Dade County. The County agrees to submit this Agreement for approval of the County Commission in an expeditious manner and further agrees to request that this Agreement be approved. If this Agreement is not approved by the County Commission, this Agreement will become null and void and will not be admissible in any subsequent legal proceedings. If this Agreement is not approved by the County Commission by December 31, 2007, this Agreement can be terminated by either party by notifying the other party in writing of such termination.

2. Payment. Upon the approval of the Agreement by the County Commission and subsequent execution hereof by the County Mayor or his authorized designee, the County agrees to pay to Tetra Tech the total amount of $800,000.00 within 15 working days of the date of the last to occur of the following four pre-conditions, and also subject to the $50,000 hold-back requirement set forth in sub-section 2(b) below: first, that the Agreement is approved by the County Commission and executed by the County Mayor or his designee; second, that Tetra Tech and the County exchange properly executed originals of the Agreement; third, Tetra Tech delivers to County properly executed general releases from Wolfberg Alvarez & Partners ("Wolfberg"), CSA Group Florida, Inc. ("CSA"), Halcrow HPA p/k/a Han Padron and Associates ("HanPadron"), and Indigo Service Corporation ("Indigo") in the form attached as Exhibit A (Tetra Tech Subconsultant Releases to County) or such other form if and to the extent deemed acceptable to and approved by the Port Director in writing; and four, Tetra Tech files a notice of dismissal with prejudice of all claims filed with the American Arbitration Association (AAA) against the County and/or P & O in AAA Case No. 32 110 Y 00428 06 or otherwise with written confirmation of such filing copied to the Office of the County Attorney. Upon both the approval of the County Commission and the execution of this Agreement by the County Mayor or his authorized designee, and subject to the fulfillment of each of the pre-conditions set forth herein, the County agrees to pay Tetra Tech the $800,000.00 settlement sum as follows:

a. $750,000.00 shall be paid by the County to Tetra Tech within fifteen working days of the date of the last to occur of pre-conditions one, two, three, and four set forth in Section 2 above.

claims set forth in this Settlement Agreement, it being understood, however, that nothing contained in this Settlement Agreement is intended to waive, extinguish, or diminish any obligations of Tetra Tech (or any of its subconsultants) under the Contract or this Agreement (including but not limited to the obligation to provide as-built/record drawings) or any continuing obligations under the Contract or otherwise relating to warranties or remediating or otherwise addressing patent or latent design, program, drawing or specification errors, omissions, defects, or deficiencies under the Contract or otherwise with respect to the Contract.

c) It is expressly agreed and understood that this Agreement is a compromise of a disputed claim and should not be construed as an admission or acknowledgement by any party hereto and that such liability is expressly denied.

d) All parties shall bear their own costs, included attorneys' fees, consultants' fees and expenses in connection with this dispute. The parties shall also bear their own respective portion of the arbitration costs and fees associated with the Arbitration Proceeding.

e) In executing this Agreement, the parties declare and acknowledge that they have had the opportunity to consult legal counsel and that the terms of this Agreement are fully understood and voluntarily accepted without duress or coercion.

f) This Agreement may be executed in two or more counterparts, each of which shall be deemed to be a duplicate original, but all of which together shall constitute one and the same agreement.

g) Should any provision of this Agreement be held invalid or illegal, such illegality or invalidity shall not invalidate the whole of this Agreement, but rather the Agreement shall be construed as if it did not contain the illegal part, and the rights and obligations of the parties shall be construed and enforced accordingly.

h) It is expressly understood and agreed that the terms of this Agreement cannot be altered, changed or modified except by a writing duly executed by an authorized representative of both parties.

i) The parties may exchange this Agreement with facsimile signatures with originals to be provided with a reasonable time thereafter.

j) Each party warrants that the person executing this Agreement on its behalf is fully authorized to do so.

k) This settlement agreement shall be governed by and construed in accordance with Florida law and venue for any action arising herefrom or to enforce or construe any provision hereof shall lie exclusively in Miami, Florida.

l) Notwithstanding and prevailing over any contrary term, provision, or implication contained in the Contract or the General Conditions thereto, all arbitration

JSW

requirements contained in the Contract or the General Conditions thereto or incorporated therein are henceforth deemed terminated, nullified and of no further force or effect.

IN WITNESS WHEREOF, each of the parties agrees to the terms of this Agreement by the execution of this Agreement in the spaces below.

TETRA TECH EC, INC.

By: Jonathan S. Weiss

Printed: Jonathan S. Weiss

Title: Executive Vice President

Date: 11/21/07

ATTESTATION:

By: Maurose Dwayna

Title: Admin Asst

MIAMI-DADE COUNTY

By: _____

Printed: _____

Title: _____

Date: _____

11

EXHIBIT "A"

Release

In consideration of the releases set forth in the Settlement Agreement and Release executed by Tetra Tech EC, Inc. ("Tetra Tech") and Miami-Dade County (the "County") as well as for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, _____("Releasor"),_ on behalf of itself, its representatives, shareholders, employees, agents, servants, managers, parents, subsidiaries, affiliates, predecessors, successors, indemnitors and assigns hereby irrevocably release, acquit and forever discharge the County, P&O Ports Florida Inc., the Dante B. Fascell Port of Miami-Dade, as well as their parents, subsidiaries, officers, employees, representatives, assigns, successors, shareholders, consultants and subconsultants and attorneys for and from any and all claims, demands, judgments, actions, causes of action, sums of money or other obligations or liabilities of any kind or nature, whether known or unknown, choate or inchoate, arising from or in any way relating to, in whole or in part, the Standard Form of Agreement between P & O Ports Florida, Inc. ("P & O") and Foster Wheeler Environmental Corporation ("FWEC"), a predecessor to Tetra Tech, dated December 21, 2001 and/or Standard Form of Architect's Services: Design and Contract Administration (collectively referred to as the "Contract"), any supplemental agreements or amendments thereto, or any subconsultant agreement(s) arising from or relating to such Contract, or otherwise arising from or relating to the Miami Seaport Redevelopment Program at the Dante B. Fascell Port of Miami-Dade in Miami-Dade County, Florida (the "Project").

This release is freely and voluntarily executed by Releasor, having been apprised of all relevant information furnished by its attorney and all other information relevant to such a release. The Releasor in executing this release does not rely on any inducements, promises, or representations made by any of the releasees hereof or their attorneys, employees or agents. This release shall be governed by, and shall be construed in accordance with, Florida law, and venue for any action to enforce or construe this release shall lie exclusively in Miami, Florida.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this _____ day of _____, 2007.

WITNESSES:

_____

Print Name:_____

[INSERT FULL NAME OF RELEASOR ENTITY]

By: _____

Print: _____

Title: _____

Date: _____

EXHIBIT A

EXHIBIT "B"

POM REDEVELOPMENT PROGRAM 10/26/2007

Project No.	Project Name	No. of Dwgs	AS-BUILT MARKUPS FROM CONTRACTOR	AS BUILT ELEVATIONS/SURVEY - SURVEYOR SIGNED/SEALED	CERTIFICATE OF FINAL ACCEPTANCE	COMMENTS
12.3	Interim Control Room	47	incomplete resubmittal returned / resubmit	incomplete survey / resubmit	submitted	CM has completed survey and is reviewing drawings. CM is expected to deliver to POM week of 11/26/07. POM to transmit to TTEC thereafter.
17	New Cargo Gate	75	incomplete submittal returned / resubmit	incomplete survey / resubmit	not submitted	CM needs to perform survey and resubmit.
26.2	Demolition of Port Maintenance Facilities	16	submitted	N/A	complete	CM has submitted all requirments to TTEC. TTEC must produce As-builts.
29	Comfort Stations	31	submitted	partial only / resubmit	not submitted	CM has submitted all requirments to TTEC. TTEC must produce As-builts.
33	Security Improvements - (9 sets/packages)		progress partials returned / resubmit	not submitted	not submitted	CM is reviewing drawings and is expected to deliver to POM week of 11/26/07. POM to transmit to TTEC thereafter.
	Administration Building	10				
	Terminals 3,4&5	22				
	Terminals 8&9	12				
	Terminal 12	10				
	Parking Garage Terminal 12	7				
	Parking Garage Terminals 3,4&5	8				
	RCC Rooms	22				
	Site Cameras and Fiber Loop	9				
	Door Access Sensor Systems	39				

ESTIMATED COUNT 308

NOTE: Drawing count is estimated and does not include other contractor/sub generated as-builts and/or markups to show actual installation in the field.