

Memorandum



Date: May 20, 2008

Agenda Item No. 12(A)(1)

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

From: George M. Burgess, County Manager, and R. A. Cuevas, Jr., Miami-Dade County Attorney

Subject: Claims Settlement Agreement with Lemartec Engineering and Construction Corporation and Miami-Dade County, relating to the construction of Miami-Dade Fire Rescue East Kendall Station 13 and Logistics Complex, Project No. DB03-FIRE-04, Contract No. MDFR-EKLOG-01-02.

RECOMMENDATION

It is recommended that the Board approve the attached settlement agreement between Miami-Dade County and Lemartec Engineering and Construction Corporation relating to the construction of Miami-Dade Fire Rescue East Kendall Station 13 and Logistics Complex, Project No. DB03-FIRE-04, Contract No. MDFR-EKLOG-01-02 in the amount of \$1,176,524.17, with a time extension of 214 days, to November 8, 2007.

SCOPE:

FISCAL IMPACT/FUNDING SOURCE:

This settlement is for \$1,176,524.17 and will be funded by Fire Impact Fees, Developer Fees/Donations, 1994 Fire Rescue District Bonds and 2002 Capital Asset Acquisition Bonds.

	<u>Original Contract Values</u>	<u>Previous Adjustments to Values</u>	<u>Current Totals</u>	<u>Total Paid</u>	<u>Current Balance</u>
Base:	\$6,778,084.00	\$0.00	\$6,778,084.00	\$6,659,467.52	\$118,616.48
Contingency:	\$250,000.00	\$0.00	\$250,000.00	\$247,945.27	\$2,054.73
Dedicated:	\$233,202.10	\$0.00	\$233,202.10	\$130,211.37	\$92,990.73
Totals:	\$7,251,286.10	\$0.00	\$7,251,286.10	\$7,037,624.16	\$213,661.94

	<u>Original Contract Duration</u>	<u>Previous Adjustments to Duration</u>	<u>Current Totals</u>
Base Duration:	500	112	612
Contingency:	50	0	50
Total Duration:	550	112	662

TRACK RECORD/MONITOR:

The CIIS contains three (3) contracts with Miami-Dade Fire Rescue (MDFR) with one evaluation filled out for a rating of 2.7 points out of a possible 4 points. The MDFR project manager for this project is Alfonso Ledo.

BACKGROUND:

The East Kendall Fire Rescue Station No. 13 was approved by the voters as part of the 1994 Special Obligations Bond. This bond issue was to provide financing to construct ten fire rescue stations, a new headquarters building and a training facility. Due to land acquisition difficulties, the East Kendall station

is the last of the 1994 Bond issue stations to be completed. After numerous attempts to purchase land a suitable location was not found and MDRF decided to construct the facility at the previous MDRF Headquarters Building, which was within the territory of the planned station. Due to the size of the property, it was decided to locate the new Logistics Division Offices and Supply Warehouse at the same site. A County Site Review Committee memorandum indicated that the site was currently permitted by DERM for fuel storage tanks when in fact it was not, resulting in significant construction and permitting delays. Change Order No.1 granted time only (112 days) and was a result of these permitting delays and additional requirements by the reviewing agencies. As a consequence of these requirements and other unforeseen conditions encountered at the site once construction began, Lemartec Engineering and Construction requested additional funds to cover the increase in costs and additional time to cover delays. After lengthy negotiations, Lemartec filed a lawsuit in December 2006 titled Lemartec Engineering and Construction Corp. v. Miami-Dade County, Case No. 06-27367 CA 30, now pending before the Circuit Court of the 11th Judicial Circuit in and for Miami-Dade County, Florida ("Lawsuit"). In the Lawsuit, Lemartec asserts six counts and seeks additional compensation in connection with the Project. Specifically, in the Lawsuit, Lemartec requests an award of damages in excess of \$1.3 million dollars. The Settlement Agreement settles all the claims asserted in the Lawsuit and also other claims asserted by Lemartec that are not a part of the Lawsuit. In the Settlement Agreement, Lemartec fully releases and waives and any and all claims, disputes and causes of action arising out of or in connection with the Project, the work and the Lawsuit.

Approval of this settlement agreement will increase the construction cost of the 62,000 square foot East Kendall Station 13 & Logistics Complex from \$117 to \$134 per square foot. The total cost of the project, including demolition of the previous MDRF headquarters building, the design criteria professional services agreement, the construction contract and settlement and purchase and installation of office systems furniture and telecommunications infrastructure, is \$9,411,047, or \$152 per square foot.

PROJECT NAME: Miami-Dade Fire Rescue East Kendall Station 13

PROJECT NO.: DB03-FIRE-04

CONTRACT NO.: MDRF-EKLOG-01-02

PROJECT DESCRIPTION:

The work consists of the design and construction of a typical one story fire-rescue station, and an adjacent two story office and warehouse facility for the Miami-Dade Fire Rescue Department, approximately 62,000 square feet, to be constructed on County-owned property.

PROJECT LOCATION: 6000 SW 87 Avenue, Miami, Florida.

APPROVAL PATH: Board of County Commissioners

USING DEPARTMENT: Miami Dade Fire Rescue

MANAGING DEPARTMENT: Miami Dade Fire Rescue

PRIME CONTRACTOR: Lemartec Engineering and Construction Corporation

COMPANY PRINCIPAL(S): Jose J. Garcia-Tuñon

COMPANY QUALIFIER(S): Jose J. Garcia-Tuñon

COMPANY EMAIL ADDRESS: ggtunon@lemartec.com
COMPANY STREET ADDRESS: 4800 SW 74 Court, Miami, FL 33155
COMPANY CITY- STATE- ZIP: Miami, Florida 33155
YEARS IN BUSINESS: 24
PREVIOUS CONTRACTS WITH COUNTY IN THE PAST 5 YEARS: 3- totaling \$ 10,772,415.75
CSBE CONTRACT MEASURES: 29%
CSBE ACHIEVED: Goal Met
SUBCONTRACTORS AND SUPPLIERS (SECTION 10-34 MIAMI DADE COUNTY CODE: Solares Electric


Assistant County Manager



MEMORANDUM

(Revised)

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

DATE: May 20, 2008

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

SUBJECT: Agenda Item No. 12(A)(1)

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

Agenda Item No. 12(A)(1)
5-20-08

Veto _____

Override _____

RESOLUTION NO. _____

RESOLUTION APPROVING THE SETTLEMENT AGREEMENT OF THE LAWSUIT BETWEEN LEMARTEC ENGINEERING AND CONSTRUCTION CORPORATION AND MIAMI-DADE COUNTY, CIRCUIT COURT CASE NO. 06-27367 CA 30, IN THE AMOUNT OF \$1,176,524.17 RELATING TO THE CONSTRUCTION OF MIAMI-DADE FIRE RESCUE EAST KENDAL STATION 13 PROJECT NO. DB03-FIRE-04, CONTRACT NO: MDFR-EKLOG-01-02; AUTHORIZING THE MAYOR OR DESIGNEE TO EXECUTE THE SETTLEMENT AGREEMENT AND ALL OTHER DOCUMENTS NECESSARY TO IMPLEMENT THE AGREEMENT

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 attached Settlement Agreement ("the Agreement") in the amount of \$1,176,524.17, between Lemartec Engineering and Construction Corporation and Miami-Dade County, Circuit Court Case No. 06-27367 CA 30, relating to the construction of Miami-Dade Fire Rescue East Kendall Station 13, Project No. DB03-FIRE-04, Contract No. MDFR-EKLOG-01-02, in substantially the form attached hereto and incorporated herein; authorizes the County Mayor or designee to execute the Agreement in substantially the form attached hereto, and to execute all other documents necessary to implement the Agreement, subject to approval of the County Attorney as to legal sufficiency.

5

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 20th day of May, 2008. 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.

D.F.

Daniel Frastai



Lemartec

engineering & construction corporation

Main Office

4800 SW 74 Court
Miami, FL 33155

Tel 305-661-9393
Fax 305-663-9207

Palm Beach Office

Please Contact
Main Office

e-mail

mail@lemartec.com

Website

www.lemartec.com



April 28, 2008

Ms. Cheryl Hernandez
MDFR HQ
9300 NW 41st Street
Room #237
Miami, FL 33178

Subject: MDFR #13 Claim
Our Ref: 04125C

Dear Ms. Hernandez:

Enclosed please find five executed originals of Stipulation and Agreement for Final Settlement, Release, Indemnity and Waiver of Claims between Miami-Dade County and Lemartec Engineering and Construction Corp.

Sincerely,

**LEMARTEC ENGINEERING AND
CONSTRUCTION CORPORATION**

Guillermo García-Tuñón, Jr., P.E.
President

GGT/igt

cc: David L. Swimmer, Esquire

RECEIVED
APR 28 2008

FIRE RESCUE DEPARTMENT
FACILITIES & CONSTRUCTION DIVISION
HEADQUARTERS BLDG.

IN THE CIRCUIT COURT OF THE 11TH
JUDICIAL CIRCUIT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

CASE NO.: 06-27367 CA 30

GENERAL JURISDICTION DIVISION

LEMARTEC ENGINEERING AND
CONSTRUCTION CORPORATION
a Florida Corporation,

Plaintiff,

v.

MIAMI-DADE COUNTY, a political
subdivision of the State of Florida,

Defendant.

**STIPULATION AND AGREEMENT FOR FINAL SETTLEMENT, RELEASE,
INDEMNITY AND WAIVER OF CLAIMS BETWEEN MIAMI- DADE COUNTY
AND LEMARTEC ENGINEERING AND CONSTRUCTION CORP.**

This Settlement Agreement (“Agreement”) is entered into this ___ day of _____, 2008 between Miami-Dade County, a political subdivision of the State of Florida (“County”) and Lemartec Engineering and Construction Corporation, (“Contractor”) as follows:

Whereas, County and Contractor entered into a Design-Build Agreement for the design and construction of the East Kendall Fire Rescue Station No. 13 – Logistical Division Facility (“Project” or “Contract”); and

Whereas, Contractor filed a lawsuit entitled Lemartec Engineering and Construction Corp. v. Miami-Dade County, Case No. 06-27367 CA 30, now pending before the Circuit Court of the 11th Judicial Circuit in and for Miami-Dade County, Florida (“Lawsuit”) seeking additional compensation in connection with the Project; and

Whereas, County and Contractor have determined to settle all disputes arising out of the Project and claims in the Lawsuit to date pursuant to the terms of this Agreement; and

The parties agree, subject to the approval of the Board of County Commissioners and the County Mayor or designee as follows:

1. County will pay Contractor:
 - a. \$601,064.00 for alleged price escalations and insurance renewal costs.
 - b. \$140,401.00 for additional changes required by the Department of Environmental Resources Management.
 - c. \$210,183.00 for additional interior modifications, electrical work and site work due to unsuitable soil conditions.
 - d. \$54,919.00 for changes required by FDOT for reconstruction at the front apron of the facility.
 - e. \$31,188.20 for additional Builder's Risk insurance needed through April 24, 2008.
 - f. \$118,319.93 for Payment Requisition No. 15.
 - g. \$20,449.04 for reimbursable expenses.

For a total amount sum of \$1,176,524.17.

2. Contractor agrees to accept the payments listed in Paragraph 1 above as full accord and satisfaction of all monies currently due it under or in connection with the Contract, the Project, the Lawsuit and the work performed on the Project, including but not limited to work performed by the Contractor, by its Surety, and by their subcontractors, materialmen and suppliers, and in full accord and satisfaction of all claims asserted in the Lawsuit.

3. As a condition of payment, Contractor shall furnish to Miami-Dade Fire Rescue Department ("MDFR") conditional releases or consents of surety from all subcontractors and suppliers involved in the Project. There will be no assessment of liquidated damages.

4. In consideration of the payments listed in Paragraph 1 above, Contractor releases County, and its officers, employees and agents, from and waives and relinquishes any and all claims, disputes or causes of action it has or may have, whether known or unknown, against County, and their officers, employees and agents arising out of or in connection with the Contract and the Project or the work performed under the Contract and the Project, including, but not limited to, any and all claims asserted in or relating to the Lawsuit in connection with the Project and any and all claims that could have been asserted in connection with the Contract and the Project, whether known or unknown. Contractor will indemnify County, its officers, employees, and agents, from

any claims from its subcontractors and suppliers in connection with the Contract and the Project.

5. County accepts the work currently in place. The warranty provisions for this accepted work began to run as of the time that MDFR obtained its temporary certificate of occupancy. County waives all claims against Contractor for work performed to date, except that County expressly reserves all rights:

- a. to require the repair or replacement of defective work under the warranty and guaranty provisions of the Contract Documents;
- b. to require the repair or replacement of latent defects in the work to the extent provided by Florida law;
- c. to enforce any provisions of the Contract between County and Contractor which specifically provide that they survive the completion of the work;
- d. to enforce the terms of the Payment Bond against Surety of the Project in the event that timely claims may be made by any covered third parties; and
- e. to enforce any and all provisions of this Agreement.

6. The County shall make the payment set forth in Paragraph 1 within ten (10) days of the date that this Agreement becomes effective. This Agreement becomes effective upon approval of the Board of County Commissioners of Miami-Dade County, Florida and the expiration of the requisite veto period. Within ten (10) days of receipt of the payments described in Paragraph 1 above, Lemartec will file a voluntary dismissal with prejudice of all of its claims against the County in the Lawsuit. Each party to this Agreement will bear its own costs and attorneys' fees in connection with the Lawsuit. The Court will retain jurisdiction to enforce the terms of this Agreement.

7. The County will use reasonable efforts to place this item on the next available Board of County Commissioners meeting for approval.

8. The parties acknowledge that they have read this Agreement, understand it, and have consulted with their respective attorneys before executing this document.

9. The parties accept the terms of this Agreement, and have agreed to its terms solely for their own convenience, without admitting liability.

10. This Agreement may be executed in any number of separate counterparts, each of which shall together be deemed an original, but the several counterparts shall together constitute but one and the same Agreement.

11. The parties acknowledge that there has been no influence to enter into this Agreement in any manner, nor has any party relied upon any verbal warranties or representations not set forth in this Agreement. This Agreement constitutes the sole and entire agreement between the Parties and no modification hereof shall be binding unless attached hereto and signed by all parties to this Agreement. All prior and contemporaneous conversation, negotiations, possible and alleged agreements, representations, covenants and warranties concerning the subject matter hereof are merged herein.

12. In the event that the parties are required to litigate in order to enforce the terms of this Agreement, the prevailing party shall be entitled to recover reasonable attorney's fees and costs.

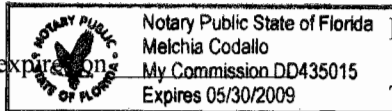
EXECUTION

IN WITNESS WHEREOF, the Parties hereto have executed and sealed this Agreement on the date stated above.

LEMARTEC ENGINEERING AND CONSTRUCTION CORPORATION
a Florida corporation,

Sworn to and subscribed before me
this 28 day of April, 2008.

Melchia Codallo
Notary Public



My Commission expires on _____

[Handwritten Signature]

By: GUILBERMO GARCIA-TUNON
Title: PRESIDENT

MIAMI-DADE COUNTY, FLORIDA,
a political subdivision of the State of

Florida,
Sworn to and subscribed before me
this ___ day of _____, 2008.

Notary Public
My Commission expires on _____

By: County Mayor or designee