

Memorandum



Date: November 10, 2008

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

From: George M. Burgess
County Manager

Subject: Resolution Approving Change Order No. 1, Change Order No. 2 and
Settlement Agreement between Miami-Dade County and The De Moya
Group, Inc.

GOE
Substitute to
Agenda Item No.
2(GG)

This substitute differs from the original in that it changes the terms of the assignment of the County's claim to De Moya regarding the Construction Engineering Inspection Consultant, Bolton Perez and Associates (BPA). Through this substitute, if De Moya receives any monetary proceeds from that assigned action, after deduction of all expenses, court costs and attorneys' fees incurred by them, De Moya shall retain fifty percent (50%) of such proceeds and pay over to the County the other fifty percent (50%).

Recommendation

It is recommended that the Board of County Commissioners (BCC) approve the attached resolution authorizing Change Order No. 1, Change Order No. 2 and the Settlement Agreement between Miami-Dade County (County), and The De Moya Group, Inc. (De Moya) concerning the NW 97 Avenue over SR 836 from Fontainebleau Boulevard to North of NW 13 Street Project ("Project") and authorizing the County Mayor to execute said Change Orders and Agreement. Change Order Nos. 1 and 2 were necessary due to additional work requested by the County, and the Settlement Agreement is as a result of litigation regarding the Project.

Scope

This project is located within Commission Districts 10 and 12.

Fiscal Impact/Funding Source

The Fiscal Impact to the County will be as follows: Change Order No. 1 for additional work requested by the County in order to facilitate access and traffic circulation into the surrounding neighborhood, which was under development during the time of the bridge construction. This work in the amount of \$717,152.04 has been paid by the developer, Shoma Development Corporation (Shoma). Change Order No. 2 is for additional work requested by the County in response to concerns from the adjacent area car dealerships to provide better truck traffic circulation and access in the area. This work in the amount of \$538,186.95 is being funded from Road Impact Fees. Settlement Agreement includes the cost for the replacement of beams which partially collapsed during Hurricane Katrina's landfall on August 25, 2005. This settlement in the amount of \$897,012.31 will be paid from the contract contingency allowance. Work performed in the amount of \$229,019.90 for contract items overruns, underruns and contingency owed to the contractor is also included, and falls within funds currently allowed under the original contract ceiling, as amended by the subject change orders, for a final payment of \$2,381,371.20, inclusive of all changes and the settlement.

Background

The scope of the work for MIAMI-DADE COUNTY Project No. 671128, NW 97 Avenue over State Road 836 from Fontainebleau Boulevard to North of NW 13 Street consisted of the

construction of a four (4) lane bridge and approaches over State Road 836 which included a raised median, concrete curb and gutters, sidewalks, new pavement and associated markings, signage, signalization, pedestrian/bicycle overpass, drainage, and roadway lighting. The contract amount was awarded at \$15,815,362.36 with a contract time period of 600 calendar days. The prime contractor, De Moya, was issued the Notice to Proceed on June 1, 2004 with a schedule completion date of January 21, 2006.

Change Order No. 1

The Public Works Department (PWD) requested De Moya to construct additional improvements within the project limits which entailed providing signalized access at the NW 900 block of Fontainebleau Boulevard. Shoma, during the construction of the bridge, was in the process of developing a 1890 unit residential community near the Project known as "Fontainebleau East & West" and was required to connect two (2) access roads (east and west) to the 97 Avenue Bridge. A determination was made that the most efficient and effective method to accomplish this work was to modify the existing contract between the County and De Moya. Therefore, on June 7, 2005, the BCC authorized the County to amend its contract with De Moya to permit De Moya to build the roadway connection, and further authorized the County Manager to execute a Non-Binding Memorandum of Understanding with Shoma to reimburse the County for the costs associated with the work.

The additional work has been included in Change Order No. 1 for a cost of \$717,152.04 and additional contract time of 190 calendar days. See attached Change Order No. 1.

Change Order No. 2

In response to adjacent area car dealerships, PWD instructed De Moya to provide additional signalized intersection improvements at NW 12 Street and NW 97 Avenue and to construct a U-Turnaround under the bridge. The purpose of the U-Turnaround work was to provide better access the adjacent businesses and better circulation for heavy trucks traveling from NW 97 Avenue to NW 12 Street.

All costs associated with these improvements are included in Change Order No. 2. The total amount of Change Order No. 2 is \$538,186.95 and the total of additional contract time is 353 calendar days. See attached Change Order 2.

Settlement Agreement

On August 25, 2005, Hurricane Katrina's landfall as a category 1 hurricane produced widespread wind and water damage throughout Miami-Dade County. The NW 97 Avenue overpass above SR 836 under construction at the time suffered a partial collapse of the beams. Those structural members (16 beams) over the SR 836 eastbound lanes fell onto the roadway surface, while a second set of beams (16 beams), on the northern side of the overpass, fell upon the swale area and did not impact the westbound lanes of traffic. The remaining spans, including those over the westbound lanes, remained in place. In accordance with County directives, the contractor immediately mobilized crews and began debris removal efforts, provided two phases of temporary bracing and re-purchased and re-installed the bridge beams as per the contract specifications.

On December 1, 2005, De Moya filed a lawsuit for breach of contract and professional negligence against the County and the County's Consultant, Network Engineering Services, Inc., d/b/a Bolton, Perez and Associates (BPA) in Case No. 05-23507 CA 15 in the Circuit Court of the 11th Judicial Circuit in and for Miami-Dade County, Florida. The damages claimed by De Moya due to this event and the actions of the County and its consultant were quantified by De Moya at a cost of \$2,134,404.08 million dollars, plus interest and five (5)



months construction work delay. Subsequently, the County filed a counterclaim against De Moya and a crossclaim against BPA.

The issues in litigation involve the proper interpretation of the contract documents and the applicable standards for placement, temporary bracing, and permanent installation of the beams in light of the events which occurred in this project and the passage of a hurricane. De Moya contends that the force majeure event of the contract should govern the event. The County contends that the contractor did not perform in accordance with the contract requirements in not completing the permanent installation earlier and that the temporary bracing was inadequate. De Moya challenges these facts. Expert opinions conflict with respect to the adequacy of De Moya's performance regarding bracing of the beams. A summary of the operative facts and the litigation history of the case is attached as Exhibit A.

The parties have worked out a settlement agreement that is being recommended for your approval. In essence it involves payment to De Moya of \$897,012.31 which represents a significant reduction of its overall claim. The Contractor is assuming the costs for the debris removal of the beams that collapsed, the labor and equipment for the replacement beam installation, the installation of the steel temporary bracing, all the repairs to the existing structure that were damaged, and the additional maintenance of traffic for these activities. The reduced amount allows the County to pay the claim from the Project contingency, therefore allowing the Project, as amended by the other change orders set forth in this item, to be performed within allowed funds.

As noted above, this item also includes a final payment for work performed in the amount of \$229,019.90 for contract items overruns, underruns and contingency owed to the contractor. This amount also falls within funds currently allowed under the original contract ceiling, as amended by the subject change orders. The Settlement Agreement also assigns the County's rights to De Moya of any and all claims it has against BPA with the following condition. If De Moya receives any monetary proceeds from that assigned action, after deduction of all expenses, court costs and attorneys' fees incurred by them, De Moya shall retain fifty percent (50%) of such proceeds and pay over to the County the other fifty percent (50%).

Given the anticipated costs of this item and the uncertain outcome of the issues in dispute, the settlement is recommended for your approval. A copy of the Settlement Agreement is attached. The Settlement Agreement is also subject to the approval by the BCC of the award of Contract No. 20070575 Project NW 74 Street from NW 107 Avenue to NW 84 Avenue to De Moya (De Moya is the low bidder on the aforementioned project in the amount of \$24,060,890.52), which was tabled at the July 9, 2008, Transit Committee meeting and is now being resubmitted for that Committee's consideration. De Moya has performed at a Satisfactory level on two resurfacing projects awarded in 2007 after the NW 97th Avenue Overpass Project.

Based on the foregoing, approval of the change orders and settlement are recommended as being in the best interest of the County.


Assistant County Manager



MEMORANDUM

(Revised)

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

DATE: December 2, 2008

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

SUBJECT: Agenda Item No.

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.

Veto _____

Override _____

RESOLUTION NO. _____

RESOLUTION APPROVING CHANGE ORDER NO. 1, CHANGE ORDER NO. 2 AND A SETTLEMENT AGREEMENT, IN THE TOTAL AMOUNT OF \$2,381,371.20, BETWEEN THE DE MOYA GROUP, INC. AND MIAMI-DADE COUNTY CONCERNING THE NW 97 AVENUE BRIDGE PROJECT AND AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE SAID CHANGE ORDERS AND SETTLEMENT AGREEMENT SUBJECT TO THE AWARD OF CONTRACT NO. 20070575 TO THE DE MOYA GROUP

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:

Section 1. Approves Change Order No. 1 and Change Order No. 2 for Contract No. 671128 in substantially the form attached hereto and made a part hereof and authorizes the County Mayor or County Mayor's designee to execute such change orders.

Section 2. Approves the Settlement Agreement of the pending litigation between Miami-Dade County and The De Moya Group, Inc., (De Moya) in substantially the form attached hereto and made a part hereof, and authorizes the County Mayor or County Mayor's designee to execute same for and on behalf of Miami-Dade County.

Section 3. The Approval of the above Change Orders and Settlement Agreement, in the total amount of \$2,381,371.20, is subject to the approval and effectiveness of Contract No. 20070575 to De Moya.

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 2nd day of December, 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.



Henry N. Gillman

Exhibit A

De Moya v. Miami-Dade County and Bolton, Perez & Associates
Case No. 05-23507 CA 15

General Chronology of Contract

January 2004 - De Moya was awarded a Public Works Contract for construction of work on NW 97th Avenue from South of Fontainebleau Boulevard to North of NW 13th Street for \$15.8 million.

De Moya was responsible for constructing a four-lane bridge across State Road 836, raised median, concrete curb and gutters, sidewalk, pavement, pedestrian/bicycle overpass, drainage, pavement markings, signage, signalization, and roadway lighting.

Construction began in 2004 (contract time was 600 days).

April 2004 - Preconstruction Conference – shop drawing list and schedule does not include shop drawings for temporary bracing.

February 21, 2005 - De Moya set all beams of Spans 5 and 6

March 30, 2005, Bolton, Perez & Associates (BPA), County's Consultant for Construction Engineering and Inspection Services, sent a letter to De Moya advising that they are 45 days behind schedule –“There has been little or no effort on this Project by the De Moya Group or any subcontractors since March 18, 2005”. The letter also reminded De Moya of contract requirements to have sufficient equipment, forces and material to prosecute work under required schedule.

May 26, 2005 letter to County from De Moya complaining that there were delays to Traffic Control Plan (TCP) and that De Moya would follow TCP in erecting beams. He identified May 22 as begin date for beams

June 1, 2005 letter to De Moya from BPA - Schedule of erection was given on May 5, 2005 which was not 6 weeks notice of a work activity per contract plans. BPA says De Moya is responsible for any delays and denied request for time extension and costs.

June 6, 2005 – De Moya set all 16 beams of Span 4 over westbound 836.

June 13, 2005 - De Moya set all 16 beams of Span 3 over eastbound 836.

June 17, 2005 – De Moya starts building diaphragms.

June 28, 2005 letter to De Moya from BPA- concerned about commitment to project – resources and manpower.

July 2005 – County agreed to extend contract time for additional scope of work, including new signalized intersections (U-turns) and procurement of signalization material and coordination of plans.

July 19, 2005 – Luis Baldo (PWD Project Manager) was concerned with wood bracing and spoke with Richard Kinkead of EAC (Designer of Record).

July 20, 2005 letter to De Moya from BPA – concerned that De Moya stopped building diaphragms at end of June. Asked De Moya to verify that erected beams are adequately braced.

Aug 5, 2005 meeting - De Moya said beams are adequately braced and that they will resume diaphragm construction following week.

August 16-18, 2005 - Emails from Otto Rojas to Luis Baldo - saw beams – no improvement on construction of diaphragms; beams could be potential hazard in case of a hurricane – expedite diaphragm construction.

August 25 - Hurricane Katrina (Cat I Hurricane) - 32 beams (16 for Span 3 over Eastbound SR 836 and 16 for Span 6 over north swale) collapsed - Beams for Spans 1,2,4 and 5 did not collapse.

Post-Katrina Reports on failure of bridge girders at Spans 3 and 6

BPA - Beams laterally braced at each end with 2x6 timber; some nails were bent; found pieces of reinforcing bars had sheared off the face of beams; Opinion is that failure was caused by wind loads overturning the girders- wind loosened the bracing and beams overturned onto each other and collapsed.

EAC Consulting (Richard Kinkead, P.E.) - 2x6 boards became displaced during the hurricane which rendered the beams without bracing; one end beam was overturned and impacted the adjacent beam creating a “domino effect” that led to falling of all beams.

FDOT (William Nickas, P.E.) - photos show only horizontal top flange bracing on the girders still in place which is inadequate to resist strong lateral loads created by wind. FDOT Specs (2000) 450-2.10 requires contractor to “adequately brace members to resist wind forces and weight of forms and other temporary loads, especially those eccentric to the vertical axis of the members, during all stages of erection.” FDOT Spec 5-1.4.5.6 Falsework and Shoring – for construction affecting public safety, submit to engineer of record shop drawings and applicable calculations signed and sealed by specialty engineer; Spec 5-1.4.5.7 – Formwork and Scaffolding – contractor is solely responsible for the safe installation and use of all formwork and scaffolding.

MDC - based on recommendations of consultants, directed De Moya to brace spans over expressway for hurricane force winds.

The Florida Transportation Builders' Association (FTBA) response - a clear standard for temporary bracing and wind loads is missing in FDOT specs. The FTBA opined that that the bracing by De Moya met the required standard of care and conformed to standard industry practice.

De Moya Lawsuit - filed complaint on December 1, 2005 against County and BPA; County filed Counterclaim against de Moya and Crossclaim against BPA. The parties have engaged in pre-trial discovery, including the exchange of voluminous amounts of documents and have filed various motions. No trial date is scheduled.

Issues - The main issue in this case involves De Moya's bracing of horizontal beams prior to Hurricane Katrina. There appears to be a consensus of the experts that the Hurricane's winds caused the bracing to overturn and the beams to collapse. The dispute centers on the interpretation and application of the contract and FDOT specifications which are incorporated into the contract. De Moya's general position - there was no requirement to submit shop drawings for hurricane force bracing and BPA, County's consultant for construction and engineering inspection, never requested any shop drawings; bracing met industry standards; bridge construction was ahead of schedule as of the date of the Hurricane; force majeure event caused the collapse and contractor is not responsible for extensive or catastrophic damage caused by the elements. County's position - FDOT specifications which are incorporated into the contract require shop drawings for construction affecting public safety; De Moya's bracing with wood timber was inadequate and collapse was a result of De Moya's failure to maintain the schedule which required that concrete diaphragms be poured around the beams prior to Hurricane season.

This case involves various questions of fact and expert opinions including, but not limited to: Whether the contract plans and specifications required shop drawings for temporary bracing and how the specifications were interpreted and applied by the parties? Whether the County or BPA had a duty to direct De Moya to install certain bracing for hurricane force winds? Whether the County or BPA's actions resulted in De Moya's failure to pour concrete diaphragms prior to Hurricane season; whether the failure of beams was due to Hurricane Katrina or inadequate bracing and whether De Moya is entitled to reimbursement for costs related to cleanup, additional bracing and repairs?

SETTLEMENT AGREEMENT BETWEEN
THE DE MOYA GROUP, INC.
AND
MIAMI-DADE COUNTY

This Settlement Agreement is entered into on this _____ day of _____, 2008, by and between Miami-Dade County (“the County”) and The de Moya Group, Inc. (“de Moya”).

WHEREAS, the County and de Moya are party to a contract known as NW 97 Avenue from Fountainbleau to NW 13 Street Miami-Dade County Public Works Project No. 671128 ("the Contract"); and

WHEREAS, the contract required de Moya to construct a four-lane bridge and approaches, at or near the area located at NW 97 Avenue over State Road 836 from Fountainbleau Boulevard to north of NW 13 Street (the “Project”) as more fully delineated in the plans and specifications; and

WHEREAS, de Moya contends, among other things, that it incurred additional costs due to actions and inactions of the County and its agents relating to Hurricane Katrina (“Katrina Claim”); and

WHEREAS, de Moya filed a lawsuit against the County and the County’s Consultant, BPA, styled The de Moya Group, Inc. v. Miami-Dade County and Network Engineering Services, Inc. d/b/a Bolton, Perez and Associates, Case No. 05-23507 CA 15 in the Circuit Court of the 11th Judicial Circuit in and for Miami-Dade County, Florida, to recover on the Katrina Claim (the “Lawsuit”); and

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WHEREAS, the County filed a counterclaim against de Moya and a crossclaim against Network Engineering Services, Inc., d/b/a Bolton, Perez and Associates (“BPA”); and

WHEREAS, the County and de Moya have agreed to amicably resolve any and all alleged County liability to de Moya in the Lawsuit, as well as the County’s claims of de Moya’s liability to the County, including all claims and matters between the County and de Moya arising out, or relating to the Project, the de Moya Claims, and the de Moya Complaint and the County’s Counterclaim as asserted in the Lawsuit, by the payment of the amount set forth below, which includes the change orders attached hereto as Exhibit “A”, and also allowing de Moya to pursue the County’s Katrina claims against BPA.

NOW THEREFORE, in consideration of the foregoing representations and the mutual covenants, promises, considerations and agreements set forth below, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, and with the intent to be legally bound de Moya and the County agree as follows:

1. Representations: The foregoing representations are true and correct and are incorporated as necessary and substantive provisions of this Settlement Agreement, and also by this reference thereto, the Contract between de Moya and the County, are incorporated herein and made a part hereof.

2. 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, as-builts, atlases and contractor affidavits, the County shall pay to de Moya the amount of \$2,381,371.20; payment of said amount to be final payment for the work relating to the Contract which

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includes Change Orders No. 1 and 2, a copy of which are attached hereto as Exhibit "A" and includes the payment of \$897,012.31 in payment for the Katrina Claim. The Parties to this Settlement Agreement shall each bear their own respective attorneys' fees and costs expended relating to the Lawsuit and this Settlement Agreement.

3. Payment of said sum of \$2,381,371.20 shall constitute full satisfaction of any and all claims against the County of which de Moya 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 Lawsuit, the Contract or the Project, including both direct, indirect and pass-through claims, damages, actions and causes of action.

4. This Settlement Agreement does not constitute an admission by any party of any wrongdoing or liability of any kind.

5. In consideration of the mutual covenants contained in this Settlement Agreement, de Moya hereby releases, discharges and acquits the County and its officials, and employees from any and all claims, direct or indirect, arising out of or related to the Project, the Lawsuit or the Contract of which de Moya or any of its subcontractors or material suppliers had knowledge or reasonably should have had knowledge, in connection with any of the work performed or damages or costs incurred during the period of construction. The County and de Moya expressly agree that this Settlement Agreement does not release or discharge de Moya's Katrina Claim against BPA and the County's Katrina Claim against BPA.

6. The County hereby releases, discharges, and acquits de Moya, its officers, directors, employees, agents, successors and assigns, its subcontractors and material

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suppliers from any and all liquidated damages and any and all other damages or costs arising out of or related to delays and expenses in connection with the Contract and the Lawsuit, except that the County does not waive any claims it may have against de Moya as a result of latent defects in the work. The County sells, assigns, transfers and sets over unto de Moya all rights, title, interest in and to actions, causes, causes of action, suits, debts, dues, sums of money, and accounts whatsoever in law or in equity, from the beginning of the world to the date hereof regarding any and all claims the County has or may have against BPA relating to or in connection with the Katrina Claim to de Moya. The County shall cooperate with de Moya relating to this assignment and de Moya's litigation with BPA to the extent required by law. If in de Moya's pursuit of the assigned action against BPA (as assignee of the County) de Moya receives any monetary proceeds from that assigned action, and after deduction of all expenses, costs, court costs and attorneys fees incurred by de Moya through the date of that receipt (the "net proceeds"), de Moya shall retain fifty percent of such net proceeds and pay over to the County the other fifty percent of the net proceeds.

7. de Moya hereby expressly agrees to defend, hold harmless, and indemnify the County and its officials, employees, agents and representatives, from any and all claims, direct or indirect, arising out of or related to the construction, of which de Moya or any of its subcontractors or material suppliers had knowledge or reasonably should have had knowledge, in connection with any of the work performed or damages or costs incurred during the construction. de Moya 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

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shall pay all costs, judgments, and attorney's fees which may issue thereon. This indemnification includes any claims of BPA, its successors and assigns

8. Severability: The County and de Moya acknowledge and agree that if *any part, term or provision* of this Settlement Agreement is determined by the courts to be invalid, illegal or in conflict *with any* law of the State, the validity of the remaining portions or provisions shall not be affected thereby.

9. Merger: This Settlement Agreement is complete and contains the full understanding of de Moya and the County. This Settlement Agreement may not be modified without the express written consent of de Moya and the County. This Settlement Agreement supersedes all other terms, provisions, or understandings of any prior documentation or agreement as may exist between de Moya and the County.

10. Applicable Law: This Settlement Agreement shall be interpreted under Florida law. The Court in the Lawsuit retains jurisdiction to enforce the terms of this Settlement Agreement.

11. Approval: 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 Settlement Agreement becomes effective eleven (11) days after approval by the Miami-Dade County Board of County Commissioners, unless vetoed by the County Mayor. In the event the County Mayor vetoes the Board of County Commissioner's action, the Board of County Commissioner's action shall not be effective in the absence of an override of the County Mayor's veto at the next regularly scheduled meeting of the Board of County Commissioners after the veto occurs. The

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actions of the Board of County Commissioners and the County Mayor in connection with the approval or rejection of this Settlement Agreement rests within their sole discretion.

12. Other Conditions: This Settlement Agreement is also subject to the effectiveness on or before December 31, 2008 of the County's Contract execution of Contract No. 20070575 with the de Moya Group as well as the County's payment to de Moya of the amount specified in the Settlement Agreement. The failure to meet these conditions subsequent shall render this Settlement Agreement null and void unless de Moya provides an extension of time for these conditions subsequent to becoming effective.

13. de Moya shall file a notice of dismissal with prejudice dismissing the County, only, and not BPA from the action on the complaint against the County in Case No. 05-23507 CA 15 within five days of the County's execution of Contract No. 20070575 with de Moya as well as the County's payment to de Moya of the amount specified in this Settlement Agreement.

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

Witnesses:

THE DE MOYA GROUP, INC.

Kimberly Jack
[Signature]

By: [Signature]

Print Name: Armando deMoya

Title: 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:

[Signature]
Assistant County Attorney

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[Signature]