Memorandum

MIAMI-DADE COUNTY

Date: June 30, 2009

Agenda Item No. 12(A)(3)

To: Honorable Chairman Dennis C. Moss
and Members, Board of County Commissioners

From: George M. Burgess
County Manager

R. A. Cuevas, Jr.
County Attorney

Subject: Mediation Settlement Agreement in Lieu of Litigation between Miami-Dade County and Perez-Gurri Corp. (d/b/a N & J Construction)

Recommendation

Miami-Dade County Park and Recreation Department (MDPR) recommends the attached Mediation Settlement Agreement (Agreement) in lieu of litigation between Miami-Dade County and Perez-Gurri Corp. (d/b/a N & J Construction).

Scope

This item authorizes the Agreement entered into on May 22, 2009 by both parties resolving all matters associated with the termination of N & J Construction by Miami-Dade County on the Crandon Park – Eco Adventures Office Renovation project (Contract No. CICC 7040-0/07 - Project No. 422801-02-013).

Fiscal Impact/Funding Source

The fiscal impact associated with the recommended approval of the Agreement is $65,000.

Track Record/Monitor

The firm has received four performance evaluations with an average rating of 3.5 out of 4.0.

Background

N & J Construction was awarded the Crandon Park – Eco Adventures Office Renovation construction contract on September 11, 2006. The total value of the awarded contract was $407,500 and was to be completed in 120 days. Soon after construction began, N & J Construction notified MDPR that the drawings and plans provided by MDPR differed from the actual on-site conditions. These unforeseen issues delayed the contractor and impacted his ability to perform. N & J Construction timely submitted a number of Requests for Information regarding these inconsistencies; however, MDPR was not able to provide timely responses to the all the issues, and, as a result, work on the project could not continue.

While the design inconsistencies were being resolved, the parties also began negotiations for additional work needed to complete the contract; however, the parties could not agree on the costs associated with this additional work. MDPR terminated the contract for convenience on October 9, 2007 (253 days after the start date and 393 days after the Contract was awarded). MDPR attempted to negotiate the amounts owed to N & J Construction. N & J Construction submitted a

claim that it was owed approximately $23,000 for work it had completed but had not been paid for at the time of the Termination. Further, because of the delay between the expiration of the Stop Work Order and the Termination for Convenience, the County faced costs associated with the mobilization and demobilization of N & J Construction's workforce for those 113 days. Negotiations were unsuccessful and N & J Construction filed suit in the 11th Judicial Circuit of the Miami-Dade Circuit Court in December 2007 seeking $121,000.

The conditions contained in the Agreement were accepted during pre-trial mediation on May 22, 2009 by both parties and settles all matters arising out of the suit. The settlement amount will be paid to N & J Construction for work performed and as final settlement of all claims upon receipt and exchange of mutual releases relating to the Crandon Park – Eco Adventures Office Renovation project and the suit.

In December, 2008 after re-design efforts were resolved and re-permitted, a new construction contract was awarded to another firm. The renovation work is currently proceeding on schedule and is anticipated to be completed in August, 2009.

Attachment

Alex Muñoz,
Assistant County Manager

MEMORANDUM
(Revised)

TO: Honorable Chairman Dennis C. Moss and Members, Board of County Commissioners

DATE: June 30, 2009

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

SUBJECT: Agenda Item No. 12(A)(3)

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 Mayor'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. 12(A)(3)
6-30-09

RESOLUTION NO. _____

RESOLUTION AUTHORIZING EXECUTION OF A MEDIATION SETTLEMENT AGREEMENT IN LIEU OF LITIGATION BETWEEN PEREZ-GURRI CORP (D/B/A N & J CONSTRUCTION) AND MIAMI-DADE COUNTY IN THE AMOUNT OF $65,000.00; AND AUTHORIZING THE MIAMI-DADE COUNTY MAYOR OR HIS DESIGNEE TO EXECUTE THE AGREEMENT AND ANY AND ALL OTHER 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 hereby approves the Mediation Settlement Agreement between Perez-Gurri (d/b/a N & J Construction) and Miami-Dade County in the amount of $65,000.00, in substantially the form attached hereto on behalf of Miami-Dade County; and authorizes the County Mayor to execute the Agreement and any and 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:

Dennis C. Moss, Chairman
Jose "Pepe" Diaz, Vice-Chairman

Bruno A. Barreiro	Audrey M. Edmonson
Carlos A. Gimenez	Sally A. Heyman
Barbara J. Jordan	Joe A. Martinez
Dorrin D. Rolle	Natacha Seijas
Katy Sorenson	Rebeca Sosa
Sen. Javier D. Souto	

The Chairperson thereupon declared the resolution duly passed and adopted this 30th day of June, 2009. 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.

Michael B. Nadler

MEDIATION SETTLEMENT AGREEMENT

PEREZ-GURRI CORP D/B/A N & J CONSTRUCTION

VS.

MIAMI DADE COUNTY

COURT CASE #: 07-43488 CA 08

CIRCUIT: 11TH COUNTY: DADE

FEDERAL DISTRICT: _____

The parties and/or their respective counsel and/or representative hereby stipulate and agree that all matters arising out of the above matter, including any subrogation claims, are hereby resolved as follows:

Defendant (X) shall pay to the Plaintiff(s) the amount of $ 65,000.00/00 Each party shall bear their respective attorney fees and costs. All other matters discussed at the mediation shall remain privileged and confidential, unless otherwise agreed by all parties. The court shall retain Jurisdiction to enforce the terms of the SETTLEMENT AGREEMENT.

Additional terms: The parties shall exchange mutual limited releases (relating to the Crandon Adventure project and the above captioned litigation). The court shall expedite payment subject to Court Commission approval. Upon receipt of the settlement funds the plaintiff shall dismiss the action with prejudice

DATE: 05/22/09

X [signature] Alan G. Gotlin

[signature] John Perez-Gurri

X [signature] Michael B. Nadler

[signature] Maggie Tawil

Copies furnished to above

(_____)

FMG #: 1-73292

AGRBB.MBD