Memorandum

MIAMI-DADE COUNTY

Date: December 15, 2009

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

Agenda Item No. 12(A)(3)

From:

George M. Burgess
County Manager

R. A. Cuevas, Jr.
County Attorney

Subject: Resolution approving the settlement of the lawsuit: *Zurich American Insurance Company v. Parsons Transportation Group, Inc., Odebrecht Construction, Inc., and Parsons-Odebrecht JV*, Circuit Court Case No.08-78361 CA 40 ("Lawsuit") in the amount of $1.85 million

---

Recommendation

It is recommended that the Board approve the attached Settlement Agreement ("Settlement") between Zurich American Insurance Co. ("Zurich"), Parsons Transportation Group, Inc., Odebrecht Construction, Inc., and Parsons Odebrecht JV (collectively "POJV") in the amount of $1.85 million, resolving claims made or that could have been made by Zurich against POJV and Miami-Dade County in the Lawsuit. The Lawsuit arose out of a dispute between Zurich, POJV, and the County, with respect to whether any additional premium was owed Zurich for the Builder's Risk Policy that POJV and the County had obtained from Zurich for the South Terminal Development Program. Zurich claims they are owed about $4.7 million plus interest in unpaid premiums. POJV and the County dispute that Zurich is owed this amount.

Scope

Miami-International Airport is located within District Six; however, the impact of this agenda item is countywide in nature as Miami International Airport is a regional asset.

Fiscal Impact/Funding Source

The County shall pay Zurich the final settlement sum of $1.85 million. Funding source is Aviation Revenue Bonds/Construction Funds.

Background

In August 2001, the County entered into a contract with POJV (the "Contract") to act as Construction Manager At-Risk for the County's South Terminal Development Project (the "Project"). Under the Contract, POJV was required to procure builder's risk insurance for the Project and MDAD was to reimburse POJV for the premiums.

POJV contracted with Zurich to obtain builder's risk insurance coverage (the "Policy") for the Project for the period of July 1, 2002 through July 1, 2006. In the summer of 2006, at around the time that the policy was set to expire, a dispute arose between Zurich, POJV, and the County regarding whether any additional premium was owed to Zurich. The builder's risk premium was calculated based on the original South Terminal contract price. This original contract price did not include certain items such as POJV's "soft costs" (POJV's General Administrative services fee, Construction on-site services fee, general work conditions allowance, General work conditions escalation, profit fee, owner contingency allowance, and owner dedicated allowance). Zurich contends that these soft costs should have been included as part of the contract price for purposes of calculating the builder's risk premium. Zurich also claims that at the time that the Policy expired an adjustment for installed value was required that would have increased the premium due Zurich. As a result, Zurich claims it is owed a premium adjustment of about $4.7million plus interest. It is the County's position that the soft costs should not have been included in the premium calculation and while the County agrees that an adjustment should be made for the installed value, the County disputes the amount sought by Zurich.

The parties made numerous efforts to resolve the issues but no resolution acceptable to all of the parties was reached. As a result, on or about December 17, 2008, Zurich filed the Lawsuit against POJV seeking to recover the alleged owed premium. The Lawsuit seeks declaratory relief and includes a count for breach of contract. On July 8, 2009, the parties attended a formal mediation to try and resolve the issues and were again unsuccessful. A motion to dismiss the lawsuit arguing that POJV's soft costs should not be included in the premium calculation and disputing Zurich's position on the correct premium adjustment due for the installed value was denied by the Court and the case is now set for trial in the Fall of 2010.

On October 6, 2009, this Board approved Change Order 9 to the South Terminal Development Program contract between POJV and the County. As part of that change order, the County agreed to substitute itself as defendant in the Lawsuit and to be otherwise responsible for any judgment in the action. Included in the change order is reference that the County was processing a work order to pay to Zurich, through POJV, the undisputed builders risk premium amount owed to Zurich of $620,749. This settlement agreement voids that work order and instead that undisputed amount is included within the sum of $1.85 million being offered for settlement. In return for paying Zurich this sum, the County will receive a full release as to any claims related to the builder's risk premium. In our view, approval of the attached proposed settlement is recommended because it minimizes the uncertainty attendant with the matter in dispute and eliminates the costs and risks of continued litigation.

Assistant County Manager

MEMORANDUM

(Revised)

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

DATE: December 15, 2009

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

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

Please note any items checked.

_____ "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

_____ Ordinance creating a new board requires detailed County Manager's report for public hearing

✓ No committee review

_____ Applicable legislation requires more than a majority vote (i.e., 2/3's ____, 3/5's ____, unanimous _____) to approve

✓ Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 12(A)(3)
12-15-09

RESOLUTION NO. _____

RESOLUTION APPROVING SETTLEMENT AGREEMENT BETWEEN MIAMI-DADE COUNTY, ZURICH AMERICAN INSURANCE COMPANY, PARSONS TRANSPORTATION GROUP, INC., ODEBRECHT CONSTRUCTION, INC., AND PARSONS-ODEBRECHT JV IN THE AMOUNT OF $1,850,000.00

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 and authorizes the execution by the County Mayor or the Mayor's Designee of the Settlement Agreement ("Settlement Agreement") of the lawsuit between Zurich American Insurance Co. ("Zurich"), Parsons Transportation Group, Inc., Odebrecht Construction, Inc. and Parsons-Odebrecht JV (collectively POJV"), in the total amount of $1,850,000.00 in substantially the form attached hereto.

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 15th day of December, 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. D.F.

Daniel Frastai

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Release ("Agreement") is made and entered into as of the Effective Date of this Agreement as defined below by and among Miami-Dade County, Florida, a political subdivision of the State of Florida (the "County") Zurich American Insurance Company ("Zurich"), Parsons Transportation Group, Inc., Odebrecht Construction, Inc., and Parsons-Odebrecht JV (collectively, "POJV"). All of the parties to the Agreement are collectively referred to herein as the "Parties."

BACKGROUND

WHEREAS, on July 1, 2002 Zurich and POJV entered into a written contract for Zurich to provide Builder's Risk insurance coverage to POJV and the County for the South Terminal Project for the period of July 1, 2002 through July 1, 2006 under Builders Risk Policy #IM 3709314-00 ("Builders Risk Policy"); and

WHEREAS, a dispute arose in 2006 regarding whether or not any additional premiums were owed by POJV and the County to Zurich for the Builder's Risk Policy; and

WHEREAS, on or about December 17, 2008, Zurich filed a Complaint styled *Zurich American Insurance Company v. Parsons Transportation Group, Inc., Odebrecht Construction, Inc., and Parsons-Odebrecht JV* in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida, Case No. 08-78361 CA 31 (the "Lawsuit"), in which Zurich asserted claims against POJV for declaratory relief and breach of contract regarding the alleged additional premiums owed; and

WHEREAS, POJV denies that it breached any contract or that Zurich is entitled to declaratory relief.

WHEREFORE, the Parties desire to enter into this Agreement in order to effect a full, complete, and final settlement of Zurich's claim regarding alleged additional premiums owed related to the Builders Risk Policy which existed or could have existed as of the Effective Date hereof, which were asserted, or which could have been asserted, in the Lawsuit.

AGREEMENT

NOW, therefore, in consideration of the mutual promises contained herein and intending to be legally bound, the Parties agree as follows:

1. **Recitals:** The Recitals set forth above are true and correct and are incorporated into the Agreement by reference.

2. **Effective Date:** This Agreement becomes effective and binding on all Parties when the Board of County Commissioners of Miami-Dade County, Florida (the "BCC") approves this Agreement and either (1) the time period for veto by the Mayor of the County expires without the exercise of that veto, or, if exercised, (2) the BCC overrides any such veto by the Mayor of the County.

3. **The County's Payment to Zurich:** The County shall pay Zurich the sum of One Million Eight Hundred and Fifty Thousand Dollars ($1,850,000.00) within twenty (20) days following the Effective Date.

4. **Release by Zurich:** In consideration of the payment, releases and promises made herein, Zurich and Zurich's parents, successors, assigns subsidiaries, directors, officers, managers, members, employees, agents, representatives, assigns, and agencies hereby release and forever discharge POJV and the County, and all of their respective Commissioners, representatives, departments, including but not limited to the Miami-Dade Aviation Department, agents, servants, employees, attorneys, officers, directors, board members, shareholders, investors, trustees, partners, parent and subsidiary corporations, administrators, assigns, predecessors, successors, insurers, sureties, and any other related entities, of and from any and all liability, claim and/or demand, whether known or unknown, relating in any way to any alleged additional premiums owed on the Builders Risk Policy for the South Terminal Project. Notwithstanding the foregoing, Zurich expressly excludes from the effect of this Release and does not release POJV and the County from the terms and conditions of this Settlement Agreement. Notably, this Agreement is expressly limited to any and all liability, claims and/or demands for any additional premiums owed on the Builders Risk Policy and does not effectuate a release of the Parties of any and all of their other obligations pursuant to the Builders Risk Policy, including, but not limited to, Zurich's obligations to cover POJV and/or County claims under the Builder's Risk Policy.

5. **Work Order 31-30:** POJV and the County hereby nullify and void Work Order 31-30 in the amount of $620,749.

6. **Dismissal of Lawsuit:** Within five (5) business days following the payment of the consideration described in Paragraph 3 above, the Parties shall prepare and file with the Court in the Lawsuit, in accordance with Rule 1.420 of the Florida Rules of Civil Procedure, a stipulation of dismissal with prejudice (along with a proposed Order of Dismissal With Prejudice) providing that the Lawsuit should be dismissed in its entirety with prejudice, with each side to bear its own attorneys' fees and costs, including fees and costs of experts and consultants, and with the Court reserving jurisdiction for the purpose of enforcing this Agreement.

7. **Costs and Fees:** The Parties agree to be responsible for their own attorneys' fees, costs, and expenses (including fees and costs of experts and consultants) incurred in connection with their dispute, the Lawsuit, and this Agreement, except for any fees, costs, and expenses incurred in connection with seeking the enforcement or interpretation of this Agreement by the Court, which shall be governed by Paragraph 14 below.

8. **No Admission of Liability:** The settlement reflected in the Agreement is a resolution of hotly contested and disputed claims allegations and assertions. It is expressly understood and agreed that this Agreement constitutes a compromise of disputed claims. This Agreement is not, and shall not be construed as, an admission of guilt, fault, or liability on behalf of any party. Rather, the Parties have entered into this Agreement solely for the purpose of reaching a compromise and avoiding the expense and uncertainty of litigation and have relied on their own judgment in entering into this settlement and not on any representations of the other party.

9. **Authority; No Prior Assignment:** The Parties warrant and represent that they are fully entitled and duly authorized to give the releases contained herein, and that they have not assigned any of the rights or causes of action released herein. Each of the signatories hereto represents and warrants that he or she is duly authorized to execute this Agreement on behalf of such party.

10. **Representation of Comprehension of Document:** In entering into this Agreement, the Parties represent that they have relied upon the legal advice of their attorneys, who are the attorneys of their own choice, and that the terms of this Agreement have been completely read and explained to them by their attorneys and these terms are fully understood and voluntarily accepted by them. Notwithstanding the identity of the drafters of this Agreement, the Parties agree that there will be no presumption against any Party arising out of or relating to the identity of such draftspeople.

11. **Governing Law and Venue:** This Agreement shall be enforceable and construed according to the laws of the State of Florida without regard to its conflict of laws provisions. The Parties agree that any action to enforce this Agreement shall be brought in the Circuit Court of Miami-Dade County, Florida, all other venues being waived.

12. **Complete Agreement:** This Agreement constitutes the complete and entire Agreement between the Parties relating to the Lawsuit. All prior agreements, negotiations, correspondence, proposals, prior documents, and any verbal understandings regarding the Lawsuit are merged into this Agreement, which shall supersede any provision of any agreement inconsistent with the terms of the Agreement. The terms of this Agreement may not be modified, supplemented, or waived except by a writing signed by the Parties. Notwithstanding, the foregoing, the County shall remain obligated to reimburse POJV for all of POJV's litigation costs and attorney's fees incurred in the defense of this Lawsuit.

13. **Binding Effect:** This Agreement shall be binding upon and inure to the benefit of the Parties, their affiliates, representatives, agents, shareholders, members, licensees, employees, investors, trustees, parent and subsidiary corporations or related entities, successors in interest and/or assigns, and any and all others acting by or through them or under their direction and control, including but not limited to all persons or entities that may attempt to make a claim through the Parties.

14. **Enforcement Costs and Fees:** In the event one of the Parties brings suit to enforce or interpret any provisions of this Agreement, or is required to defend any action or proceeding, the defense of which is based upon any provision of this Agreement, the prevailing party in any such action, and any appeal(s) thereof, shall be entitled to an award of its reasonable attorneys' fees and costs incurred in connection with any such action or proceeding.

15. **Further Action**: Each of the Parties hereto agrees to execute and deliver all documents, provide all information and take or forbear from all such action as may be reasonable necessary or appropriate to achieve the purposes of this Agreement.

16. **Counterparts:** This Agreement may be executed in separate counterpart originals, and facsimile, photocopy, or PDF signatures shall be considered as original signatures for all purposes.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Parties have duly authorized and caused this Agreement to be executed effective as of the Effective Date.

MIAMI-DADE COUNTY, FLORIDA

By: _____

Title: _____

Date: _____

PARSONS TRANSPORTATION GROUP, INC.

By: _____

Title: _____

Date: _____

ODEBRECHT CONSTRUCTION, INC.

By: _____

Title: PRESIDENT V. PRESIDENT

Date: 12/1/09 12/1/09

PARSONS-ODEBRECHT JV

By: _____

Title: EXECUTIVE COMMITTEE MEMBER

Date: 12/1/09

ZURICH AMERICAN INSURANCE

By: _____

Title: _____

Date: _____

IN WITNESS WHEREOF, the Parties have duly authorized and caused this Agreement to be executed effective as of the Effective Date.

MIAMI-DADE COUNTY, FLORIDA

By: _____

Title: _____

Date: _____

PARSONS TRANSPORTATION GROUP, INC.

By: _____

Title: Executive Vice President

Date: 12-2-09

ODEBRECHT CONSTRUCTION, INC.

By: _____

Title: _____

Date: _____

PARSONS-ODEBRECHT JV

By: _____

Title: Sr Vice President - POJV Board Member

Date: 12-2-09

ZURICH AMERICAN INSURANCE

By: _____

Title: _____

Date: _____

11

IN WITNESS WHEREOF, the Parties have duly authorized and caused this Agreement to be executed effective as of the Effective Date.

MIAMI-DADE COUNTY, FLORIDA

By: _____

Title: _____

Date: _____

PARSONS TRANSPORTATION GROUP, INC.

By: _____

Title: _____

Date: _____

ODEBRECHT CONSTRUCTION, INC.

By: _____

Title: _____

Date: _____

PARSONS-ODEBRECHT JV

By: _____

Title: _____

Date: _____

ZURICH AMERICAN INSURANCE

By: _____

Title: Collection Manager

Date: 12/01/09

12