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OF COUNTY COMMISSIONERS
MIAMI-DADE COUNTY, FLORIDA

Memorandum

MIAMI-DADE COUNTY

Date: December 4, 2007

Agenda Item No. 8(R)(1)(D)

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

From: George M. Burgess
County Manager

R-1324-07

Subject: Execution of a Settlement Agreement for MDWASD Contract No. W-655 between The Poole & Kent Company and Miami-Dade County

RECOMMENDATION

The Miami-Dade Water and Sewer Department (MDWASD) is conducting an internal review of its construction contracts and preparing change orders or settlement agreements as required with the intent of resolving all outstanding construction issues.

It is recommended that the Board of County Commissioners (Board) approve the attached settlement agreement between The Poole and Kent Company (P&K) and Miami-Dade County. P&K and Miami-Dade County through MDWASD is looking to settle claims for the above referenced contract. The settlement amount consists of $267,000 above the original contract amount of $7,214,000.

BACKGROUND

On November 28, 1999, P&K was awarded MDWASD Contract No. W-655: East Pump Room Switchgear and Pumps Replacement Project at the Alexander Orr Jr. Water Treatment Plant located at 6800 SW 87 Avenue, Miami, Florida. The total contract amount was for $7,214,000 with a contract term of 730 days.

The project's scope of work included demolishing five existing engine pumps and installing three new ones, including the electrical switchgear and a 900 kilowatt emergency generator, without interrupting the plant's daily operations or its capacity. The project was designed by MDWASD's engineers and completed on February 23, 2006, which was substantially beyond the original contract term of two years.

On July 28, 2005, P&K sued the County claiming that it had incurred over $2 million in additional costs and damages as a result of substantial delays and additional work caused by MDWASD. P&K's claims are based on the following: 1) a redesign of the electrical power distribution system was required as the space allocated in the original design was not optimal, the electrical wiring was farther away from the electrical equipment than the newly proposed location, a more efficient re-design became possible only after the new space became available, 2) more stringent testing procedures to improve the reliability of the plant's operations during power failures due to storms or other unexpected conditions, 3) equipment substitution issues for the engine pumps, the substitution was authorized in the contract if an equal product was found, the approval process for the substitute product caused delays, 4) rescheduling the demolition sequence due to the unexpected failure of two of the existing engine pumps, 5) the lack of specialized equipment in the design which serves to protect the engine pump in case of an

unexpected shut-down, and 6) failure of the speed reduction device whose function is to manage the speed of the pump.

MDWASD reviewed P&K's claims and engaged in settlement discussions to resolve all issues resulting in a settlement which includes waiving liquidated damages, payment of the retainage and the contract balance and an additional $267,000, which is 3.7% above the original contract amount of $7,214,000.

The County Attorney's Office has reviewed this settlement agreement and concurs with this action.

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(R)(1)(D)

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(R)(1)(D)
12-04-07

RESOLUTION NO. **R-1324-07**

RESOLUTION AUTHORIZING EXECUTION OF A SETTLEMENT AGREEMENT BETWEEN THE POOLE AND KENT COMPANY AND MIAMI-DADE COUNTY IN THE AMOUNT OF $939,388.74 TO SETTLE CLAIMS IN CONNECTION WITH COUNTY CONTRACT NO. W-655

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 execution of a Settlement Agreement between The Poole and Kent Company and Miami-Dade County in the amount of $939,388.74 to settle claims in connection with County Contract No. W-655; in substantially the form attached hereto and made a part hereof; and authorizes the County Mayor or his designee to execute same for and on behalf of Miami-Dade County.

The foregoing resolution was offered by Commissioner Jose "Pepe" Diaz, who moved its adoption. The motion was seconded by Commissioner Joe A. Martinez and upon being put to a vote, the vote was as follows:

Bruno A. Barreiro, Chairman aye
Barbara J. Jordan, Vice-Chairwoman aye

Jose "Pepe" Diaz	aye	Audrey M. Edmonson	aye
Carlos A. Gimenez	aye	Sally A. Heyman	absent
Joe A. Martinez	aye	Dennis C. Moss	aye
Dorrin D. Rolle	aye	Natacha Seijas	aye
Katy Sorenson	absent	Rebeca Sosa	aye
Sen. Javier D. Souto	absent		

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. Kay Sullivan
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

Henry N. Gillman

SETTLEMENT AGREEMENT BETWEEN

THE POOLE AND KENT COMPANY

AND

MIAMI-DADE COUNTY

This Settlement Agreement is entered into on this 27TH day of SEPTEMBER, 2007, by and between Miami-Dade County ("the County") and The Poole and Kent Company ("P & K").

WHEREAS, the County and P & K are party to a contract known as "Alexander Orr Jr. Water Treatment Plant East Pump Room Switch Gear & Pumps Replacement", Contract # W-655 ("the Contract"); and

WHEREAS, the Contract required P & K to remove existing pumping unit numbers 1 and 2, and their corresponding diesel engines; the replacement of pumping units numbers 3, 4 and 5 with new pumps, natural gas engines and air cooled radiators with backup heat exchangers. The Contract also required construction of a switchgear room, a supervisor/operator office; supply and installation of a diesel driven emergency generator; supply of an above ground water storage tank; and installation of piping and valves associated with pumping unit numbers 3, 4 and 5; and

WHEREAS, P & K contends that it incurred additional costs due to delays and actions by the County; and

WHEREAS, the County contends that it incurred costs and has assessed liquidated damages due to delays and actions by Poole and Kent, and

WHEREAS, P & K has filed an action in the Circuit Court of Miami-Dade County styled The Poole and Kent Company v. Miami-Dade County, Case No. 05-15214 CA 13, seeking damages relating to the Contract; and

WHEREAS, the County and P & K desire to completely resolve and settle all issues which were, or could have been, raised on account of the services, labor and materials provided, and work done, and all damages or costs of any nature incurred, including both direct and indirect by P & K and its subcontractors, suppliers, and material suppliers for the work

performed under the Contract, as well as all damages or costs of any nature incurred, including both actual and liquidated, by the County as fully set forth below.

NOW THEREFORE, in consideration of the mutual covenants and agreements set forth below, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, P & K and the County agree as follows:

1. Within twenty-one (21) days from the effective date of this settlement agreement and subject to the receipt of all complete and proper documentation required by the Contract including, but not limited to, certified payrolls, releases of lien, as-builts, and contractor affidavits, the County shall pay to P & K the amount of $939,388.74 ("settlement payment"); such settlement payment shall be final payment for the Contract work. The County represents and warrants that no change order is necessary to adjust the Contract amount to facilitate and effectuate the settlement payment or to delete any remaining work from P & K's contract.

2. Payment of said sum of $939,388.74 shall constitute full satisfaction of any and all claims of which P & K 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 contract or the services and construction, including both direct, indirect and pass-through claims, damages, actions and causes of action. The payment of said sum, the resolution of P & K's claims, and the dismissal of P & K's lawsuit shall constitute full satisfaction of any and all claims against P & K and its subcontractors and suppliers of which the County had knowledge of or reasonably should have had knowledge of in connection with any of the work performed, the contract, or the project, including claims for damages or costs due to work not performed by P & K.

3. Nothing in this settlement agreement constitutes an admission by any party of any wrongdoing or liability of any kind.

4. In consideration of the mutual covenants contained in this settlement agreement, P & K hereby releases, discharges and acquits the County and its officials, employees and agents from and against, and also waives and relinquishes any and all rights to, all claims, direct and indirect costs, damages, liability, interest, disputes or causes of action of whatever nature or kind it has or may have, whether known or unknown, against the County and its officials, employees and agents arising out of or relating to the settlement payment, contract, work or project.

5. The County hereby releases, discharges, and acquits P & K, its subcontractors and material suppliers from any and all actual or liquidated damages and other damages or costs arising out of or related to the contract, work or project. The County does not waive any claims it may have against P & K as a result of latent defects in the work and under any applicable warranties.

6. In consideration of the payment by the County to P & K of the settlement payment, P & K shall defend, hold harmless, and indemnify the County and its officials, employees, agents and representatives, from any and all claims, liability, losses or damages, direct or indirect, including without limitation attorney's fees and costs of defense, arising out of or related to work performed under the contract, of which P & K or any of its subcontractors or material suppliers had knowledge or reasonably should have had knowledge. P & K 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 shall pay all costs, judgments and attorney's fees which may issue thereon. P & K's obligations to defend, hold harmless and indemnify, or to pay any claims under this provision shall not apply to any claims, liability, losses or damages arising out of or relating to work performed by any of P & K's subcontractors or material suppliers pursuant to written contracts or purchase orders issued by the County directly to those subcontractors or suppliers, even if such work related to this project or P & K's contract.

7. This settlement agreement is complete and contains the full understanding of P & K and the County. This agreement may not be modified without the express written consent of P & K and the County. This agreement supersedes all other terms, provisions, or specifications of any prior documentation or agreement as may exist between P & K and the County.

8. This settlement agreement shall be interpreted under Florida law. Venue for any litigation relating to this Agreement shall be had in Miami-Dade County, Florida.

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

actions of the Commission and the Mayor in connection with the approval or rejection of this agreement rests within their sole discretion.

10. Within three (3) days of the Effective Date of this settlement agreement, P & K shall deliver to the County a stipulation, signed by P & K's counsel, dismissing the lawsuit with prejudice, and requesting the court to retain jurisdiction for the sole purpose of enforcing this settlement agreement.

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

Witnesses:

Margarita Camacho

THE POOLE AND KENT COMPANY

By: _____

Print Name: PATRICK H. CARR

Title: EXEC. V.P. / COO

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:

_____
Assistant County Attorney