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OF COUNTY COMMISSIONERS
MIAMI-DADE COUNTY, FLORIDA

Memorandum

MIAMI-DADE COUNTY

Date: December 4, 2007

Amended
Agenda Item No. 8(Q)(1)(A)

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

From: George M. Burgess
County Manager

Subject: Resolution Authorizing Amendment to Previously Approved Settlement Agreement between Miami-Dade County and The Haskell Company

R#1366-07

Recommendation
It is recommended that the Board approve the accompanying Resolution authorizing an amendment to the previously approved settlement agreement between Miami-Dade County and The Haskell Company R-345-07.

Scope
The Port of Miami is located within District 5 – Chairman Bruno Barreiro. The impact of this agenda item is countywide as the Port of Miami is a regional asset and generates employment for residents throughout all of Miami-Dade County.

Fiscal Impact/Funding Source
This amendment will have no fiscal impact.

Track Record/Monitor
The Seaport Department staff member responsible for monitoring this amendment is Lance Llewelyn, Interim Assistant Director of Engineering & Development, Port of Miami.

Background
On March 20, 2007, the Board approved Resolution R-345-07, authorizing the settlement agreement between the County and Haskell for the sum of $2,447,000, resolving Haskell construction claims arising from the Seaport Redevelopment Program.

The settlement agreement set forth several pre-conditions to the County's obligation to issue Haskell the $2,447,000 settlement payment. Among the required pre-conditions, Haskell was required to deliver to the County (1) a Haskell release of project related claims or potential claims (subject to a limited exception for certain Haskell subcontractors still performing work on the project); and (2) a release from each Haskell subcontractor and supplier (of any tier). Although Haskell has delivered the signed Haskell release, Haskell advises it had over 350 subcontractors and suppliers on this project, some of which no longer exist. Consequently, Haskell states it is unable to provide the County with releases from all of its numerous subcontractors and suppliers. Accordingly, in lieu of providing such subcontractors releases, Haskell has offered to provide the County with the following alternative forms of relief, protection and security to assure the County that all of Haskell's subcontractors have been paid in full (other than those still working on the project) and to minimize the likelihood that the County will be exposed to further claims on the project:

(1) A letter from Haskell and/or its surety representing and warranting that Haskell's payment bond is still in place and in full force and effect to, among other things, cover any payment bond claims that may be timely asserted by beneficiaries of such bond;

(2) An affidavit executed by an officer of Haskell affirming, representing, and warranting, among other things, that all Haskell subcontractors and suppliers have been paid in full (other than those expressly identified in such affidavit, such as subcontractors still performing work on the project) and that each of the Haskell subcontractors paid in full has accepted final payment from Haskell and has thereby waived any and all claims against Haskell, Miami-Dade County, and P&O Ports Florida, Inc. relating to or arising from the project, the Haskell CM Contract or their respective subcontracts; and

(3) An indemnity, hold harmless, and duty-to-defend agreement in favor of the County covering claims that Haskell subcontractors or suppliers (of any tier) may assert either against the County, or against Haskell, that arises from or relates to the project, the Haskell CM Contract with the County or any Haskell subcontract issued in connection therewith.

The attached amendment number 1 to the previously-approved settlement agreement authorizes the Port Director to accept alternative security, assurances, and protections from Haskell, such as, but not limited to, those listed above, in lieu of receiving from Haskell executed general releases and releases of lien from all Haskell subcontractors and suppliers (of all tiers), to assure that such subcontractors and suppliers have been or will be paid and to minimize the County's exposure to further claims.

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: Amended Agenda Item No. 8(Q)(1)(A)

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 _____

Amended
Agenda Item No. 8(Q)(1)(A)
12-04-07

RESOLUTION NO. R-1366-07

RESOLUTION AUTHORIZING AN AMENDMENT TO THE PREVIOUSLY APPROVED SETTLEMENT AGREEMENT BETWEEN MIAMI-DADE COUNTY AND THE HASKELL COMPANY; AND TO EXERCISE ALL 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:

Section 1. Approves the amendment to the previously approved settlement agreement between Miami-Dade County and The Haskell Company R-345-07, in substantially the form attached hereto and made a part hereof.

Section 2. Authorizes the County Mayor or his designee to execute same after review and approval by the County Attorney's Office; and to exercise all rights conferred therein.

The foregoing resolution was offered by Commissioner Barbara J. Jordan, who moved its adoption. The motion was seconded by Commissioner Dorrin D. Rolle 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	aye	Rebeca Sosa	aye
Sen. Javier D. Souto	aye		

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

COUNTY COMMISSIONERS DADE COUNTY FLORIDA

By: KAY SULLIVAN
Deputy Clerk

Approved by County Attorney
as to form and legal sufficiency. SBB

Steven B. Bass

AMENDMENT NO. 1 TO JULY 19, 2007 SETTLEMENT AGREEMENT BETWEEN MIAMI-DADE COUNTY AND THE HASKELL COMPANY

Miami-Dade County ("County" or "Owner") and The Haskell Company ("Haskell") hereby enter into Amendment No. 1 to their July 19, 2007 Settlement Agreement (the "Settlement Agreement") (a/k/a Change Order No. 1 to the December 10, 2001 CM Contract with Haskell), in accordance with the terms and conditions set forth below.

WHEREAS, Haskell and P&O Ports Florida, Inc. ("P&O) (predecessor in interest to Miami-Dade County) entered into a Construction Manager at Risk Contract on December 10, 2001 relating to the construction of numerous infrastructure improvement projects at the Port of Miami (the "Contract"); and

WHEREAS, P&O's rights and interests in said Contract were later assigned to the County; and

WHEREAS, during the course of work under such Contract, Haskell asserted various claims for additional compensation and extended general conditions, among other things; and

WHEREAS, the County and Haskell previously reached a tentative settlement agreement resolving all of the claims that Haskell asserted, or could have asserted, against the County or P&O arising from or relating to the Contract for the settlement sum of $2,447,000, subject to the terms, conditions, and pre-conditions set forth in the Settlement Agreement; and

WHEREAS, such Settlement Agreement (a/k/a Change Order No. 1 to the Contract) was approved by the Board of County Commissioners on March 20, 2007 via Resolution No. R-345-07, and was later executed by all parties as of July 19, 2007; and

WHEREAS, such Settlement Agreement required Haskell to satisfy certain listed pre-conditions that constituted conditions precedent to the County's obligation to pay the settlement sum to Haskell, not all of which have been satisfied; and

WHEREAS, among such required pre-conditions was Haskell's obligation to deliver to the County a general release and a release of lien (in forms acceptable to the County) from both Haskell and each Haskell subcontractor and supplier (of all tiers); and

WHEREAS, subsequent to the execution of the Settlement Agreement, Haskell advised the County that it had over 350 subcontractors and suppliers, that certain subcontractors and suppliers were no longer in business, and that Haskell was unable to obtain and provide the County with executed general releases and releases of lien from each Haskell subcontractor and supplier of all tiers, but was willing and able to instead provide the County with various forms of alternative assurances, security, and indemnity protections in lieu of a complete set of executed general releases and releases of lien from all Haskell subcontractors and suppliers.

NOW, THEREFORE, in consideration of the following mutual covenants and agreements contained herein below, Haskell and the County hereby agree to modify the Settlement Agreement as follows:

The Settlement Agreement (a/k/a Change Order No. 1 to the Contract) is hereby amended by adding the following as new Paragraph 19:

19. (A) <u>Alternative Security, Protection and Assurances from Haskell</u>. Notwithstanding the requirement in Paragraph 9 of this Change Order that Haskell deliver to the County, as a pre-condition to payment of the settlement sum, both executed general releases and releases of lien from each Haskell subcontractor and supplier (of any tier), the County may accept at its election (but is not required to accept), in lieu of such required subcontractor and

supplier general releases and releases of lien, alternative forms of security, protection and assurances from Haskell at the election and discretion of, and in a form acceptable to, the Port Director, following consultation with and subject to receiving legal sufficiency approval from the Office of the County Attorney. Such alternative Haskell security, protection and assurances (if applicable) shall be in a form, quality, and nature determined by the County through its Port Director (in consultation with, and subject to receiving legal sufficiency approval from, the Office of the County Attorney). Haskell hereby acknowledges and agrees that such alternative security, protection and assurances, may include, without limitation, sworn representations and warranties from Haskell, written consents of surety, an indemnity, hold harmless, and duty to defend agreement from Haskell in favor of the County, and other terms, conditions, assurances, and agreements to provide alternative and substitute protections to the County to mitigate for the fact that Haskell is unable to provide general releases and releases of lien in favor of the County from all Haskell subcontractors and suppliers of all tiers.

(B) Supplemental Pre-Conditions. Notwithstanding the pre-conditions to the County's obligation to render the settlement payment to Haskell set forth in Section 9 of the Settlement Agreement, the County shall pay Haskell the $2,447,000 settlement sum, by check or wire transfer, within ten (10) business days of the last to occur of the four pre-conditions listed in Section 9(i)-(iv) plus the following additional four pre-conditions relating to this Amendment No. 1: (a) approval of this Amendment No. 1 by the County Commission via resolution; (b) the 10-day veto period expires without any Mayoral veto being exercised; (c) proper execution and delivery of this Amendment No. 1 by both Haskell and the County; and (d) in the event the County elects to accept alternative security and assurances from Haskell, in lieu of receiving executed general releases and releases of lien from each Haskell subcontractor and supplier (of

all tiers), that the County receives such written alternative security and assurances from Haskell in a form, quality, and nature acceptable to the Port Director and that such acceptance is acknowledged in writing after receipt of all elements of such required alternative Haskell security and assurances by the Port Director. Other than the modifications to the Settlement Agreement contained above in this Paragraph 19, the remainder of Change Order No. 1 to the Contract shall remain in full force and effect subject to its original terms and conditions.

Counterparts. This Amendment No. 1 to the parties' prior Settlement Agreement (a/k/a Change Order No. 1 to the Contract) may be signed in any number of counterparts, each of which shall be an/original and all of which shall represent but one agreement. This Amendment No. 1 shall become effective on the date, or latest date, that it is executed by all parties hereto following County Commission approval, and executed original or counterparts are delivered to the representative parties.

IN WITNESS WHEREOF, each of the parties agree to the terms of this Amendment No. 1 by execution of this Amendment in the spaces below.

THE HASKELL COMPANY

By: _____
Printed: John W. Patton
Title: President - Civil/Public Facilities
Date: December 10, 2007

ATTESTATION:

By: _____
Title: Steven T. Halverson President/CEO
Date: December 10, 2007

CORPORATE SEAL

MIAMI-DADE COUNTY

By: _____
Printed: _____
Title: _____
Date: _____

ATTESTATION:

By: _____
Title: _____
Date: _____