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OF COUNTY COMMISSIONERS
MIAMI-DADE COUNTY, FLORIDA

Memorandum

MIAMI-DADE COUNTY

Date: February 5, 2008

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

From: George M. Burgess
County Manager

R. A. Cuevas, Jr.
County Attorney

Agenda Item No. 12(A)(2)

Resolution R-142-08

Subject: Settlement Agreement between Coastal Tug and Barge, Inc. and Miami-Dade County

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RECOMMENDATION

It is recommended that the Board of County Commissioners approve the attached settlement agreement between Coastal Tug and Barge, Inc. (Coastal) and Miami-Dade County. Coastal and the County through Miami-Dade Water and Sewer Department (MDWASD) is looking to settle claims in the amount of $385,000. This settlement amount will be paid to the County by Coastal to cover costs incurred by MDWASD to repair a 72-inch underwater sewer main ruptured by Coastal in the Miami River.

This is part of an on-going effort by MDWASD to perform 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.

BACKGROUND

On March 15, 2001, a tug boat owned and operated by Coastal struck a sewer manhole riser located several feet above the bottom of Biscayne Bay. The sewer manhole is connected to a 72-inch sewer main owned and operated by the County. The collision separated the sewer manhole from the sewer main, releasing approximately 12 million gallons of sewage into the Bay. MDWASD crews worked overtime to divert the flow of sewage to another segment of the sewer system in order to minimize public health risks and further contamination of the Bay. The County solicited bids to perform the repair work, and awarded an emergency repair contract to the low bidder, Ric-Man International, Inc.

The County sought reimbursement from Coastal in the amount of $683,906.80 for the emergency repair work. In response, Coastal argues that 1) the County failed to properly inspect and maintain the sewer manhole riser, resulting in the manhole riser being exposed, 2) the County failed to precisely mark the location of the sewer main, 3) the repair costs incurred by the County are excessive when compared to previous costs incurred by the County years prior to the accident, and 4) if Coastal is found to be liable to the County, the extent of such liability is limited by statute to the value of the tugboat, which allegedly is less than $400,000.

The County claims that 1) Coastal had a duty to avoid striking the sewer main and breached that duty by failing to ensure that updated charts were aboard the tugboat, 2) Coastal failed to operate the

tugboat properly in the vicinity of the main, and 3) Coastal failed to take alternate routes which might have minimized risk to the sewer main.

This case was mediated before retired Circuit Judge Herb Klein. At mediation, Coastal agreed to resolve the claims by payment to the County in the amount of $385,000. Administrative staff and the County Attorney's Office believe that this amount is reasonable given the foregoing.

Assistant County Manager

MEMORANDUM

(Revised)

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

DATE: February 5, 2002

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

SUBJECT: Agenda Item No. 12(A)(2)

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. 12(A)(2)
02-05-08

RESOLUTION NO. **R-142-08**

RESOLUTION APPROVING SETTLEMENT OF LITIGATION WITH COASTAL TUG AND BARGE, INC. IN THE AMOUNT OF $385,000.00 TO SETTLE DAMAGES TO MIAMI-DADE WATER AND SEWER DEPARTMENT'S 72-INCH SEWER MAIN AND MANHOLE RISER LOCATED IN GOVERNMENT CUT, AND AUTHORIZING COUNTY MAYOR OR HIS DESIGNEE TO EXECUTE RELEASE

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 that this Board approves the settlement of litigation styled Miami-Dade County vs. Coastal Tug and Barge, Inc., Case No. 02-14477 CA 06, in accordance with the Settlement Agreement attached hereto, in the amount of $385,000 to settle damages to Miami-Dade Water and Sewer Department's 72-inch sewer main and manhole riser located in Government Cut; and authorizes the Mayor or his designee to execute a release following approval by the County Attorney's Office.

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

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

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

The Chairperson thereupon declared the resolution duly passed and adopted this 5th day of February, 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: **Kay Sullivan**
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

Henry N. Gillman

Plaintiff Miami-Dade County, and Defendant Coastal Tug & Barge, Inc, agree to settle all claims and counterclaims in the case of Miami-Dade County v. Coastal Tug and Barge, Inc case number 02-14477 CA 06 with the following terms and conditions:

1.) Coastal Tug & Barge, Inc. shall pay Miami-Dade County the sum of $385,000.00 within thirty calendar days of approval of this settlement by the Miami-Dade County Board of County Commissioners and signature of release by the County Manager or his designee.

2.) Plaintiff and Defendant shall execute mutual releases as to all claims asserted or that could have been asserted related to Case Number 02-14477 CA 06.

3.) It is expressly understood that neither side admits liability of any sort related to the facts as alleged in Case number 02-14477 CA 06.

4.) This agreement shall only have effect if and when approved by the Board of County Commissioners.

Bruce Libhaber
Attorney for Miami-Dade County

Michael E Conroy FBN 845434
Attorney for Coastal Tug & Barge, Inc.

7/26/07
for Miami-Dade County

Jill A Laff
for Coastal Tug & Barge, Inc.