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CLERK OF THE BOARD
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

Agenda Item No. 12(A)(3)

**Resolution R-146-08**

**Subject:** Settlement of Litigation between Marlin Engineering, Inc. and Miami-Dade County

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## RECOMMENDATION

It is recommended that the attached resolution be approved which authorizes the execution of a settlement agreement in the amount of $29,500 between Miami-Dade County and Marlin Engineering, Inc. ("Marlin"). This settlement resolves a pending lawsuit brought by Marlin against the County in connection with Agreement Number 99MEIC001, in which Marlin was hired to provide general consulting engineering services to the Miami-Dade Water and Sewer Department (WASD).

This is part of an on-going effort by WASD 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

WASD issued Marlin work orders to perform various services under its contract. Marlin's claims in the pending lawsuit are specific to two work orders as detailed below:

1. WASD issued a work order for Marlin to prepare a procedures manual on the Infiltration, Exfiltration and Inflow Program. In 2003, the Office of the Inspector General (OIG) and MDWASD determined that the procedures manual supplied by Marlin was a near-duplicate copy of a manual previously provided to MDWASD by another consultant. WASD requested that Marlin be debarred from county contracting for this act, and a Debarment Committee was established. Upon being presented all evidence and arguments, the Debarment Committee determined not to impose debarment. Marlin seeks to recover the cost of the attorney's fees it incurred defending the debarment in the approximate amount of $100,000; however the trial court dismissed the claim. Marlin indicated its intention to appeal this ruling.

2. WASD issued a work order for Marlin to draft a form construction contract, S-769: Removal and Replacement of Sanitary Sewer Gravity Mains. WASD determined that the construction contract provided by Marlin was inadequate. Rather than correct the deficiencies, WASD instructed Marlin to cease work. Under the terms of the contract, Marlin is entitled to be paid for the value of the work (approximately $19,000), but is not entitled to payment for unperformed work or profit. WASD agrees that Marlin is entitled to some payment based on the value of the work incorporated into the contract that was bid out.

At mediation, Marlin agreed to settle all claims for $29,500. Since Marlin is entitled to compensation for work, the value of the work it performed, plus several years' worth of pre-judgment interest thereon, WASD believes this settlement is fair and reasonable. It also eliminates any possible appeal of the dismissal of its claim for attorney's fees.

Assistant County Manager

# MEMORANDUM

(Revised)

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

DATE: February 5, 2008

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 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)(3)
02-05-08

RESOLUTION NO. R-146-08

RESOLUTION APPROVING SETTLEMENT OF LITIGATION WITH MARLIN ENGINEERING INC. IN THE AMOUNT OF $29,500.00 TO SETTLE VARIOUS CLAIMS IN CONNECTION WITH COUNTY AGREEMENT NO. 99MEIC001; AND AUTHORIZING COUNTY MAYOR OR 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 this Board hereby approves the settlement of litigation styled Marlin Engineering Inc. v. Miami-Dade County, Case No. 05-20648 CA 23, in accordance with the Settlement Agreement attached hereto, in the amount of $29,500.00 to settle various claims in connection with County Agreement 99MEIC001; and authorizes the County Mayor or his designee to execute a release following approval by the County Attorney's Office.

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

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

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|---|---|---|---|
| Jose "Pepe" Diaz | **absent** | Audrey M. Edmonson | **aye** |
| Carlos A. Gimenez | **aye** | Sally A. Heyman | **absent** |
| Joe A. Martinez | **absent** | Dennis C. Moss | **absent** |
| 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 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

IN THE CIRCUIT COURT OF THE 11th JUDICIAL CIRCUIT
AND FOR MIAMI-DADE COUNTY, FLORIDA

| | |
|---|---|
| MARLIN ENGINEERING, INC.,<br><br>Plaintiff(s),<br>vs.<br><br>MIAMI-DADE COUNTY,<br><br>Defendant(s) | CASE NO: 05-20648 CA 23<br><br>**Mediation Settlement Agreement** |

The undersigned signatories, having mediated with John W. Salmon hereby agree that all matters arising out of the above referenced case are resolved as follows:

1. Miami Dade County shall pay to Marlin Engineering the amount of $ 29,500.00.

2. Unless otherwise agreed, each party shall bear their respective attorney's fees and costs; the cost of mediation shall be divided equally between all parties; all matters discussed at the mediation conference shall remain privileged and confidential; the Court shall retain jurisdiction to enforce the terms of this settlement agreement.

3. Additional terms: See Exhibit A, attached and incorporated.

Dated this 31 day of August, 2007.

SIGNATURES:

President
Plaintiff Marlin Engineering, Inc. Defendant

Plaintiff's Counsel Defendant's Counsel

Exhibit A
Marlin Engineering v. Miami Dade County

This settlement shall only be effective if approved by the Board of County Commissioners and not vetoed by the Mayor of Miami-Dade County.

Prior to payment, parties shall execute mutual releases jointly releasing all claims that each party had or may have had relating to the underlying facts of this litigation. including all claims for attorney's fees and a waiver of all appellate rights.

Notwithstanding the preceding, this shall not prevent the County from enforcing any warranties, as applicable, against Marlin, or for any claims for latent defects in the work, to the extent such rights were created under the contract.

Neither party shall indemnify each other. Each party shall bear its own fees and costs.