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CLERK OF THE BOARD
OF COUNTY COMMISSIONERS
MIAMI-DADE COUNTY, FLORIDA

# Memorandum

MIAMI-DADE COUNTY

**Date:** December 2, 2008

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

**From:** George M. Burgess
County Manager

Agenda Item No. 8(P)(1)(I)

**Resolution No. R-1338-08**

**Subject:** Resolution Approving Change Order No. 1, Change Order No. 2 and Settlement Agreement between Miami-Dade County and The De Moya Group, Inc.

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**This item was amended on November 10, 2008 at the Governmental Operations and Environment Committee meeting to include the Change Orders that were part of the item and were inadvertently omitted. The amendment also corrects a scrivener's error contained in the original item for the contract amount on Change Order No. 2.**

## Recommendation

It is recommended that the Board of County Commissioners (BCC) approve the attached resolution authorizing Change Order No. 1, Change Order No. 2 and the Settlement Agreement between Miami-Dade County (County), and The De Moya Group, Inc. (De Moya) concerning the NW 97 Avenue over SR 836 from Fontainebleau Boulevard to North of NW 13 Street Project ("Project") and authorizing the County Mayor to execute said Change Orders and Agreement. Change Order Nos. 1 and 2 were necessary due to additional work requested by the County, and the Settlement Agreement is as a result of litigation regarding the Project.

## Scope

This project is located within Commission Districts 10 and 12.

## Fiscal Impact/Funding Source

The Fiscal Impact to the County will be as follows: Change Order No. 1 for additional work requested by the County in order to facilitate access and traffic circulation into the surrounding neighborhood, which was under development during the time of the bridge construction. This work in the amount of $717,152.04 has been paid by the developer, Shoma Development Corporation (Shoma). Change Order No. 2 is for additional work requested by the County in response to concerns from the adjacent area car dealerships to provide better truck traffic circulation and access in the area. This work in the amount of $538,186.95 is being funded from Road Impact Fees. Settlement Agreement includes the cost for the replacement of beams which partially collapsed during Hurricane Katrina's landfall on August 25, 2005. This settlement in the amount of $897,012.31 will be paid from the contract contingency allowance. Work performed in the amount of $229,019.90 for contract items overruns, underruns and contingency owed to the contractor is also included, and falls within funds currently allowed under the original contract ceiling, as amended by the subject change orders, for a final payment of $2,381,371.20, inclusive of all changes and the settlement.

## Background

The scope of the work for MIAMI-DADE COUNTY Project No. 671128, NW 97 Avenue over State Road 836 from Fontainebleau Boulevard to North of NW 13 Street consisted of the construction of a four (4) lane bridge and approaches over State Road 836 which included a

raised median, concrete curb and gutters, sidewalks, new pavement and associated markings, signage, signalization, pedestrian/bicycle overpass, drainage, and roadway lighting. The contract amount was awarded at $15,815,362.36 with a contract time period of 600 calendar days. The prime contractor, De Moya, was issued the Notice to Proceed on June 1, 2004 with a schedule completion date of January 21, 2006.

**Change Order No. 1**

The Public Works Department (PWD) requested De Moya to construct additional improvements within the project limits which entailed providing signalized access at the NW 900 block of Fontainebleau Boulevard. Shoma, during the construction of the bridge, was in the process of developing a 1890 unit residential community near the Project known as "Fontainebleau East & West " and was required to connect two (2) access roads (east and west) to the 97 Avenue Bridge. A determination was made that the most efficient and effective method to accomplish this work was to modify the existing contract between the County and De Moya. Therefore, on June 7, 2005, the BCC authorized the County to amend its contract with De Moya to permit De Moya to build the roadway connection, and further authorized the County Manager to execute a Non-Binding Memorandum of Understanding with Shoma to reimburse the County for the costs associated with the work.

The additional work has been included in Change Order No. 1 for a cost of $717,152.04 and additional contract time of 190 calendar days. See attached Change Order No. 1.

**Change Order No. 2**

In response to adjacent area car dealerships, PWD instructed De Moya to provide additional signalized intersection improvements at NW 12 Street and NW 97 Avenue and to construct a U-Turnaround under the bridge. The purpose of the U-Turnaround work was to provide better access the adjacent businesses and better circulation for heavy trucks traveling from NW 97 Avenue to NW 12 Street.

All costs associated with these improvements are included in Change Order No. 2. The total amount of Change Order No. 2 is $538,186.95 and the total of additional contract time is 353 calendar days. See attached Change Order 2.

**Settlement Agreement**

On August 25, 2005, Hurricane Katrina's landfall as a category 1 hurricane produced widespread wind and water damage throughout Miami-Dade County. The NW 97 Avenue overpass above SR 836 under construction at the time suffered a partial collapse of the beams. Those structural members (16 beams) over the SR 836 eastbound lanes fell onto the roadway surface, while a second set of beams (16 beams), on the northern side of the overpass, fell upon the swale area and did not impact the westbound lanes of traffic. The remaining spans, including those over the westbound lanes, remained in place. In accordance with County directives, the contractor immediately mobilized crews and began debris removal efforts, provided two phases of temporary bracing and re-purchased and re-installed the bridge beams as per the contract specifications.

On December 1, 2005, De Moya filed a lawsuit for breach of contract and professional negligence against the County and the County's Consultant, Network Engineering Services, Inc., d/b/a Bolton, Perez and Associates (BPA) in Case No. 05-23507 CA 15 in the Circuit Court of the 11th Judicial Circuit in and for Miami-Dade County, Florida. The damages claimed by De Moya due to this event and the actions of the County and its consultant were quantified by De Moya at a cost of $2,134,404.08 million dollars, plus interest and five (5)

months construction work delay. Subsequently, the County filed a counterclaim against De Moya and a crossclaim against BPA.

The issues in litigation involve the proper interpretation of the contract documents and the applicable standards for placement, temporary bracing, and permanent installation of the beams in light of the events which occurred in this project and the passage of a hurricane. De Moya contends that the force majeure event of the contract should govern the event. The County contends that the contractor did not perform in accordance with the contract requirements in not completing the permanent installation earlier and that the temporary bracing was inadequate. De Moya challenges these facts. Expert opinions conflict with respect to the adequacy of De Moya's performance regarding bracing of the beams. A summary of the operative facts and the litigation history of the case is attached as Exhibit A.

The parties have worked out a settlement agreement that is being recommended for your approval. In essence it involves payment to De Moya of $897,012.31 which represents a significant reduction of its overall claim. The Contractor is assuming the costs for the debris removal of the beams that collapsed, the labor and equipment for the replacement beam installation, the installation of the steel temporary bracing, all the repairs to the existing structure that were damaged, and the additional maintenance of traffic for these activities. The reduced amount allows the County to pay the claim from the Project contingency, therefore allowing the Project, as amended by the other change orders set forth in this item, to be performed within allowed funds.

As noted above, this item also includes a final payment for work performed in the amount of $229,019.90 for contract items overruns, underruns and contingency owed to the contractor. This amount also falls within funds currently allowed under the original contract ceiling, as amended by the subject change orders. The Settlement Agreement also assigns the County's rights to De Moya of any and all claims it has against BPA with the following condition. If De Moya receives any monetary proceeds from that assigned action, after deduction of all expenses, court costs and attorneys' fees incurred by them, De Moya shall retain fifty percent (50%) of such proceeds and pay over to the County the other fifty percent (50%).

Given the anticipated costs of this item and the uncertain outcome of the issues in dispute, the settlement is recommended for your approval. A copy of the Settlement Agreement is attached. The Settlement Agreement is also subject to the approval by the BCC of the award of Contract No. 20070575 Project NW 74 Street from NW 107 Avenue to NW 84 Avenue to De Moya (De Moya is the low bidder on the aforementioned project in the amount of $24,060,890.52), which was tabled at the July 9, 2008, Transit Committee meeting and is now being resubmitted for that Committee's consideration. De Moya has performed at a Satisfactory level on two resurfacing projects awarded in 2007 after the NW 97th Avenue Overpass Project.

Based on the foregoing, approval of the change orders and settlement are recommended as being in the best interest of the County.

Assistant County Manager

Exhibit A

**De Moya v. Miami-Dade County and Bolton, Perez & Associates**
**Case No. 05-23507 CA 15**

**General Chronology of Contract**

January 2004 - De Moya was awarded a Public Works Contract for construction of work on NW 97th Avenue from South of Fontainebleau Boulevard to North of NW 13th Street for $15.8 million.

De Moya was responsible for constructing a four-lane bridge across State Road 836, raised median, concrete curb and gutters, sidewalk, pavement, pedestrian/bicycle overpass, drainage, pavement markings, signage, signalization, and roadway lighting.

Construction began in 2004 (contract time was 600 days).

April 2004 - Preconstruction Conference – shop drawing list and schedule does not include shop drawings for temporary bracing.

February 21, 2005 - De Moya set all beams of Spans 5 and 6

March 30, 2005, Bolton, Perez & Associates (BPA), County's Consultant for Construction Engineering and Inspection Services, sent a letter to De Moya advising that they are 45 days behind schedule –"There has been little or no effort on this Project by the De Moya Group or any subcontractors since March 18, 2005". The letter also reminded De Moya of contract requirements to have sufficient equipment, forces and material to prosecute work under required schedule.

May 26, 2005 letter to County from De Moya complaining that there were delays to Traffic Control Plan (TCP) and that De Moya would follow TCP in erecting beams. He identified May 22 as begin date for beams

June 1, 2005 letter to De Moya from BPA - Schedule of erection was given on May 5, 2005 which was not 6 weeks notice of a work activity per contract plans. BPA says De Moya is responsible for any delays and denied request for time extension and costs.

June 6, 2005 – De Moya set all 16 beams of Span 4 over westbound 836.

June 13, 2005 - De Moya set all 16 beams of Span 3 over eastbound 836.

June 17, 2005 – De Moya starts building diaphragms.

June 28, 2005 letter to De Moya from BPA- concerned about commitment to project – resources and manpower.

July 2005 – County agreed to extend contract time for additional scope of work, including new signalized intersections (U-turns) and procurement of signalization material and coordination of plans.

July 19, 2005 – Luis Baldo (PWD Project Manager) was concerned with wood bracing and spoke with Richard Kinkead of EAC (Designer of Record).

July 20, 2005 letter to De Moya from BPA – concerned that De Moya stopped building diaphragms at end of June. Asked De Moya to verify that erected beams are adequately braced.

Aug 5, 2005 meeting - De Moya said beams are adequately braced and that they will resume diaphragm construction following week.

August 16-18, 2005 - Emails from Otto Rojas to Luis Baldo - saw beams – no improvement on construction of diaphragms; beams could be potential hazard in case of a hurricane – expedite diaphragm construction.

August 25 - Hurricane Katrina (Cat I Hurricane) - 32 beams (16 for Span 3 over Eastbound SR 836 and 16 for Span 6 over north swale) collapsed - Beams for Spans 1,2,4 and 5 did not collapse.

**Post-Katrina Reports on failure of bridge girders at Spans 3 and 6**

BPA - Beams laterally braced at each end with 2x6 timber; some nails were bent; found pieces of reinforcing bars had sheared off the face of beams; Opinion is that failure was caused by wind loads overturning the girders- wind loosened the bracing and beams overturned onto each other and collapsed.

EAC Consulting (Richard Kinkead, P.E.) - 2x6 boards became displaced during the hurricane which rendered the beams without bracing; one end beam was overturned and impacted the adjacent beam creating a "domino effect" that led to falling of all beams.

**FDOT** (William Nickas, P.E.) - photos show only horizontal top flange bracing on the girders still in place which is inadequate to resist strong lateral loads created by wind. FDOT Specs (2000) 450-2.10 requires contractor to "adequately brace members to resist wind forces and weight of forms and other temporary loads, especially those eccentric to the vertical axis of the members, during all stages of erection." FDOT Spec 5-1.4.5.6 Falsework and Shoring – for construction affecting public safety, submit to engineer of record shop drawings and applicable calculations signed and sealed by specialty engineer; Spec 5-1.4.5.7 – Formwork and Scaffolding – contractor is solely responsible for the safe installation and use of all formwork and scaffolding.

MDC - based on recommendations of consultants, directed De Moya to brace spans over expressway for hurricane force winds.

The Florida Transportation Builders' Association (FTBA) response - a clear standard for temporary bracing and wind loads is missing in FDOT specs. The FTBA opined that that the bracing by De Moya met the required standard of care and conformed to standard industry practice.

**De Moya Lawsuit** - filed complaint on December 1, 2005 against County and BPA; County filed Counterclaim against de Moya and Crossclaim against BPA. The parties have engaged in pre-trial discovery, including the exchange of voluminous amounts of documents and have filed various motions. No trial date is scheduled.

**Issues** - The main issue in this case involves De Moya's bracing of horizontal beams prior to Hurricane Katrina. There appears to be a consensus of the experts that the Hurricane's winds caused the bracing to overturn and the beams to collapse. The dispute centers on the interpretation and application of the contract and FDOT specifications which are incorporated into the contract. De Moya's general position - there was no requirement to submit shop drawings for hurricane force bracing and BPA, County's consultant for construction and engineering inspection, never requested any shop drawings; bracing met industry standards; bridge construction was ahead of schedule as of the date of the Hurricane; force majeure event caused the collapse and contractor is not responsible for extensive or catastrophic damage caused by the elements. County's position - FDOT specifications which are incorporated into the contract require shop drawings for construction affecting public safety; De Moya's bracing with wood timber was inadequate and collapse was a result of De Moya's failure to maintain the schedule which required that concrete diaphragms be poured around the beams prior to Hurricane season.

This case involves various questions of fact and expert opinions including, but not limited to: Whether the contract plans and specifications required shop drawings for temporary bracing and how the specifications were interpreted and applied by the parties? Whether the County or BPA had a duty to direct De Moya to install certain bracing for hurricane force winds? Whether the County or BPA's actions resulted in De Moya's failure to pour concrete diaphragms prior to Hurricane season; whether the failure of beams was due to Hurricane Katrina or inadequate bracing and whether De Moya is entitled to reimbursement for costs related to cleanup, additional bracing and repairs?

# MEMORANDUM

(Revised)

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

DATE: December 2, 2008

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

SUBJECT: Agenda Item No. 8(P)(1)(I)

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(P)(1)(I)
12-2-08

RESOLUTION NO. **R-1338-08**

RESOLUTION APPROVING CHANGE ORDER NO. 1, CHANGE ORDER NO. 2 AND A SETTLEMENT AGREEMENT BETWEEN THE DE MOYA GROUP, INC. AND MIAMI-DADE COUNTY CONCERNING THE NW 97 AVENUE BRIDGE PROJECT AND AUTHORIZING THE COUNTY MAYOR TO EXECUTE SAID CHANGE ORDERS AND SETTLEMENT AGREEMENT SUBJECT TO THE AWARD OF CONTRACT NO. 20070575 TO THE DE MOYA GROUP

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:

Section 1. Approves Change Order No. 1 and Change Order No. 2 for Contract No. 671128 in substantially the form attached hereto and made a part hereof and authorizes the County Mayor or his designee to execute such change orders.

Section 2. Approves the Settlement Agreement of the pending litigation between Miami-Dade County and The De Moya Group, Inc., (De Moya) 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.

Section 3. The Approval of the above Change Orders and Settlement Agreement is subject to the approval and effectiveness of Contract No. 20070575 to De Moya.

The foregoing resolution was offered by Commissioner **Rebeca Sosa**, 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 | **aye** |
| 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 2nd day of December, 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

**SETTLEMENT AGREEMENT BETWEEN**
**THE DE MOYA GROUP, INC.**
**AND**
**MIAMI-DADE COUNTY**

This Settlement Agreement is entered into on this _____ day of _____, 2008, by and between Miami-Dade County ("the County") and The de Moya Group, Inc. ("de Moya").

WHEREAS, the County and de Moya are party to a contract known as NW 97 Avenue from Fountainbleau to NW 13 Street Miami-Dade County Public Works Project No. 671128 ("the Contract"); and

WHEREAS, the contract required de Moya to construct a four-lane bridge and approaches, at or near the area located at NW 97 Avenue over State Road 836 from Fountainbleau Boulevard to north of NW 13 Street (the "Project") as more fully delineated in the plans and specifications; and

WHEREAS, de Moya contends, among other things, that it incurred additional costs due to actions and inactions of the County and its agents relating to Hurricane Katrina ("Katrina Claim"); and

WHEREAS, de Moya filed a lawsuit against the County and the County's Consultant, BPA, styled The de Moya Group, Inc. v. Miami-Dade County and Network Engineering Services, Inc. d/b/a Bolton, Perez and Associates, Case No. 05-23507 CA 15 in the Circuit Court of the 11th Judicial Circuit in and for Miami-Dade County, Florida, to recover on the Katrina Claim (the "Lawsuit"); and

WHEREAS, the County filed a counterclaim against de Moya and a crossclaim against Network Engineering Services, Inc., d/b/a Bolton, Perez and Associates ("BPA"); and

WHEREAS, the County and de Moya have agreed to amicably resolve any and all alleged County liability to de Moya in the Lawsuit, as well as the County's claims of de Moya's liability to the County, including all claims and matters between the County and de Moya arising out, or relating to the Project, the de Moya Claims, and the de Moya Complaint and the County's Counterclaim as asserted in the Lawsuit, by the payment of the amount set forth below, which includes the change orders attached hereto as Exhibit "A", and also allowing de Moya to pursue the County's Katrina claims against BPA.

NOW THEREFORE, in consideration of the foregoing representations and the mutual covenants, promises, considerations and agreements set forth below, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, and with the intent to be legally bound de Moya and the County agree as follows:

1. Representations: The foregoing representations are true and correct and are incorporated as necessary and substantive provisions of this Settlement Agreement, and also by this reference thereto, the Contract between de Moya and the County, are incorporated herein and made a part hereof.

2. Within twenty-one (21) days from the effective date of this Settlement Agreement and subject to the receipt of all documentation required by the Contract including, but not limited to, certified payrolls, releases of lien, as-builts, atlases and contractor affidavits, the County shall pay to de Moya the amount of $2,381,371.20; payment of said amount to be final payment for the work relating to the Contract which

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includes Change Orders No. 1 and 2, a copy of which are attached hereto as Exhibit "A" and includes the payment of $897,012.31 in payment for the Katrina Claim. The Parties to this Settlement Agreement shall each bear their own respective attorneys' fees and costs expended relating to the Lawsuit and this Settlement Agreement.

3. Payment of said sum of $2,381,371.20 shall constitute full satisfaction of any and all claims against the County of which de Moya 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 Lawsuit, the Contract or the Project, including both direct, indirect and pass-through claims, damages, actions and causes of action.

4. This Settlement Agreement does not constitute an admission by any party of any wrongdoing or liability of any kind.

5. In consideration of the mutual covenants contained in this Settlement Agreement, de Moya hereby releases, discharges and acquits the County and its officials, and employees from any and all claims, direct or indirect, arising out of or related to the Project, the Lawsuit or the Contract of which de Moya or any of its subcontractors or material suppliers had knowledge or reasonably should have had knowledge, in connection with any of the work performed or damages or costs incurred during the period of construction. The County and de Moya expressly agree that this Settlement Agreement does not release or discharge de Moya's Katrina Claim against BPA and the County's Katrina Claim against BPA.

6. The County hereby releases, discharges, and acquits de Moya, its officers, directors, employees, agents, successors and assigns, its subcontractors and material

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suppliers from any and all liquidated damages and any and all other damages or costs arising out of or related to delays and expenses in connection with the Contract and the Lawsuit, except that the County does not waive any claims it may have against de Moya as a result of latent defects in the work. The County sells, assigns, transfers and sets over unto de Moya all rights, title, interest in and to actions, causes, causes of action, suits, debts, dues, sums of money, and accounts whatsoever in law or in equity, from the beginning of the world to the date hereof regarding any and all claims the County has or may have against BPA relating to or in connection with the Katrina Claim to de Moya. The County shall cooperate with de Moya relating to this assignment and de Moya's litigation with BPA to the extent required by law. If in de Moya's pursuit of the assigned action against BPA (as assignee of the County) de Moya receives any monetary proceeds from that assigned action, and after deduction of all expenses, costs, court costs and attorneys fees incurred by de Moya through the date of that receipt (the "net proceeds"), de Moya shall retain fifty percent of such net proceeds and pay over to the County the other fifty percent of the net proceeds.

7. de Moya hereby expressly agrees to defend, hold harmless, and indemnify the County and its officials, employees, agents and representatives, from any and all claims, direct or indirect, arising out of or related to the construction, of which de Moya or any of its subcontractors or material suppliers had knowledge or reasonably should have had knowledge, in connection with any of the work performed or damages or costs incurred during the construction. de Moya 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

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shall pay all costs, judgments, and attorney's fees which may issue thereon. This indemnification includes any claims of BPA, its successors and assigns

8. Severability: The County and de Moya acknowledge and agree that if *any part*, term *or* provision of this Settlement Agreement is determined by the courts to be invalid, illegal or in conflict *with any* law of the State, the validity of the remaining portions or provisions shall not be affected thereby.

9. Merger: This Settlement Agreement is complete and contains the full understanding of de Moya and the County. This Settlement Agreement may not be modified without the express written consent of de Moya and the County. This Settlement Agreement supersedes all other terms, provisions, or understandings of any prior documentation or agreement as may exist between de Moya and the County.

10. Applicable Law: This Settlement Agreement shall be interpreted under Florida law. The Court in the Lawsuit retains jurisdiction to enforce the terms of this Settlement Agreement.

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

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actions of the Board of County Commissioners and the County Mayor in connection with the approval or rejection of this Settlement Agreement rests within their sole discretion.

12. Other Conditions: This Settlement Agreement is also subject to the effectiveness on or before December 31, 2008 of the County's Contract execution of Contract No. 20070575 with the de Moya Group as well as the County's payment to de Moya of the amount specified in the Settlement Agreement. The failure to meet these conditions subsequent shall render this Settlement Agreement null and void unless de Moya provides an extension of time for these conditions subsequent to becoming effective.

13. de Moya shall file a notice of dismissal with prejudice dismissing the County, only, and not BPA from the action on the complaint against the County in Case No. 05-23507 CA 15 within five days of the County's execution of Contract No. 20070575 with de Moya as well as the County's payment to de Moya of the amount specified in this Settlement Agreement.

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

Witnesses:

THE DE MOYA GROUP, INC.

By: _____

Print Name: Armando deMoya

Title: President

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

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# MIAMI-DADE COUNTY, FLORIDA

## PUBLIC WORKS DEPARTMENT

## CHANGE ORDER TO ORIGINAL CONTRACT

MIAMI-DADE COUNTY

**CHANGE ORDER NO:** 1 **CONTRACT NO:** 671128 **DATE:** 9/30/2008

**PROJECT TITLE:** NW 97 Avenue over SR 836 from Fountainbleau Boulevard to North of NW 13 Street.

**TO CONTRACTOR:** The De Moya Group, Inc. 12209 South Dixie Highway Miami, Florida 33156

YOU ARE HEREBY REQUESTED TO MAKE THE FOLLOWING CHANGES IN THE PLANS AND SPECIFICATIONS FOR THIS PROJECT AND TO PERFORM THE WORK ACCORDINGLY, SUBJECT TO ALL CONTRACT STIPULATIONS AND COVENANTS.

**Description of work authorized:** Increase the contract time by $717,152.04 and extend the contract time by 190 calendar days. This Change Order is conditioned upon the effectiveness and execution by Miami-Dade County and The De Moya Group, Inc. of the attached form of Settlement Agreement.

**Monetary Justification:** This Change Order increases the contract amount by $717,152.04 (this amount will be reimbursed by Shoma Homes to Miami-Dade County) as follows:

- $455,672.00 are needed to compensate the contractor for the construction of a signalized intersection at Sta. 19+05 on NW 97th Avenue as shown on the set of plans prepared by Bermello Ajamil & Partners. This work was not included in the original plans. (Continued below)

**Time Justification:** This Change Order extends the contract time by 190 calendar days as follows:

- 124 compensable calendar days are needed to complete the construction of a signalized intersection at Sta. 19+05 on NW 97th Avenue.

- 66 non-compensable calendar days are needed for the procurement of signalization material and coordination of plans and shop drawings prior to the construction (Continued below)

**This change order includes not only all direct costs of contractor such as labor, material, job overhead, and profit markup; but also includes any costs for modifications or changes in sequence of work to be performed, delays, rescheduling, disruption, extended direct overhead or general overhead, acceleration, material or other escalation which include wages and other impact costs.**

**Contractor hereby waives, fully releases, discharges and acquits Miami-Dade County of any and all liability for claims, additional costs, and any requests for additional time arising out of the fulfillment of the contract and this change order from the date of the contract award to and including execution of this change order.**

**SUMMARY OF CONTRACT AMOUNT / TIME**

| | |
|---|---|
| ORIGINAL CONTRACT AMOUNT | $15,815,362.36 |
| COST OF CHANGES PREVIOUSLY ORDERED | $0.00 |
| ADJUSTED CONTRACT AMOUNT PRIOR TO THIS CHANGE | $15,815,362.36 |
| COST OF CHANGES WITH THIS DOCUMENT | $717,152.04 |
| ADJUSTED CONTRACT AMOUNT INCLUDING THIS CHANGE | $16,532,514.40 |
| PERCENT INCREASE WITH THIS CHANGE | 5% |
| TOTAL PERCENT INCREASE TO DATE | 5% |
| TIME: ORIGINAL CONTRACT / PREVIOUS CHANGES / THIS CHANGE | 600 / 0 / 190 |
| CONTINGENCY TIME: ORIGINAL CONTRACT / PREVIOUS CHANGES / THIS CHANGE | 0 / 0 / 0 |
| ADJUSTED DURATION INCLUDING THIS CHANGE | 790 |

CERTIFYING STATEMENT: *I hereby certify that the changes and supporting cost data included is, in my considered opinion, necessary and accurate; that the prices quoted are fair and reasonable and in proper ratio to the cost of the original work contracted for under benefit of competitive bidding.*

Approved: ENGINEER OR CONSULTING ENGINEER _____ Date: _____

Recommended By: PROJECT MANAGER _____ Date: _____

**TO BE FILLED OUT BY PUBLIC WORKS DEPARTMENT**

**FUNDS BUDGET CODE** CPE01C.BCC12C.TRSIGL99111

CERTIFIED BY DEPARTMENT'S FINANCE DIVISION: [signature] Date: 11/4/08

[initials] 10/24/08

**Accepted By:**

| Organization | Name | Title | Date |
|---|---|---|---|
| The De Moya Group, Inc. | [signature] A.J. deMoya | Vice President Contractor | 10/16/08 |
| Surety | Travelers Casualty and Surety Company of America [signature] Mary C. Aceves, Attorney-in-Fact | Surety | 10/17/08 |

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| Title | Name | Date |
|---|---|---|
| Reviewed By: **Manager, Construction Division** | | 10-21-08 |
| Approved By: **Assistant Director** | | 10/21/08 |
| Approved By: **Director** | | 11/4/08 |
| Approved By: **Director, SBD** | | 11/6/08 |
| Approved By: **Director, OSBM** | | |
| Approved By: **County Attorney** | | 11/7/08 |
| Approved By: **County Manager** | | |
| Attested By: **Clerk of the Board** | | |

**Time Justification: (Continued)**

of the signalized intersection described above.

**Monetary Justification: (Continued)**

- $261,480.04 to compensate the contractor for a compensable time extension of 124 calendar days needed to complete the construction of the signalized intersection at Sta. 19+05 on NW 97th Avenue as per FDOT formula.

**Time Justification Declaration:**

A time extension is provided for additional work performed outside the scope of the original Contract that affects the critical path schedule of the contracted work or previously approved changes. Should additional work be required which does not affect the critical path schedule, no time extension will be granted. Should one item of additional work run concurrent with another item of additional work, only time not duplicated can be provided.

TRAVELERS

# POWER OF ATTORNEY

**Farmington Casualty Company**
**Fidelity and Guaranty Insurance Company**
**Fidelity and Guaranty Insurance Underwriters, Inc.**
**Seaboard Surety Company**
**St. Paul Fire and Marine Insurance Company**
**St. Paul Guardian Insurance Company**
**St. Paul Mercury Insurance Company**
**Travelers Casualty and Surety Company**
**Travelers Casualty and Surety Company of America**
**United States Fidelity and Guaranty Company**

**Attorney-In Fact No.** 219740 **Certificate No.** 002480902

**KNOW ALL MEN BY THESE PRESENTS**: That Seaboard Surety Company is a corporation duly organized under the laws of the State of New York, that St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company and St. Paul Mercury Insurance Company are corporations duly organized under the laws of the State of Minnesota, that Farmington Casualty Company, Travelers Casualty and Surety Company, and Travelers Casualty and Surety Company of America are corporations duly organized under the laws of the State of Connecticut, that United States Fidelity and Guaranty Company is a corporation duly organized under the laws of the State of Maryland, that Fidelity and Guaranty Insurance Company is a corporation duly organized under the laws of the State of Iowa, and that Fidelity and Guaranty Insurance Underwriters, Inc. is a corporation duly organized under the laws of the State of Wisconsin (herein collectively called the "Companies"), and that the Companies do hereby make, constitute and appoint

Charles D. Nielson, Charles J. Nielson, Mary C. Aceves, Warren M. Alter, David R. Hoover, Gicelle Pajon, Olga Iglesias, and Gloria McClure

of the City of Miami Lakes, State of Florida, their true and lawful Attorney(s)-in-Fact, each in their separate capacity if more than one is named above, to sign, execute, seal and acknowledge any and all bonds, recognizances, conditional undertakings and other writings obligatory in the nature thereof on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

**IN WITNESS WHEREOF**, the Companies have caused this instrument to be signed and their corporate seals to be hereto affixed, this 11th day of March, 2008.

**Farmington Casualty Company**
**Fidelity and Guaranty Insurance Company**
**Fidelity and Guaranty Insurance Underwriters, Inc.**
**Seaboard Surety Company**
**St. Paul Fire and Marine Insurance Company**
**St. Paul Guardian Insurance Company**
**St. Paul Mercury Insurance Company**
**Travelers Casualty and Surety Company**
**Travelers Casualty and Surety Company of America**
**United States Fidelity and Guaranty Company**

State of Connecticut
City of Hartford ss.

By: George W. Thompson, Senior Vice President

On this the 11th day of March, 2008, before me personally appeared George W. Thompson, who acknowledged himself to be the Senior Vice President of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., Seaboard Surety Company, St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company, and that he, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

**In Witness Whereof,** I hereunto set my hand and official seal.
My Commission expires the 30th day of June, 2011.

Marie C. Tetreault, Notary Public

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58440-5-07 Printed in U.S.A.

This Power of Attorney is granted under and by the authority of the following resolutions adopted by the Boards of Directors of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., Seaboard Surety Company, St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company, which resolutions are now in full force and effect, reading as follows:

**RESOLVED**, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President, any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary may appoint Attorneys-in-Fact and Agents to act for and on behalf of the Company and may give such appointee such authority as his or her certificate of authority may prescribe to sign with the Company's name and seal with the Company's seal bonds, recognizances, contracts of indemnity, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking, and any of said officers or the Board of Directors at any time may remove any such appointee and revoke the power given him or her; and it is

**FURTHER RESOLVED**, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President may delegate all or any part of the foregoing authority to one or more officers or employees of this Company, provided that each such delegation is in writing and a copy thereof is filed in the office of the Secretary; and it is

**FURTHER RESOLVED**, that any bond, recognizance, contract of indemnity, or writing obligatory in the nature of a bond, recognizance, or conditional undertaking shall be valid and binding upon the Company when (a) signed by the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary and duly attested and sealed with the Company's seal by a Secretary or Assistant Secretary; or (b) duly executed (under seal, if required) by one or more Attorneys-in-Fact and Agents pursuant to the power prescribed in his or her certificate or their certificates of authority or by one or more Company officers pursuant to a written delegation of authority; and it is

**FURTHER RESOLVED**, that the signature of each of the following officers: President, any Executive Vice President, any Senior Vice President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Secretary, and the seal of the Company may be affixed by facsimile to any power of attorney or to any certificate relating thereto appointing Resident Vice Presidents, Resident Assistant Secretaries or Attorneys-in-Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and any such power of attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding on the Company in the future with respect to any bond or understanding to which it is attached.

I, Kori M. Johanson, the undersigned, Assistant Secretary, of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., Seaboard Surety Company, St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company do hereby certify that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which is in full force and effect and has not been revoked.

**IN TESTIMONY WHEREOF**, I have hereunto set my hand and affixed the seals of said Companies this 17th day of October, 20 08.

Kori M. Johanson, Assistant Secretary

To verify the authenticity of this Power of Attorney, call 1-800-421-3880 or contact us at www.travelersbond.com. Please refer to the Attorney-In-Fact number, the above-named individuals and the details of the bond to which the power is attached.

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# MIAMI-DADE COUNTY, FLORIDA

## PUBLIC WORKS DEPARTMENT

## CHANGE ORDER TO ORIGINAL CONTRACT

**CHANGE ORDER NO:** 2 **CONTRACT NO:** 671128 **DATE:** 10/8/2008

**PROJECT TITLE:** NW 97 Avenue over SR 836 from Fountainbleau Boulevard to North of NW 13 Street.

**TO CONTRACTOR:** The De Moya Group, Inc. 12209 South Dixie Highway Miami, Florida 33156

YOU ARE HEREBY REQUESTED TO MAKE THE FOLLOWING CHANGES IN THE PLANS AND SPECIFICATIONS FOR THIS PROJECT AND TO PERFORM THE WORK ACCORDINGLY, SUBJECT TO ALL CONTRACT STIPULATIONS AND COVENANTS.

**Description of work authorized:** Increase the contract amount by $538,186.95 and extend the contract time by 353 calendar days. This Change Order is conditioned upon the effectiveness and execution by Miami-Dade County and The De Moya Group, Inc. of the attached form of Settlement Agreement.

**Monetary Justification:** This Change Order increases the contract amount by $538,186.95 as follows:

- $281,011.43 are needed to compensate the contractor for the construction of new signalized U-turns at the intersection of NW 12th street and NW 97th Avenue. The U-turns are required to improve traffic circulation in the area, including a large volume of truck traffic.
- $21,000.00 are needed to compensate the contractor for the clean-out of an existing conveyance ditch and for building of a partial fill behind End-Bent No. (Continued below)

**Time Justification:** This Change Order extends the contract time as follows:

- 112 calendar days required to complete the construction of new signalized intersections (U-turns) as per FDOT formula. These days are compensable (see Monetary Justification).

- 14 non-compensable calendar days are needed due to time suspended for the Thanksgiving and Christmas holidays in 2004, as per Section 8-6 (Continued below)

**This change order includes not only all direct costs of contractor such as labor, material, job overhead, and profit markup; but also includes any costs for modifications or changes in sequence of work to be performed, delays, rescheduling, disruption, extended direct overhead or general overhead, acceleration, material or other escalation which include wages and other impact costs.**

**Contractor hereby waives, fully releases, discharges and acquits Miami-Dade County of any and all liability for claims, additional costs, and any requests for additional time arising out of the fulfillment of the contract and this change order from the date of the contract award to and including execution of this change order.**

**SUMMARY OF CONTRACT AMOUNT / TIME**

| | |
|---|---|
| ORIGINAL CONTRACT AMOUNT | $15,815,362.36 |
| COST OF CHANGES PREVIOUSLY ORDERED | $717,152.04 |
| ADJUSTED CONTRACT AMOUNT PRIOR TO THIS CHANGE | $16,532,514.40 |
| COST OF CHANGES WITH THIS DOCUMENT | $538,186.95 |
| ADJUSTED CONTRACT AMOUNT INCLUDING THIS CHANGE | $17,070,701.35 |
| PERCENT INCREASE WITH THIS CHANGE | 3% |
| TOTAL PERCENT INCREASE TO DATE | 8% |
| TIME: ORIGINAL CONTRACT / PREVIOUS CHANGES / THIS CHANGE | 600 / 190 / 353 |
| CONTINGENCY TIME: ORIGINAL CONTRACT / PREVIOUS CHANGES / THIS CHANGE | 0 / 0 / 0 |
| ADJUSTED DURATION INCLUDING THIS CHANGE | 1143 |

CERTIFYING STATEMENT: *I hereby certify that the changes and supporting cost data included is, in my considered opinion, necessary and accurate; that the prices quoted are fair and reasonable and in proper ratio to the cost of the original work contracted for under benefit of competitive bidding.*

Approved: ENGINEER OR CONSULTING ENGINEER _____ Date: _____

Recommended By: PROJECT MANAGER _____ Date: _____

**TO BE FILLED OUT BY PUBLIC WORKS DEPARTMENT**

**FUNDS BUDGET CODE** CP2010C.BCC12C.TRS16L.99111

CERTIFIED BY DEPARTMENT'S FINANCE DIVISION: _____ Date: 11/4/08

**Accepted By:**

| Organization | Name | Title | Date |
|---|---|---|---|
| The De Moya Group, Inc. | Armando deMoya | President Contractor | 11/04/08 |

Travelers Casualty and Surety Company of America

**Surety** Mary C. Aceves, Attorney-in-Fact **Surety** 11/4/08

| Title | Name | Date |
|---|---|---|
| Reviewed By: **Chief, Construction Division** | | 11-4-08 |
| Approved By: **Assistant Director** | | 11/4/08 |
| Approved By: **Director** | | 11-4-08 |
| Approved By: **Director, SBD** | | 11-6-08 |
| Approved By: **Director, OSBM** | | 11/7/08 |
| Approved By: **County Attorney** | | 11/7/08 |
| Approved By: **County Manager** | | |
| Attested By: **Clerk of the Board** | | |

**Time Justification: (Continued)**

.4 of the 1991 FDOT Standard Specifications.
- 14 non-compensable calendar days are needed due to a delay by the owner in providing the survey control points.
- 12 non-compensable calendar days are needed due to inclement weather and its effects at the job site in 2005.
- 25 non-compensable calendar days are needed due to delays caused by Hurricane Dennis (3 days), Katrina (4 days), Rita (2 days) and Wilma (16 days) in 2005.
- 21 non-compensable calendar days are needed due to the cleanout of the existing conveyance ditch and to the building of a partial fill.
- 10 non-compensable calendar days are needed due to inclement weather and its effects at the job site in 2006.
- 6 non-compensable calendar days are needed due to delays caused by Tropical Storm Ernesto in 2006.
- 65 non-compensable calendar days are needed for the procurement of new traffic signal material, coordination of plans and shop drawing revisions.
- 13 non-compensable calendar days are needed for the drilling and installation of dowels for the bridge median barrier.
- 61 non-compensable calendar days are needed for the procurement of additional pedestrian enclosure material and required installation.

**Monetary Justification: (Continued)**

1/MSE Wall A.
- $236,175.52 are needed to compensate the contractor for 112 calendar days required to complete the construction of new signalized intersections (U-turns) as per FDOT formula.

**Time Justification Declaration:**

A time extension is provided for additional work performed outside the scope of the original Contract that affects the critical path schedule of the contracted work or previously approved changes. Should additional work be required which does not affect the critical path schedule, no time extension will be granted. Should one item of additional work run concurrent with another item of additional work, only time not duplicated can be provided.

TRAVELERS

# POWER OF ATTORNEY

Farmington Casualty Company
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St. Paul Guardian Insurance Company
St. Paul Mercury Insurance Company
Travelers Casualty and Surety Company
Travelers Casualty and Surety Company of America
United States Fidelity and Guaranty Company

**Attorney-In Fact No.** 219740 **Certificate No.** 002480847

**KNOW ALL MEN BY THESE PRESENTS:** That Seaboard Surety Company is a corporation duly organized under the laws of the State of New York, that St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company and St. Paul Mercury Insurance Company are corporations duly organized under the laws of the State of Minnesota, that Farmington Casualty Company, Travelers Casualty and Surety Company, and Travelers Casualty and Surety Company of America are corporations duly organized under the laws of the State of Connecticut, that United States Fidelity and Guaranty Company is a corporation duly organized under the laws of the State of Maryland, that Fidelity and Guaranty Insurance Company is a corporation duly organized under the laws of the State of Iowa, and that Fidelity and Guaranty Insurance Underwriters, Inc. is a corporation duly organized under the laws of the State of Wisconsin (herein collectively called the "Companies"), and that the Companies do hereby make, constitute and appoint

Charles D. Nielson, Charles J. Nielson, Mary C. Aceves, Warren M. Alter, David R. Hoover, Gicelle Pajon, Olga Iglesias, and Gloria McClure

of the City of Miami Lakes, State of Florida, their true and lawful Attorney(s)-in-Fact, each in their separate capacity if more than one is named above, to sign, execute, seal and acknowledge any and all bonds, recognizances, conditional undertakings and other writings obligatory in the nature thereof on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

**IN WITNESS WHEREOF**, the Companies have caused this instrument to be signed and their corporate seals to be hereto affixed, this 11th day of March, 2008.

Farmington Casualty Company
Fidelity and Guaranty Insurance Company
Fidelity and Guaranty Insurance Underwriters, Inc.
Seaboard Surety Company
St. Paul Fire and Marine Insurance Company
St. Paul Guardian Insurance Company
St. Paul Mercury Insurance Company
Travelers Casualty and Surety Company
Travelers Casualty and Surety Company of America
United States Fidelity and Guaranty Company

State of Connecticut
City of Hartford ss.

By: George W. Thompson, Senior Vice President

On this the 11th day of March, 2008, before me personally appeared George W. Thompson, who acknowledged himself to be the Senior Vice President of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., Seaboard Surety Company, St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company, and that he, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

**In Witness Whereof,** I hereunto set my hand and official seal.
My Commission expires the 30th day of June, 2011.

Marie C. Tetreault, Notary Public

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58440-5-07 Printed in U.S.A.

This Power of Attorney is granted under and by the authority of the following resolutions adopted by the Boards of Directors of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., Seaboard Surety Company, St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company, which resolutions are now in full force and effect, reading as follows:

**RESOLVED**, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President, any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary may appoint Attorneys-in-Fact and Agents to act for and on behalf of the Company and may give such appointee such authority as his or her certificate of authority may prescribe to sign with the Company's name and seal with the Company's seal bonds, recognizances, contracts of indemnity, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking, and any of said officers or the Board of Directors at any time may remove any such appointee and revoke the power given him or her; and it is

**FURTHER RESOLVED**, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President may delegate all or any part of the foregoing authority to one or more officers or employees of this Company, provided that each such delegation is in writing and a copy thereof is filed in the office of the Secretary; and it is

**FURTHER RESOLVED**, that any bond, recognizance, contract of indemnity, or writing obligatory in the nature of a bond, recognizance, or conditional undertaking shall be valid and binding upon the Company when (a) signed by the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary and duly attested and sealed with the Company's seal by a Secretary or Assistant Secretary; or (b) duly executed (under seal, if required) by one or more Attorneys-in-Fact and Agents pursuant to the power prescribed in his or her certificate or their certificates of authority or by one or more Company officers pursuant to a written delegation of authority; and it is

**FURTHER RESOLVED**, that the signature of each of the following officers: President, any Executive Vice President, any Senior Vice President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Secretary, and the seal of the Company may be affixed by facsimile to any power of attorney or to any certificate relating thereto appointing Resident Vice Presidents, Resident Assistant Secretaries or Attorneys-in-Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and any such power of attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding on the Company in the future with respect to any bond or understanding to which it is attached.

I, Kori M. Johanson, the undersigned, Assistant Secretary, of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., Seaboard Surety Company, St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company do hereby certify that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which is in full force and effect and has not been revoked.

**IN TESTIMONY WHEREOF**, I have hereunto set my hand and affixed the seals of said Companies this 4th day of November, 20 08

Kori M. Johanson, Assistant Secretary

To verify the authenticity of this Power of Attorney, call 1-800-421-3880 or contact us at www.travelersbond.com. Please refer to the Attorney-In-Fact number, the above-named individuals and the details of the bond to which the power is attached.

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