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

Memorandum

MIAMI-DADE COUNTY

Date: March 2, 2010

Agenda Item No. 12(A)(2)

To: Honorable Chairman Dennis C. Moss
and Members, Board of County Commissioners

From: George M. Burgess
County Manager

Resolution No. R-285-10

R.A. Cuevas, Jr.
County Attorney

Subject: Resolution Approving a Settlement Agreement between Miami-Dade County and MEF Construction, Inc. for the People's Transportation Plan (PTP) Project Entitled ADA Sidewalk Compliance (Project #20050030) in the Amount of $24,000

RECOMMENDATION

It is recommended that the Board of County Commissioners (BCC) approve the attached resolution approving the Settlement Agreement between Miami-Dade County (County), and MEF Construction, Inc (MEF) concerning ADA Sidewalk Compliance Contract No. 20050030 ("Project") and authorizing the County Mayor or the County Mayor's designee to execute said Agreement. This Agreement is as a result of litigation regarding the subject project.

SCOPE

Work under this contract was performed in various locations within Commission Districts 6, 12 and 13.

FISCAL IMPACT/FUNDING SOURCE

The fiscal impact is $24,000. This settlement will be paid from funding for ADA Compliance Improvements under Capital Asset Acquisition Bond 2004B Proceeds.

TRACK RECORD/MONITOR

MEF has filed a lawsuit and the Public Works Department (PWD) has denied all allegations.

BACKGROUND

PWD Contract No. 20050030 ADA Sidewalk Compliance Project was approved by BCC on September 8, 2005. The notice to proceed was issued on November 28, 2005. The project ending date was November 27, 2006. The total purchase order amount was $894,500 and total amount constructed was $326,725.01.

On or about June 10, 2008 MEF filed a lawsuit for breach of contract against the County in Case No. 08-32900 CA 04 in the Circuit Court of the 11th Judicial Circuit in and for Miami-Dade County,

Florida. In the lawsuit, MEF sought damages in the amount of $140,179.45 dollars, plus costs and interest due to the fact that the PWD had not used this contract to its full capacity.

MEF contends that the quantities of work performed ($326,725.01) is substantially less than the total contract price ($894,500.00). Relying on Florida Department of Transportation (FDOT) standard specifications that MEF alleges are incorporated into the Contract, MEF argues that it is entitled to an upward adjustment of compensation. The FDOT specifications provide for an adjustment in a Contract's Unit Price when the quantity of work for an individual major item of work has been decreased by more than 25% from the original contract price. Applying the FDOT specifications MEF contends that it is entitled to an additional $140,179.45 in compensation from the County. In support of its contention that the Contract Price was $894,500.00, MEF cites to the County's requirement of a payment and performance bond in the amount of $800,000.00. Additionally, as an alternative argument, MEF contends that the County delayed the commencement of work under the Project which, in turn, increased MEF's costs in the amount of $96,512.74.

The County counters that the FDOT specifications are not applicable to the Contract. The County asserts that this being a work order based contract explicitly did not guarantee MEF any specific quantity of work. The County denies that it substantially delayed the Project beyond its normal approval process so as to incur any type of liability.

The parties have worked out a settlement agreement that is being recommended for your approval. In essence it involves payment to MEF of $24,000.00 which represents a significant reduction of its overall claim. The County may incur substantial additional costs to an uncertain result if the litigation with MEF is continued; therefore, the settlement is recommended for your approval as being in the best interest of the County.

A copy of the Settlement Agreement is attached.

Assistant County Manager

MEMORANDUM

(Revised)

TO: Honorable Chairman Dennis C. Moss and Members, Board of County Commissioners

DATE: March 2, 2010

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

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

Please note any items checked.

_____ **"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**

_____ **Ordinance creating a new board requires detailed County Manager's report for public hearing**

✓ **No committee review**

✓ **Applicable legislation requires more than a majority vote (i.e., 2/3's ____, 3/5's ____, unanimous _____) to approve**

_____ **Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required**

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Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 12(A)(2)
3-2-10

RESOLUTION NO. **R-285-10**

RESOLUTION APPROVING SETTLEMENT AGREEMENT BETWEEN MIAMI-DADE COUNTY AND MEF CONSTRUCTION, INC. FOR THE PEOPLE'S TRANSPORTATION PLAN (PTP) PROJECT ENTITLED ADA SIDEWALK COMPLIANCE (PROJECT # 20050030) IN THE AMOUNT OF $24,000.00

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 attached Settlement Agreement between Miami-Dade County and MEF Construction, Inc. for the People's Transportation Plan (PTP) Project Entitled ADA Sidewalk Compliance (Project # 20050030) in the amount of $24,000.00 to MEF Construction, Inc. and authorizes the County Mayor or the County Mayor's designee to execute the Agreement in substantially the form attached hereto, and to execute all other documents necessary to implement the Agreement, subject to the approval of the County Attorney as to legal sufficiency.

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

Dennis C. Moss, Chairman **aye**
Jose "Pepe" Diaz, Vice-Chairman **aye**

Bruno A. Barreiro	**absent**	Audrey M. Edmonson	**aye**
Carlos A. Gimenez	**absent**	Sally A. Heyman	**aye**
Barbara J. Jordan	**aye**	Joe A. Martinez	**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 March, 2010. 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: **DIANE COLLINS**
Deputy Clerk

Approved by County Attorney as to form and legal sufficiency.

Eduardo W. Gonzalez

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

GENERAL JURISDICTION DIVISION

MEF CONSTRUCTION, INC.,
a Florida corporation,

CASE NO. 08-32900 CA 04

Plaintiff,

vs.

MIAMI-DADE COUNTY, FLORIDA,
a municipal corporation of the State of Florida,

Defendant.
_____/

AGREEMENT FOR FINAL SETTLEMENT, RELEASE, INDEMNITY AND WAIVER OF CLAIMS BETWEEN MIAMI- DADE COUNTY AND MEF CONSTRUCTION, INC.

This Settlement Agreement ("Agreement") is entered into this ___ day of _____, 2010 between Miami-Dade County, a political subdivision of the State of Florida ("County"") and MEF Construction, Inc., ("Contractor") as follows:

Whereas, County and Contractor entered into a contract on a project described as the People's Transportation Plan (PTP) Project entitled ADA Sidewalk Compliance Contract No. CICC-7360-0/08 RPQ No. 20050030 (the "Project" or "Contract"); and

Whereas, Contractor filed a lawsuit entitled MEF Construction, Inc. v. Miami-Dade County, Case No. 08-32900 CA 04, now pending before the Circuit Court of the 11th Judicial Circuit in and for Miami-Dade County, Florida ("Lawsuit") seeking additional compensation in connection with the Project; and

Whereas, County and Contractor have determined to settle all disputes arising out of the Project and claims in the Lawsuit to date pursuant to the terms of this Agreement; and

The parties agree, subject to the approval of the Board of County Commissioners and the County Mayor or designee as follows:

1. County will pay Contractor the total sum amount of $24,000.00.

2. Contractor agrees to accept the payment listed in Paragraph 1 above as full accord and satisfaction of all monies currently due it under or in connection with the Contract, the Project, the Lawsuit and the work performed on the Project, including but not limited to work performed by the Contractor, by its Surety, and by their subcontractors, materialmen and suppliers, and in full accord and satisfaction of all claims asserted in the Lawsuit.

3. As a condition of payment, Contractor shall furnish to the Miami-Dade County Public Works Department ("PWD") final releases or consents of surety from all subcontractors and suppliers involved in the Project. The Contract did not contain any CSBE measures.

4. In consideration of the payments listed in Paragraph 1 above, Contractor releases County, and its officers, employees and agents, from and waives and relinquishes any and all claims, disputes or causes of action it has or may have, whether known or unknown, against County, and their officers, employees and agents arising out of or in connection with the Contract and the Project or the work performed under the Contract and the Project, including, but not limited to, any and all claims asserted in or relating to the Lawsuit in connection with the Project and any and all claims that could have been asserted in connection with the Contract and the Project, whether known or unknown. Contractor will indemnify County, its officers, employees, and agents, from any claims from its subcontractors and suppliers in connection with the Contract and the Project.

5. By way of this Settlement, the County accepts the work performed by Contractor, and County waives all claims against Contractor for the work performed to date, except that County expressly reserves all rights:

a. to require the repair or replacement of defective work under the warranty and guaranty provisions of the Contract documents to the extent such warranty and guaranty time provisions have not expired;

b. to require the repair or replacement of latent defects in the work to the extent provided by Florida law;

c. to enforce the terms of the Payment Bond against Surety of the Project in the event that timely claims may be made by any covered third parties; and

d. to enforce any and all provisions of this Agreement.

6. The County shall make the payment set forth in Paragraph 1 within ten (10) business days of the date that this Agreement becomes effective. This Agreement becomes effective upon approval of the Board of County Commissioners of Miami-Dade County, Florida and the expiration of the requisite veto period. The County will use

reasonable efforts to place this Agreement on the next available Board of County Commissioners meeting for approval. The payment set forth in Paragraph 1 shall be made payable to the trust account of Contractor's attorney of record in the lawsuit.

7. Within ten (10) calendar days of receipt of the payments described in Paragraph 1 above, MEF will file a voluntary dismissal with prejudice of all of its claims against the County in the Lawsuit. Each party to this Agreement will bear its own costs and attorneys' fees in connection with the Lawsuit. The Court will retain jurisdiction to enforce the terms of this Agreement.

8. The parties acknowledge that they have read this Agreement, understand it, and have consulted with their respective attorneys before executing this document.

9. The parties accept the terms of this Agreement, and have agreed to its terms solely for their own convenience, without admitting liability.

10. This Agreement may be executed in any number of separate counterparts, each of which shall together be deemed an original, but the several counterparts shall together constitute but one and the same Agreement.

11. The parties acknowledge that there has been no influence to enter into this Agreement in any manner, nor has any party relied upon any verbal warranties or representations not set forth in this Agreement. This Agreement constitutes the sole and entire agreement between the Parties and no modification hereof shall be binding unless attached hereto and signed by all parties to this Agreement. All prior and contemporaneous conversation, negotiations, possible and alleged agreements, representations, covenants and warranties concerning the subject matter hereof are merged herein.

EXECUTION

IN WITNESS WHEREOF, the Parties hereto have executed and sealed this Agreement on the date stated above.

MEF CONSTRUCTION, INC.
a Florida corporation,

Sworn to and subscribed before me
this 2 day of February, 2010.

Notary Public

My Commission expires on _____

By: MIGUEL OCANA

Title: PRESIDENT

JOE L. PUJOL
MY COMMISSION # DD 903552
EXPIRES: June 30, 2013
Bonded Thru Budget Notary Services

MIAMI-DADE COUNTY, FLORIDA,
a political subdivision of the State of

Florida,
Sworn to and subscribed before me
this ____ day of _____, 2010.

Notary Public
My Commission expires on _____

By: County Mayor or designee