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

MEMORANDUM

Agenda Item No. 8(O)(1)

TO: Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners

DATE: September 4, 2012

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

SUBJECT: Resolution approving the settlement agreement of the lawsuit between Miami-Dade County and Metro Equipment Services, Inc. in the amount of fifty thousand dollars ($50,000)
Resolution No. R-709-12

The accompanying resolution was prepared by the Water and Sewer Department and placed on the agenda by the County Attorney's Office.

R. A. Cuevas, Jr.
County Attorney

RAC/smm

Memorandum

MIAMI-DADE COUNTY

Date: September 4, 2012

To: Honorable Chairman Joe A. Martinez and
Members, Board of County Commissioners

From: Carlos A. Gimenez
County Mayor

R.A. Cuevas, Jr.
County Attorney

Subject: Resolution approving the settlement of a lawsuit between Lanzo Lining Services, Inc. vs. Metro Equipment Services, Inc., Travelers Casualty & Surety Co., vs. Miami-Dade Water and Sewer Department, Case No.: 09-77801-CA 10, in the amount of $50,000

RECOMMENDATION

It is recommended that the Board of County Commissioners (Board) approve the attached Settlement Agreement of the above referenced lawsuit between Metro Equipment Services, Inc. and Miami-Dade Water and Sewer Department (WASD) in the amount of $50,000 as full compensation for all claims arising out work related to Miami-Dade Water and Sewer Department (WASD) Contract No. S-742 and insulates the County from any residual litigation between Metro Equipment Services, Inc. and Lanzo Lining Services, Inc.

SCOPE OF AGENDA ITEM

This Settlement Agreement is for rehabilitation work performed at Bear Cut Bridge located in District 7.

FISCAL IMPACT/FUNDING SOURCE

The fiscal impact to the County is $50,000 and shall be paid from wastewater revenue bonds sold.

TRACK RECORD/MONITOR

The execution of this settlement agreement will be overseen by WASD's Deputy Director of Regulatory Compliance and Capital Improvements.

BACKGROUND

Metro Equipment Services, Inc. was awarded Contract No. S-742 for the installation of a 16-inch high density polyethylene pipe and a 12-inch ductile iron force main at Bear Cut Channel between Key Biscayne and Virginia Key. According to the scope of work, Metro Equipment Services, Inc. was to remove and demolish an abandoned 12-inch force main attached to the Bear Cut Bridge and install a new force main.

During the performance of the contract, the South Florida Water Management District and the Florida Department of Environmental Protection suggested to the County that it should find ways to utilize the Central District Wastewater Treatment Plant to provide reused wastewater to various parts of the nearby community. Given the Central District Plant's location, one of the ways of utilizing reuse water generated at the Central District Wastewater Treatment Plant is through irrigation at the Key Biscayne Golf Course. The best method to deliver the reused water from the Central District Wastewater Treatment Plant, across Bear Cut, to the Key Biscayne Golf Course was to rehabilitate the existing 12-inch force main already attached to Bear Cut Bridge and not remove it and not abandon it as originally planned.

Because Metro Equipment Services, Inc. was already working on-site and had the appropriate permits in place, WASD determined it would be more cost-effective for Metro Equipment Services, Inc. to rehabilitate the existing 12-inch force main rather than mobilize a new contractor for this work. As such, on June 3, 2008, the Board adopted Resolution No. R-666-08 approving Change Order No. 1 to Contract No. S-742 and awarded the rehabilitation work to Metro Equipment Services, Inc. who, in turn, hired Lanzo Lining Services, Inc. as a subcontractor to perform the work.

Lanzo Lining Services, Inc. was unable to successfully rehabilitate the pipe. After three attempts at rehabilitation, Lanzo Lining Services, Inc. and Metro Equipment Services, Inc. ceased any efforts to perform this work, and Metro Equipment Services, Inc. was directed to remove the pipe from the underside of the bridge as part of its base contract scope. WASD did not pay Metro Equipment Services, Inc. for the rehabilitation work, and payment was not sought by Metro. Shortly thereafter, Lanzo Lining Services, Inc. sued Metro Equipment Services, Inc., and then Metro sued the County. Lanzo Lining Services, Inc. asserted a claim in excess of $300,000.00 in damages, exclusive of cost and fees. To date, WASD has paid neither Metro Equipment Services Inc. nor Lanzo Lining Services Inc. for Lanzo's work, as WASD does not believe that this work was properly performed or otherwise provided value to the County.

Lanzo Lining Services, Inc. asserts that specifications for the rehabilitation were not constructible and not appropriate for use on a pipe suspended from a bridge. The County does not believe that its specifications were defective, instead, the County believes it was Lanzo Lining Services, Inc.'s means and methods that rendered rehabilitation of the pipe impossible. While the experts retained for the litigation by both Metro Equipment Services, Inc. and the County opined that rehabilitation of the pipe was possible, there is little engineering precedent for the type of rehabilitation WASD sought to have performed.

Accordingly, the County has agreed to the attached settlement agreement with Metro Equipment Services, Inc. which requires payment of $50,000.00 to Metro as full compensation for all claims arising out work related to the Contract and insulates the County from any residual litigation between Metro and Lanzo.

The County believes this resolution is fair and reasonable, given the risks and costs of litigation in this case. Metro has otherwise fully performed all work required of it pursuant to the Contract, and WASD is satisfied with the quality of this work.

County Manager/Deputy Mayor
Alina T. Hudak

MEMORANDUM
(Revised)

TO: Honorable Chairman Joe A. Martinez and Members, Board of County Commissioners

DATE: September 4, 2012

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

SUBJECT: Agenda Item No. 8(O)(1)

Resolution No. R-709-12

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**

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 8(O)(1)
9-4-12

RESOLUTION NO. R-709-12

RESOLUTION APPROVING THE SETTLEMENT AGREEMENT OF THE LAWSUIT BETWEEN MIAMI-DADE COUNTY AND METRO EQUIPMENT SERVICES, INC. IN THE AMOUNT OF FIFTY THOUSAND DOLLARS ($50,000); AUTHORIZING THE MAYOR OR MAYOR'S DESIGNEE TO EXECUTE SAME AND TO ENFORCE ALL TERMS 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 hereby approves and authorizes the County Mayor or Mayor's designee to execute the settlement agreement between Miami-Dade County and Metro Equipment Services, Inc. in the amount of $50,000.00, in substantially the form attached to this resolution, and to enforce all terms therein on behalf of Miami-Dade County.

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:

Joe A. Martinez, Chairman **aye**
Audrey M. Edmonson, Vice Chairwoman **aye**

Bruno A. Barreiro	**aye**	Lynda Bell	**aye**
Esteban L. Bovo, Jr.	**aye**	Jose "Pepe" Diaz	**absent**
Sally A. Heyman	**aye**	Barbara J. Jordan	**aye**
Jean Monestime	**absent**	Dennis C. Moss	**aye**
Rebeca Sosa	**aye**	Sen. Javier D. Souto	**aye**
Xavier L. Suarez	**absent**		

The Chairperson thereupon declared the resolution duly passed and adopted this 6 day of September, 2012. 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: **Christopher Agrippa**
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency. RAC for DMM

David M. Murray

SETTLEMENT AGREEMENT/GENERAL RELEASE BETWEEN METRO EQUIPMENT SERVICE, INC. AND MIAMI-DADE COUNTY

This Settlement Agreement (the "Agreement") is entered into this ___ day of September, 2012 between **Metro Equipment Service, Inc.** (hereinafter "**Metro**") and Miami-Dade County (hereinafter the "**County,**" and collectively, with Metro, the "Parties"). The term "Parties" shall be deemed to include each and all of their respective divisions, operating units, affiliated companies, subsidiaries, parents, insurers, predecessors, successors, assignees, administrators, executors, officers, trustees, employees, former employees, agents, attorneys and other representatives.

WHEREAS, the County contracted with Metro for construction of various improvements in connection with the Bear Cut bridge pursuant to the terms and conditions of Contract No. S-742 (the "Contract"), which, among other things, included the removal of a 12-iron cast iron force main attached to the underside of the bridge; and

WHEREAS, the County approached Metro about a possible change order for Contract No. S-742 through which an existing 12-inch cast iron force main attached to the underside of Bear Cut bridge would be rehabilitated for purposes of transporting reuse water to Key Biscayne rather than removed (the "Change Order"); and

WHEREAS, Metro approached Lanzo Lining Services, Inc.-Florida ("Lanzo") to serve as a possible subcontractor for the Change Order and to determine whether the rehabilitation project could be performed, and if so, at what cost; and

WHEREAS, Lanzo provided a bid to Metro for the rehabilitation of the 12-inch cast iron sewer force main and, based on Lanzo's bid, Metro and the County agreed to the Change Order; and

WHEREAS, disputes have arisen between the County and Metro, including without

limitation, disputes relating to additional costs, the feasibility of extra work, and claims brought by Lanzo against Metro in connection with the rehabilitation of the 12-inch cast iron sewer force main; and

WHEREAS, these disputes have resulted in litigation between Metro, Lanzo, and the County, which is currently pending in the Circuit Court for the Eleventh Judicial Circuit in and for Miami-Dade County, Case No. 09-77801 CA 10 (the "Circuit Court Case"); and

WHEREAS, the Parties wish to resolve all disputes and controversies between them in accordance to the terms of this Agreement, including, without limitation, all monies owed, additional costs, all allegations, legal claims, and causes of action, which were or could have been asserted by either Metro or the County with regard to Contract S-742, the Change Order or Lanzo's work on the rehabilitation project; and

WHEREAS, Metro has paid Lanzo $200,999.00 on April 25, 2012 by way of check number 3899 to resolve the claims and litigation between them; and

WHEREAS, the County agreed to resolve the claims and litigation brought by Metro against the County for the sum of $50,000.00 ("the Settlement Payment").

NOW, THEREFORE, in exchange for the mutual promises made herein and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties hereby stipulate, agree, and covenant as follows:

1. The recitals to this Agreement are incorporated into this Agreement and accepted and agreed to by all Parties, as though fully set forth in the body of the Agreement. The facts stated in the recitals shall conclusively be presumed to be true for all purposes between the Parties.

2. The County, in consideration of Metro's promises, obligations and covenants as set forth in this Agreement, and Metro's mutual performance in accordance therewith:

a. The County shall pay Metro the Settlement Payment within 30 days of the Miami-Dade County Board of County Commissioners' approval of this Agreement by delivering a check payable to the order of "Metro Equipment Service, Inc. and Peckar & Abramson P.C. Trust Account" to Adam Handfinger, One S.E. Third Avenue, Suite 3100, Miami, Florida 33131;

b. The County shall deliver to Adam Handfinger, One S.E. Third Avenue, Suite 3100, Miami, Florida 33131 on behalf of Metro, a Stipulation of Dismissal in the form attached hereto as Exhibit A, executed on behalf of the County, which shall be executed and filed by Metro within ten (10) business days of receipt of the Settlement Payment; and

c. Upon Metro's execution and filing of the Stipulation of Dismissal referenced in Paragraph 2(b) above, the County will, for itself and its respective heirs, executors, administrators, affiliates and assigns, completely and fully release and discharge Metro, and its sureties, affiliates of every kind or nature, parents, subsidiaries, successors, assigns, and predecessors, as well as the present or former attorneys, officers, directors, partners, stockholders, agents, employees, and/or affiliates of every kind or nature of the foregoing, of and from any and all manner of action and actions, claims, cause and causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, controversies, variances, trespasses, judgments, executions, claims and demands, known or unknown, in law or in equity, that the County has asserted or which they could have asserted against Metro in the Circuit Court Case. However, latent defects in the work performed by Metro are specifically excluded from this release, and, with respect to such latent defects, the County shall retain all rights it may or will have against Metro at contract or otherwise under law or equity.

Additionally, the County retains the right to enforce all applicable contract warranties and those provisions of Contract S-742, the Change Order and related documents that specifically provide that they survive the completion of the work.

3. Metro, in consideration of the County's promises, obligations and covenants as set forth in this Agreement, and the County's mutual performance in accordance therewith:

a. Upon Metro's receipt of the Settlement Payment and receipt of the County's executed Stipulation of Dismissal in substantially the form attached hereto as Exhibit A as referenced in Paragraph 2(b) above, Metro shall execute the Stipulation of Dismissal and file it in the case within ten (10) business days of receipt; and

b. Upon Metro's receipt of the Settlement Payment, Metro will, for itself and its respective heirs, executors, administrators, affiliates and assigns, completely and fully release and discharge the County, and its sureties, affiliates of every kind or nature, parents, subsidiaries, successors, assigns, and predecessors, as well as the present or former attorneys, officers, directors, partners, stockholders, agents, employees, and/or affiliates of every kind or nature of the foregoing, of and from any and all manner of action and actions, claims, cause and causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, controversies, variances, trespasses, judgments, executions, claims and demands, known or unknown, in law or in equity, that Metro has asserted or which they could have asserted against the County in the Circuit Court Case; and

c. Metro agrees that its receipt of the Settlement Payment shall constitute full accord and satisfaction of any and all claims, brought or asserted by or on behalf of Metro or any of its subcontractors or suppliers (of any tier), or which could have been brought or asserted by same, arising out of or relating to the Contract. Metro specifically waives any claim for, or entitlement to, any further compensation (other than the Settlement Payment) for additional

work, delay or otherwise arising out of or relating to the Contract or the Project, for itself or on behalf of its subcontractors or suppliers; and

d. In consideration of the first one hundred dollars paid by the County to Metro of the Settlement Payment, Metro shall indemnify and hold harmless the County and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the County or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance of the Contract or this Settlement Agreement by Metro or its employees, agents, servants, partners, principals or subcontractors. Metro 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 shall pay all costs, judgments, and attorneys' fees which may issue thereon. Metro expressly understands and agrees that any insurance protection required by the Contract or otherwise provided by Metro shall in no way limit the responsibility to indemnify, keep and save harmless and defend the County or its officers, employees, agents and instrumentalities as herein provided.

4. The Agreement contains the entire understanding and agreement of the Parties, and there are no prior or contemporaneous promises, representations, agreements, warranties or undertakings by either Party to the other, either oral or written of any character or nature, except as set forth herein.

5. The Agreement may not be altered, amended or modified except by an instrument in writing, executed and acknowledged by the parties to the Agreement, with the same formality as this Agreement and by no other means.

6. All matters affecting the execution, interpretation, validity and enforceability of the Agreement shall be subject to, and interpreted under, the laws of the State of Florida.

7. This Agreement does not constitute an admission by any Party of any wrongdoing or liability of any kind.

8. The fact that any draft of the Agreement was prepared by counsel for one of the Parties shall create no presumptions, and, specifically, shall not cause any ambiguities to be construed against that Party. The Parties acknowledge that each has contributed toward the drafting of the Agreement and that the Agreement is the result of negotiations between the Parties.

9. The Parties acknowledge that each fully understands all of the terms and obligations of the Agreement, and each believes the same to be fair, just, equitable, reasonable, fully acceptable and not unconscionable.

10. The Parties enter into the Agreement freely and voluntarily. No Party has been the subject of any duress, undue influence, fraud, or coercion in entering into the Agreement.

11. All Parties to the Agreement acknowledge that they have had the benefit of their own separate and independent attorneys to advise them of their rights and obligations under the Agreement, and they are also aware of what their rights would be in the absence of the Agreement.

12. The Agreement shall be binding upon the Parties hereto and shall also be binding upon and inure to the benefit of the heirs and successors of the respective parties.

13. Should any section, subsection, or provision of this Agreement be declared or determined finally by any court to be illegal or invalid, the validity of the remaining parts, terms or provisions shall not be affected thereby and such illegal or invalid part, term, or provision shall be deemed not to be a part of this Agreement.

14. The Agreement may be executed in two or more counterparts, including facsimile

counterparts, none of which need contain signatures of all of the Parties hereto, each of which will constitute an original, and all of which, taken together, shall constitute one and the same Agreement.

15. The Parties agree that the trial court in the Circuit Court Case shall retain jurisdiction to enforce the terms and conditions of the Agreement.

16. The Parties hereto represent and warrant that they respectively have the power, ability and all requisite approvals to enter into and perform under this Agreement; and that the person(s) signing this Agreement are duly authorized to enter into this Agreement on their behalf.

17. This Agreement, and each and every provision herein, shall be subject to the express approval of the Miami-Dade County Board of County Commissioners. This Agreement becomes effective eleven (11) days after approval by the Miami-Dade County Board of County Commissioners, unless vetoed by the Mayor. In the event the Mayor vetoes the Commission action, the Commission action shall not be effective in the absence of an override of the Mayor's veto at the next regularly scheduled meeting of the Board after the veto occurs. The actions of the Commission and the Mayor in connection with the approval or rejection of this Agreement rests within their sole discretion.

IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement on the date first above written.

METRO EQUIPMENT SERVICE, INC.

Jorge L Godoy
Signature

Jorge L. Godoy
Printed Name

President
Title

STATE OF FLORIDA)
:ss:
COUNTY OF Miami-Dade)

THIS 23rd day of July, 2012, Jorge L Godoy personally appeared before me, the undersigned authority duly authorized to administer oaths and take acknowledgments, and upon first being duly cautioned and sworn, acknowledged to and before me that he/she executed the foregoing Release, and that the same are true and correct to the best of his/her knowledge, information and belief.

Daniel Serrano
NOTARY PUBLIC, State of Florida
Print Name: Daniel Serrano
My Commission Expires: 5-15-15

✓ Personally Known, or
____ Produced N/A, as identification

NOTARY PUBLIC-STATE OF FLORIDA
Daniel Serrano
Commission # EE094067
Expires: MAY 15, 2015
BONDED THRU ATLANTIC BONDING CO., INC.

ATTEST: _____	MIAMI-DADE COUNTY, FLORIDA By _____
	Approved as to Form and Legal Sufficiency Sarah Eglover Davis 7/25/12 Assistant County Attorney