

MEMORANDUM

Agenda Item No. 8(O)(2)

TO: Honorable Chairman Jose "Pepe" Diaz
and Members, Board of County Commissioners

DATE: May 18, 2021

FROM: Geri Bonzon-Keenan
County Attorney

SUBJECT: Resolution ratifying action by the County Mayor related to Miami-Dade Water and Sewer Department's Consent Decree and Capital Improvement Programs Acceleration Ordinance pursuant to section 2-8.2.12 of the Code specifically approving a Settlement Agreement between Miami-Dade County and David Mancini & Sons, Inc., Project No. DB14-WASD-05; Contract No. 16DMSI001, in the amount of \$804,373.45, for design-build services to furnish and install a 48-inch force main along North Miami Avenue from N.W. 8 Street to N.E. 36 Street and along N.E. 36 Street from North Miami Avenue to N.E. 2 Avenue

Resolution No. R-505-21

The accompanying resolution was prepared by the Water and Sewer Department and placed on the agenda at the request of Prime Sponsor Commissioner Keon Hardemon.



Geri Bonzon-Keenan
County Attorney

GBK/uw

Memorandum



Date: May 18, 2021

To: Honorable Chairman Jose “Pepe” Diaz
and Members, Board of County Commissioners

From: Daniella Levine Cava
Mayor 

Subject: Resolution Ratifying Actions Related to Miami-Dade Water and Sewer Department’s Consent Decree and Capital Improvement Programs Acceleration Ordinance pursuant to Section 2-8.2.12 of the Miami-Dade County Code

Recommendation

It is recommended that the Board of County Commissioners (Board) ratify the actions of the County Mayor or County Mayor’s designee, as authorized under Section 2-8.2.12 of the Miami-Dade County Code related to Miami-Dade Water and Sewer Department’s (WASD) Consent Decree and Capital Improvement Programs Acceleration Ordinance (WASD’s Acceleration Ordinance), for Project No. DB14-WASD-05. This resolution ratifies a settlement agreement between Miami-Dade County and David Mancini & Sons, Inc. (DMSI) pertaining to contract 16DMSI001. During the execution of the project, the Florida Department of Transportation (FDOT) informed DMSI that it was performing a paving and stormwater project on NE 36 Street, which would be followed by a 5-year moratorium on any excavation in the area. In order to comply with FDOT permitting conditions, DMSI was required to accelerate its construction schedule, leading to additional costs for the contractor. DMSI submitted an acceleration claim for these additional costs, which resulted in this negotiated settlement of \$804,373.45.

Multi-Year Capital Plan Project

Item 1 –Settlement Agreement between Miami-Dade County and David Mancini & Sons, Inc, for the total amount of \$804,373.45, for design-build services to furnish and install a 48-inch force main along North Miami Avenue from NW 8 Street to NE 36 Street and along NE 36 Street from North Miami Avenue to NE 2 Avenue – Project No. DB14-WASD-05; Contract No. 16DMSI001.

Scope

As shown on Exhibit A, which provides basis information about the Settlement Agreement, the project is located within District 3, which is represented by Commissioner Keon Hardemon.

Delegation of Authority

Section 2-8.2.12 of the Miami-Dade County Code related to WASD’s Consent Decree and Capital Improvement Programs Acceleration Ordinance delegates authority to the County Mayor or County Mayor’s designee to award certain projects, and among other things, negotiate, and settle claims subject to ratification by the Board. The Settlement Agreement reached between Miami-Dade County and David Mancini & Sons, Inc. resolves outstanding claims related to a project awarded pursuant to Section 2-8.2.12 of the Miami-Dade County Code and, therefore, is subject to ratification by this Board.

Fiscal Impact/Funding Source

Under the terms of the Settlement Agreement, the County has agreed to pay DMSI \$804,373.45 as full and final settlement of claims under this Contract. Funding for this settlement will be from Peak Flow Management – South District Expansion, Project Number 2000000580 in the FY 2020-21 Adopted Budget and Multi-Year Capital Plan page number 66. The funding sources are: Wastewater Connection Charges, WASD Revenue Bond Sold, and Future WASD Revenue Bond.

Track Record/Monitoring

WASD’s Deputy Director of Capital Improvements, Hardeep Anand, will oversee the implementation of this Settlement Agreement.

Background

On September 3, 2014, the Board approved Ordinance No. 14-77 authorizing the County Mayor or County Mayor’s designee to award contracts for funded capital projects and related goods and services, and to accelerate the approval of WASD’s (1) Consent Decree projects and (2) projects identified in WASD Multi-Year Capital Plan’s Capital Improvement Programs without the need for prior Board approval but subject to ratification by the Board.

DMSI was selected to provide design-build services to furnish and install a 48-inch force main along North Miami Avenue from N.W. 8 Street to N.E. 36 Street and along N.E. 36 Street from North Miami Avenue to N.E. 2 Avenue. This force main is intended to provide additional system capacity and operational reliability in the area of Downtown Miami and its surroundings. The project included installation of a force main in FDOT right-of-way along NE 36 Street. During the course of the project, WASD was informed that FDOT would be performing a paving and stormwater project along NE 36 Street which would be followed by a 5-year moratorium on construction work that would impact the new roadway.

In order to complete the project prior to the imposition of the roadway moratorium, DMSI was asked by WASD to accelerate the project schedule, which included allocating additional resources to work both day and night shifts. DMSI gave WASD a Notice of Potential Claim and submitted an initial claim for \$1,455,570.18 for the accelerated work. Upon receipt and evaluation of the claim, WASD, in consultation with the County Attorney’s Office, and DMSI agreed to settle the claim for \$804,373.45. The settlement amount represents approximately four percent of the \$22,012,999.04 initial contract amount.

Exhibit A includes additional details of the project/contract for which ratification is being requested and contains the information bulleted below:

- Item Number
- Department Name
- Type of Solicitation/Contract Type
- Contract No./Project No.
- Project Name
- Firm Awarded

Honorable Chairman Jose “Pepe” Diaz
and Members, Board of County Commissioners
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- Commission District
- Settlement Agreement Amount
- Original Contract Amount/Adjusted Contract Amount
- Funding Source(s)
- Estimated Start Date/Estimated End Date
- Contract Measures: SBE Goods & Services; SBE-A/E; SBE-Construction; and CWP Program
- Brief Project Description

The Settlement Agreement, attached hereto as Exhibit B, has already been executed by the County Mayor and County Mayor’s designee and a representative of David Mancini & Sons, Inc.

Attachments



Jimmy Morales
Chief Operations Officer

Exhibit A

Ratification of Amendments/Settlement Agreement Authorized by the WASD Accelerate Ordinance

No.	Type of Solicit.	Contract No.	Project Name	Firm Awarded	Comm. District	Settlement Amount	Original Contract Amount	Funding Source(s)	Est. Start Date	Contract Measures	Brief Project Description	
	Contract Type	Project No.							Est. End Date		Change Order Description	
1	County Bid Process; Construction Contract	Contract No. 16DMSI001 Project No. DB14-WASD-05	Design-Build Services to Furnish and Install a 48-inch Force Main along North Miami Avenue from N.W. 8 Street and along N.E. 36 Street from North Miami Avenue to N.E. 2 Avenue	David Mancini & Sons, Inc.	District 3 (Keon Hardemon)	\$804, 373.45	Original Contract Amount \$22,012,999.04	Waste-water Connections Charges, WASD Revenue Bond Sold, Future WASD Revenue Bond	Notice to Proceed Start Date: 09/01/2016 Completion Date: 05/31/2019	SBE G/S - 25.00% SBE A/E - 22.00% SBE Const. - 9.33% CWP Prog. - 14.20%	This project provides for the design-build services to furnish and install a 48-inch force main along North Miami Avenue from N.W. 8 Street to N.E. 36 Street and along N.E. 26 Street from North Miami Avenue to N.E. 2 Avenue.	

Exhibit B

SETTLEMENT AGREEMENT AND GENERAL RELEASE OF ALL CLAIMS BETWEEN MIAMI-DADE COUNTY AND DAVID MANCINI & SONS, INC.

This Settlement Agreement and General Release of All Claims (the "Agreement") is made and entered as of this _____ day of _____ 2021, by and between Miami-Dade County, a political subdivision of the State of Florida (the "County"), and David Mancini & Sons, Inc. a Florida Corporation whose principal place of business is 2601 Wiles Road, Pompano Beach, Florida 33073 (hereinafter, "DMSI" and collectively, with the County, the "Parties").

RECITALS

WHEREAS, the County through the Miami-Dade Water and Sewer Department ("WASD") entered into a contract dated June 20, 2016 (the "Contract") with DMSI for the completion of Project No. DB14-WASD-05 Contract No. 16DMSI001, Design-Build Services to Furnish and Install a 48-inch Force Main along North Miami Avenue from N.W. 8th Street to N.E. 36th Street and along N.E. 36th Street from North Miami Avenue to N.E. 2nd Avenue (the "Project"); and

WHEREAS, the total amount of the Contract was \$22,012,999.04 including the Contingency and Dedicated Allowance Accounts; and

WHEREAS, the Project was completed on May 31, 2019; and

WHEREAS, during the execution of the Project, the Florida Department of Transportation ("FDOT") informed DMSI that it was performing a paving and storm water project on N.E. 36th Street which would be followed by a 5-year moratorium on any excavation in the subject area; and

WHEREAS, due to FDOT's scheduled roadway improvement work, DMSI was required to successfully complete the permitting, installation and testing of 1400 linear feet of 48-inch force main along NE 36th Street prior to June 5, 2017; and

WHEREAS, FDOT's permit to DMSI included a condition that DMSI must complete its work for installation of the force main by June 5, 2017 and that DMSI would be responsible for any delays or claims by FDOT's contractor if it was unable to perform the paving and storm water improvement work in compliance with the FDOT contract; and

WHEREAS, in order to comply with the permit condition, DMSI was required to redesign a portion of the work, reschedule the sequence of its work, expedite the procurement of materials and increase manpower resulting in additional costs; and

WHEREAS, on June 12, 2018, DMSI submitted to the County an acceleration claim seeking \$1,455,570.18; and

WHEREAS, the Water and Sewer Department and its consultants reviewed the claim; and

WHEREAS, WASD negotiated a settlement of the acceleration claim in the amount of \$787,103.44 subject to approval by the Mayor and Board of County Commissioners; and

WHEREAS, DMSI also seeks reimbursement for Off-Duty Police officers and additional permit fees in the amount of \$19,285.98; and

WHEREAS, WASD reviewed the request for reimbursement and agrees that the amount is justified; and

WHEREAS, the County and DMSI wish to amicably settle all outstanding issues between the parties regarding the Project under the terms of this Agreement.

TERMS AND CONDITIONS

NOW, THEREFORE, in consideration of the mutual covenants hereinafter set forth, the County and DMSI agree as follows:

1. **Incorporation of Recitals.** The parties agree that the above recitals are true and correct and that those recitals are incorporated by reference and form a part of this Agreement.
2. **Effective Date.** The Effective Date of this Agreement shall be the sooner of (1) the date of the expiration of the County Mayor's veto period subsequent to the approval of this Agreement by the Board of County Commissioners of Miami-Dade County (the "BCC") without the County Mayor vetoing the BCC's resolution approving same or (2) the date on which the County Mayor BCC-approved resolution authorizing the execution of this Agreement, as set forth in Section 3 of this Agreement.
3. **County Approval Process.** DMSI acknowledge that before the County may settle any claims or enter into any binding contractual obligations pursuant to this Agreement, the County must obtain the approval of the BCC and the subsequent assent of the County Mayor or, if the County Mayor vetoes any legislation approving this Agreement, an override of the County Mayor's veto by the "BCC" Approval.
 - a. **BCC Approval.** DMSI acknowledge that the County Resolution No. 130-06 requires that all non-County parties must execute this Agreement before the Agreement may be placed on the BCC's agenda. Accordingly, DMSI agrees to execute this Agreement before the County ("DMSI's Execution") and as a precondition of the presentation of this Agreement to the County Mayor or the County Mayor's designee or to the BCC. After such execution, DMSI (in exchange for sufficient consideration, the receipt of which is acknowledged, and which consideration includes the County Mayor or County Mayor's designee's recommendation of this Agreement to the BCC) agree that it may not withdraw from or modify the terms of its settlement with the County, as presented in this Agreement.

b. **The Parties' Obligations Before BCC Approval.** Neither party shall be required to file any document compromising any claims it may have against the other party and shall not have released the other party until the Effective Date of this Agreement.

c. **Consequence Upon Failure to Obtain BCC Approval.** To the extent the BCC does not approve this Agreement, and after all opportunities for BCC reconsideration have passed, the parties shall return to the status quo existing before the parties' preparation of this Agreement, and the fact that the County and DMSI sought to negotiate a resolution to their dispute concerning the Project, including any supporting documents necessary to present this Agreement to the BCC, shall be inadmissible for all reasons and shall not prejudice any of their pre-existing rights, remedies and defenses with respect to each other or any other person or entity.

4. **Agreement to Settle: No Admission of Liability.** Subject to the terms and conditions of this Agreement, including the County's payment of the Settlement Amount, DMSI and the County hereby agree that the terms of this Agreement, the payment of any monies, or any other action of forbearance taken pursuant to this Agreement shall in no way constitute, nor be construed as, an admission of liability or acknowledgment of the validity of any allegation, finding or conclusion by DMSI, the County, or their respective agents, but rather are made as a contractual settlement by way of compromise to avoid the expense and uncertainty of litigation.

5. **Payment Terms.** As full and final settlement of this matter, the County agrees to pay DMSI the following amounts:

N.E. 36 th Street Acceleration Claim:	\$787,103.44
Reimbursement for Off-Duty Police Officers: and additional permitting fees:	\$ 19,285.98
Inspector General Fee charged to DMSI:	(\$ 2,015.97)
Total to DMSI:	\$804,373.45

The County shall pay the total amount of Eight Hundred Four Thousand Three Hundred Seventy-Three 45/100 Dollars (\$804,373.45) ("Settlement Amount") within 30 days of the Effective Date of this Agreement. Such payment is further conditioned on DMSI providing the final Compliance Package which includes, without limitation, as-builds and a Final Release of Lien/Subcontractor's Statement of Satisfaction for each subcontractor marked as final, and execution of the Final Pay Estimate.

6. **Release.** Upon the payment of the Settlement Amount, DMSI, on behalf of the corporation, its officers, employees, subcontractors, materialmen, suppliers, including,

but not limited to, and pass-through claims, successors, and assigns, does hereby forever release, acquit and discharge the County, its past, present and future employees, agents, servants, successors, heirs, executors, administrators and officers of and from, any and all claims, causes of action, demands, disputes and rights of whatever nature and kind, choate or inchoate, known or unknown, past or future, related to or in any way arising out of the Project.

7. **County Reservation.** Notwithstanding any other provision of this Agreement to the contrary, the County expressly reserves its rights with respect to:
 - a. Require the repair or replacement of latent defects in the work to the extent provided by law.
 - b. Enforce those provisions of the Contract, which specifically provide that they survive the completion of the work.
8. **Parties to Bear Their Own Costs and Fees.** Each party shall bear its own attorneys' fees and costs in any action, including through all stages of appellate review, relating to or arising out of DMSI's claims or the enforcement of the terms of this Agreement.
9. **Florida Law Applies; Exclusive Venue.** This Agreement shall be construed under the laws of the State of Florida without regard to its choice of law provisions. Venue for any dispute arising out of this Agreement shall lie exclusively in Miami-Dade County, Florida.
10. **Entire Agreement: Modification.** This Agreement together with all documents required to be executed hereunder constitutes the entire agreement and understanding between the parties to this Agreement with respect to the subject matter of this Agreement. No supplement, modification, or amendment to this Agreement shall be binding unless it is executed in writing by all parties.
11. **Rule of Construction: Opportunity to Review.** The parties represent and agree that they have participated equally in the negotiation of the terms and provisions set forth in this Agreement and that no presumptions or inference shall apply against any party hereto to its construction. The parties declare that a) they have completely read the terms of this Agreement, (b) they have discussed the terms of the Agreement with legal counsel of their choice, and (c) they fully understand and voluntarily accept the terms for the purpose of making a full and final compromise, adjustment and settlement of claims.

12. **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, representatives, agents, attorneys, officers, directors, predecessors, affiliates, parent, subsidiaries, successors or assigns in connection with any legal action arising out of the Agreement.
13. **Authority to Execute and Bind.** By executing this Agreement the undersigned warrant and represent that they are authorized to enter into this Agreement and empowered to bind their respective parties to these terms and, where applicable, their parent, affiliates, subsidiaries, successors, and assignees and related entities. Further, the parties represent that they have not assigned any of their respective rights or claims subject of or to this Agreement to any third party.
14. **Captions.** The captions or headings in this Agreement are for convenience only and in no way define, limit, or describe the scope or intent of any provisions of this Agreement.
15. **Severability.** The parties have attempted to create an Agreement that is lawful and enforceable in all respects. The validity of this Agreement shall not be affected by any subsequent changes in federal, state or county law, whether through legislation or judicial interpretation, which create, eliminate or change the rights and obligations of the parties. Whenever possible, each provision of this Agreement shall be interpreted in such a manner is held to be invalid, void or enforceable, the balance of the provisions shall, nevertheless, remain in full force and effect and shall in no way be affected, impaired or invalidated.
16. **Counterparts; Electronic Signatures.** The parties agree that this Agreement, and any and all other documents in connection with this Agreement, may be executed in one or more counterparts, each of which shall be deemed an original but all of which shall together constitute one and the same Agreement. This Agreement may be executed as facsimile, email or electronic transmitted signature of any party's authorized representative shall be deemed to be an original.

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SIGNATURES ON NEXT PAGE

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement by their duly authorized officers on the date first written above.

ATTEST:

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF COUNTY
COMMISSIONERS

By: [Signature]
Clerk of the Board

By: [Signature]
for County Mayor
Jimmy Morales, Chief Operations Officer



WITNESSETH:
By: [Signature]

David Mancini & Sons, Inc.
Firm Name (Place Corporate Seal)

Leydis Colonina Perez
Type or print name

By: [Signature]
President

By: Deirdre Gan

David Mancini Jr.
Print name

Deirdre Gan
Type or print name

Approved as to form and legal sufficiency.

Sandra E. Weir DAUS 3/25/21
Assistant County Attorney



MEMORANDUM

(Revised)

TO: Honorable Chairman Jose "Pepe" Diaz
and Members, Board of County Commissioners

DATE: May 18, 2021

FROM: 
Gen Bonzon-Keenan
County Attorney

SUBJECT: Agenda Item No. 8(O)(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
- ☐ Statement of social equity required
- ☐ Ordinance creating a new board requires detailed County Mayor's report for public hearing
- ☒ No committee review
- ☐ Applicable legislation requires more than a majority vote (i.e., 2/3's present ____, 2/3 membership ____, 3/5's ____, unanimous ____, CDMP 7 vote requirement per 2-116.1(3)(h) or (4)(c) ____, CDMP 2/3 vote requirement per 2-116.1(3)(h) or (4)(c) ____, or CDMP 9 vote requirement per 2-116.1(4)(c)(2) ____ 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)(2)
5-18-21

RESOLUTION NO. R-505-21

RESOLUTION RATIFYING ACTION BY THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE RELATED TO MIAMI-DADE WATER AND SEWER DEPARTMENT'S CONSENT DECREE AND CAPITAL IMPROVEMENT PROGRAMS ACCELERATION ORDINANCE PURSUANT TO SECTION 2-8.2.12 OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA SPECIFICALLY APPROVING A SETTLEMENT AGREEMENT BETWEEN MIAMI-DADE COUNTY AND DAVID MANCINI & SONS, INC., PROJECT NO. DB14-WASD-05; CONTRACT NO. 16DMSI001, IN THE AMOUNT OF \$804,373.45, FOR DESIGN-BUILD SERVICES TO FURNISH AND INSTALL A 48-INCH FORCE MAIN ALONG NORTH MIAMI AVENUE FROM N.W. 8 STREET TO N.E. 36 STREET AND ALONG N.E. 36 STREET FROM NORTH MIAMI AVENUE TO N.E. 2 AVENUE

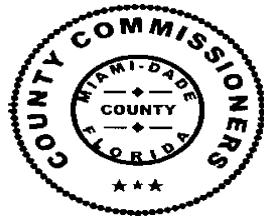
WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board ratifies the action of the County Mayor or County Mayor's designee, as authorized by section 2-8.2.12 of the Code of Miami-Dade County, specifically, approval of the Settlement Agreement between Miami-Dade County and David Mancini & Sons, Inc. in the amount of \$804,373.45 for the design-build services to furnish and install a 48-inch Force Main along North Miami Avenue from N.W. 8 Street to N.E. 36 Street and along N.E. 36 Street from North Miami Avenue to N.E. 2 Avenue, Project No. DB14-WASD-05; Contract No. 16DMSI001. A copy of the Settlement Agreement is attached to the accompanying memorandum as Exhibit B. The original contract documents are kept on file with and are available upon request from the Intergovernmental Affairs Division of the Miami-Dade Water and Sewer Department.

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

Jose "Pepe" Diaz, Chairman	aye		
Oliver G. Gilbert, III, Vice-Chairman	aye		
Sen. René García	aye	Keon Hardemon	aye
Sally A. Heyman	aye	Danielle Cohen Higgins	aye
Eileen Higgins	aye	Joe A. Martinez	aye
Kionne L. McGhee	aye	Jean Monestime	aye
Raquel A. Regalado	aye	Rebeca Sosa	aye
Sen. Javier D. Souto	aye		

The Chairperson thereupon declared the resolution duly passed and adopted this 18th day of May, 2021. This resolution shall become effective upon the earlier of (1) 10 days after the date of its adoption unless vetoed by the County Mayor, and if vetoed, shall become effective only upon an override by this Board, or (2) approval by the County Mayor of this Resolution and the filing of this approval with the Clerk of the Board.



MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By: **Melissa Adames**
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

SED

Sarah E. Davis