

MEMORANDUM

Agenda Item No. 8(O)(1)

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

DATE: June 14, 2022

FROM: Geri Bonzon-Keenan
County Attorney

SUBJECT: Resolution ratifying the execution of a settlement agreement between Miami-Dade County and HDR Engineering Inc. (HDR), which resolves all disputed claims between the County and HDR related to HDR's design error on the design of a cooling system designed pursuant to Task Authorization 25- Pump Station 187 issued under Professional Services Agreement No. 14HDRE003 pursuant to section 2-8.2.12 of the Code, Miami-Dade Water and Sewer Department's Consent Decree and Capital Improvement Project at no cost to the County; and authorizing the County Mayor to exercise the termination and other provisions contained therein

Resolution No. R-584-22

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



Geri Bonzon-Keenan
County Attorney

GBK/uw

Memorandum



Date: June 14, 2022

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

From: Daniella Levin Cava *Daniella Levin Cava*
Mayor ****Consent Decree Project****

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

Executive Summary

The attached resolution seeks ratification by the Board of County Commissioners (Board) of a Settlement Agreement between HDR Engineering Inc. (HDR) and Miami-Dade County through its Water and Sewer Department (WASD). The Settlement Agreement resolves disputes arising from a design error by HDR of the cooling system installed at Pump Station 187 during a Pump Station Rehabilitation and Upgrade Project (Project).

Recommendation

It is recommended that the Board ratify the action 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 Consent Decree and Capital Improvement Programs Acceleration Ordinance (WASD Acceleration Ordinance) approving a Settlement Agreement with HDR resolving disputes arising from a design error of the cooling system in the Project. The Settlement Agreement is attached hereto as Exhibit A and will result in no monies being expended by the County to resolve the dispute.

Related Consent Decree Project

This item ratifies a Settlement Agreement which modifies Task Authorization 25 – Pump Station 187 HVAC, contained within Professional Services Agreement (PSA) No. 14HDRE003 (PSA), between WASD and HDR. Under the terms of the PSA, HDR was contracted to provide design services for wastewater collection and transmission systems related to Consent Decree Project No. E13-WASD-04.

Scope

The scope of work HDR will perform under the Settlement Agreement consists of retrofitting and installing a cooling system at Pump Station 187. The Project is located in District 6, which is represented by Commissioner Rebeca Sosa.

Fiscal Impact/Funding Source

Pursuant to the terms of the Settlement Agreement, the expenses associated with the retrofitting of the cooling system for Pump Station 0187 will be borne by HDR and be provided at no cost to the County.

Delegated Authority

This item authorizes the County Mayor or County Mayor’s designee to execute the Settlement Agreement and to exercise any and all rights conferred therein.

Track Record/Monitoring

WASD’s Deputy Director of Capital Projects, Marisela Aranguiz, will oversee the implementation of the Agreement.

Background

On September 3, 2014, the Board approved Ordinance No. 14-77 authorizing the County Mayor or County Mayor’s designee to award and amend contracts and negotiate and issue change orders for funded capital projects and to accelerate the approval of WASD’s: 1) Consent Decree projects, and 2) projects identified in WASD’s Multi-Year Capital Plan’s Capital Improvements Program, subject to ratification by the Board.

On December 16, 2014, the Board adopted Resolution R-1118-14, which approved the award of PSA 14HDRE003 to HDR for a project entitled Design Services for Wastewater Collection and Transmission Systems related to Consent Decree Projects, Project E13-WASD-04. Under Task Authorization 25 (Task No. 25) of the PSA, HDR provided the County with design services for the rehabilitation and upgrade of Pump Station 187. The Project included the design of a new ventilation and cooling system for the upgraded electrical room. A copy of the original PSA and Task No. 25, are available upon request from WASD’s Procurement Division.

HDR prepared the design drawings and provided limited construction services to implement the upgrades to Pump Station 187, which included the cooling system. The total amount provided to HDR for the work performed under Task No. 25 was \$411,249.83. Final completion of the construction of Pump Station 187 project was achieved in May 2019.

In June 2020, HDR was notified by WASD that the Pump Station 187 electrical room was experiencing higher temperatures than anticipated and requested that HDR investigate the situation. On July 16, 2020, HDR informed WASD that its investigation concluded there was a design error and that the cooling system installed was undersized. To mitigate the situation, WASD Heating Ventilation Air Conditioning Maintenance staff installed a temporary cooling unit to protect the electrical room until a new permanent unit could be designed and installed. Since July 2020, HDR has been working with WASD to develop a design to retrofit Pump Station 187 with a properly sized cooling system. Because the undersized cooling system was considered a design error on HDR’s part, the retrofit of the cooling system will be provided by HDR at no cost to the County.

Upon completion of construction and installation of the permanent cooling unit and acceptance by WASD and receipt of payment from HDR as set forth in Task Authorization No. 25, WASD has agreed to release HDR from all liability for costs and damages of any kind arising out of or resulting from the design of the original cooling unit and its replacement. The release is found in the updated Task Authorization No. 25, which WASD has maintained in its files and is available upon request.

To that end, pursuant to the terms of the Settlement Agreement, the scope of Task Authorization 25 – Pump Station 187 HVAC Replacement will be revised to add the full cost of the Retrofit,

along with terms that ensure HDR will reimburse WASD for the entire cost of construction for the retrofit, including but not limited to any direct costs and the cost of any necessary change orders related to the design error that may be incurred. The estimated cost of the retrofit construction is \$300,000, but HDR and the County acknowledge that actual costs may be higher or lower. None of these costs will be borne by the County.

Small Business Enterprise Measures

In light of the Settlement Agreement, the Internal Services Department’s Small Business Development (SBD) Division reviewed the PSA for compliance with Small Business Enterprise (SBE) measures and compliance with the 30% SBE - Architectural and Engineering (SBE-A/E) goal and determined that HDR was in compliance. The SBD memorandum is attached hereto as Exhibits B.



Jimmy Morales
Chief Operations Officer

WASD - HDR SETTLEMENT AGREEMENT

This Settlement Agreement is entered into between Miami-Dade County ("County") and HDR Engineering, Inc. ("HDR") (collectively referred to as the "Parties").

WITNESSETH

WHEREAS, on or about December 30, 2014, the County contracted with HDR Engineering, Inc. (HDR) to provide design services for wastewater collection and transmission systems related to Consent Decree ("CD") projects, Professional Services Agreement No. 14HDRE003, Project No. E13-WASD-04 ("PSA"); and

WHEREAS, under the provisions of the PSA, Miami-Dade Water and Sewer Department (WASD) authorized Task No. 25, Design Services for the Rehabilitation and Upgrade of Pump Station (PS) 0187. The project included designing a new ventilation and cooling system for the upgraded electrical room (the "cooling system"). HDR prepared the design drawings and provided limited construction services to implement the upgrades to PS 0187, including the cooling system. Final completion for the construction of the PS 0187 project was May 2019; and

WHEREAS, in June 2020, HDR was notified by WASD that the PS 0187 electrical room was experiencing higher temperatures than anticipated and requested that HDR investigate the situation. On July 16, 2020, HDR informed WASD that, after the investigation, it was determined that the cooling system was undersized (hereinafter referred to as the "design error"); and

WHEREAS, WASD Heating Ventilation Air Conditioning ("HVAC") Maintenance staff then installed a temporary cooling unit to protect the electrical room and informed HDR that they will use the temporary unit until the new permanent unit is installed in PS 0187; and

WHEREAS, since July 2020, HDR has been working with WASD to develop a design to retrofit PS 0187 with a properly sized cooling system (the "Retrofitted Design"); and

WHEREAS, in paragraph 53, Errors and Omissions, of the PSA, HDR agreed to be responsible for direct damages to the County resulting from HDR's Errors or Omissions,

NOW, THEREFORE, in consideration of the mutual covenants, agreements, and undertakings and for other good and valuable consideration, the receipt and sufficiency being hereby acknowledged, HDR and the County mutually agree as follows:

1. **Recitals.** The above recitals are incorporated herein and made a part hereof and each of the Parties acknowledge that the recitals are true and correct to the Parties' knowledge, information, and belief and each is a material inducement to enter into this Settlement Agreement.
2. **No Admission of Liability.** This Settlement Agreement is being entered into solely for purposes of resolving all disputed claims between the Parties. By executing this Settlement Agreement neither party shall be deemed to have admitted fault or liability to the other for any asserted or unasserted claims or potential claims or causes.
3. **Authority.** The signatories each acknowledge they have the authority to execute this Settlement Agreement and that this Settlement Agreement is binding on each of the Parties executing this Settlement Agreement.
4. **Task Authorization.** Task Authorization 25, issued under the PSA, as modified by this Settlement Agreement, including all plans, specifications, and modifications to the Task Authorization are incorporated by reference, and are made a part of this Settlement Agreement except as expressly modified herein.

WASD - HDR SETTLEMENT AGREEMENT

5. **Scope of Damages.** WASD and HDR agree that the exact amount of WASD damages cannot be determined until construction is completed on the retrofit of the cooling system for PS 0187 (the "Retrofit"). HDR agrees that the Retrofit will be provided at no cost to WASD.

The scope of Task Authorization 25 – Pump Station 187 HVAC Replacement, which was issued by WASD on June 30, 2015 and revised on January 16, 2018, will be revised; Revision 02 to Task Authorization 25 will be issued to add the full cost of the Retrofit, with the following minimum terms:

- (a) HDR shall pre-purchase the Trane cooling equipment specified by the Retrofitted Design as developed per Task Authorization 25. HDR will make a direct payment to the Trane equipment provider for the cost of the equipment and delivery to the job site.
 - (b) HDR shall reimburse WASD for the cost of construction for the Retrofit, including but not limited to any direct costs and the cost of any necessary change orders that may be incurred, but not including the cost of change orders that are not related to the design error or any deficiencies identified in the Retrofitted Design. As of the date of this Settlement Agreement, the estimated cost of the retrofit construction is \$300,000, but the Parties acknowledge that actual costs may be higher or lower.
 - (i) HDR shall have the right to review any contingency draws or change orders to ensure that any changes are related to the design error; and
 - (ii) HDR will identify and submit outstanding progress bills on current Task Authorizations that total the estimated value of the cost of construction of the Retrofit. After completion of the Retrofit, final cost will determine if additional funds are due WASD or funds will be returned to HDR.
6. **Attorneys' Fees.** In the event any party is required to enforce this Settlement Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and court costs including but not limited to the cost for any appeals.
7. **Successors and Assigns.** This Settlement Agreement shall be binding upon and shall extend to and inure to the benefit of the Parties, their legal successors, assigns, heirs, personal representatives, and administrators, and shall be enforceable against them in accordance with its terms.
8. **Florida Law.** This Settlement Agreement shall be construed in accordance with and governed by the laws of the State of Florida. The exclusive venue for any litigation between them shall lie in the state court in Miami-Dade County, Florida.
9. **Modifications.** This Settlement Agreement and any of the covenants, conditions and representations contained herein, may not be waived, changed, altered, or modified except by an instrument in writing signed by the party against whom enforcement of such change is sought.
10. **No Waiver.** The failure by any party to enforce, at any time or for any period of time, any one or more of the terms or conditions of this Settlement Agreement, or a course of dealing between the Parties, shall not be a waiver of such terms or conditions or of such party's right thereafter to enforce each and every term and condition of this Settlement Agreement. No such failure to enforce the terms of this Settlement Agreement shall be construed as an implied amendment or agreement to amend or modify any other provision of this Settlement Agreement.

WASD - HDR SETTLEMENT AGREEMENT

11. **No Third-Party Rights.** This Settlement Agreement is solely for the benefit of the County and HDR. The County and HDR do not intend by any provision of this Settlement Agreement to create any rights in or increase the rights of any third-party beneficiaries, nor to confer any benefit upon or enforceable rights under this Settlement Agreement or otherwise upon anyone other than the County and HDR. Specifically, the County and HDR acknowledge that nothing in this Settlement Agreement shall extend or increase the rights of any third-party claimant.
12. **Complete Agreement.** This Settlement Agreement constitutes the whole of the understanding, discussions, and agreements by and between the County and HDR regarding the design error. The terms and provisions of this Settlement Agreement are contractual and not mere recitals. The County and HDR acknowledge that there have been no oral, written, or other agreements of any kind as a condition precedent to or to induce the execution and delivery of this Settlement Agreement. Any written or oral discussions conducted prior to the effective date of this Settlement Agreement shall not in any way vary or alter the terms of this Settlement Agreement unless contained herein.
13. **Effective Date.** This Settlement Agreement is effective as of the last date signed by the each of the Parties below.
14. **Severability.** Unless such invalidity, illegality or unenforceability shall be tantamount to a failure of consideration, if one or more provisions of this Settlement Agreement shall be declared to be invalid, illegal, or unenforceable in any respect by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions contained in this Settlement Agreement shall not in any way be affected or impaired thereby.
15. **Interpretation.** This Settlement Agreement shall be construed without regard to any presumption or other rule requiring construction against the party causing this Settlement Agreement to be drafted.
16. **Construction and Headings.** Words used in this Settlement Agreement that are either singular or plural shall be construed to include the other where appropriate. Headings are for convenience only and shall not limit, expand, affect, or alter the meaning of any text.
17. **Notices.** Any notices which are required to be given by the terms of this Settlement Agreement shall be made as follows:

To the County Daniel J. Edwards, Senior Program Manager Miami-Dade Water & Sewer Department 3071 SW 38 th Ave Miami, FL 33146 Daniel.Edwards@miamidade.gov	To HDR Brenda van Ravenswaay, Contract Program Manager HDR Engineering, INC 8333 NW 53 rd St Doral, FL 33166-4786 Brenda.vanRavenswaay@hdrinc.com
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18. **Counterparts.** This Settlement Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same agreement. A facsimile copy of this Settlement Agreement and any signatures thereon shall be considered, for all purposes, as originals.
19. **Subject to Ratification.** This Settlement Agreement is revocable if not ratified by the Board of County Commissioners. In the event the Board of County Commissioners does not ratify this Settlement Agreement, HDR is not entitled to lost

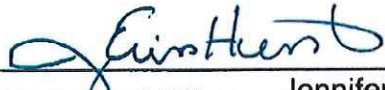
WASD - HDR SETTLEMENT AGREEMENT

profits or other consequential or indirect damages; however, HDR is responsible for the cost of the Retrofit to the extent set forth in the PSA.

IN WITNESS WHEREOF, the Parties have executed this Settlement Agreement on the last date indicated below, and each of the undersigned personally represent and warrant that they have the full right, power, and authority to execute this Settlement Agreement on behalf of the respective parties.

HDR Engineering, Inc.

STATE OF FLORIDA
COUNTY OF DADE

By: 
Signature of Officer Jennifer Erin Hunt,
Sr. Vice President

The foregoing instrument was acknowledged before me this 24th day of February, 2022 by Jennifer E. Hunt, Sr. Vice President of HDR Engineering, Inc., who is: either personally known to me, or produced _____ as identification.

Notary Public -State of Florida



CHRISTINE M. ECKERFIELD
Commission # HH 054674
Expires October 19, 2024
Bonded Thru Budget Notary Services

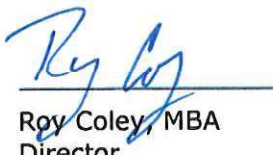
Name: Christine M. Eckerfield
My Commission Expires: October 19, 2024

Approved by County Attorney
For legal sufficiency



Feb. 28, 2022

Approved by Miami-Dade County


Roy Coley, MBA
Director

3-3-22

Miami-Dade Water and Sewer Department

Attested by Clerk of the Board



March 7, 2022



Memorandum



Date: April 18, 2022

To: Roy Coley, Director
Miami-Dade Water and Sewer Department

From: Gary T. Hartfield, Director
Small Business Development Division
Internal Services Department

A handwritten signature in blue ink, appearing to read "G. Hartfield", written over the "From:" field.

Subject: Project No. E13-WASD-04, Design Services for Wastewater Collection and Transmission Systems Related to the Consent Decree Projects (14HDRE003)

Contract No. E13-WASD-04 (14HDRE003) is being issued a Memorandum of Understanding (MOU) and was submitted to Small Business Development to review for application of Small Business Enterprise (SBE) measures and compliance with the 30% SBE - Architectural and Engineering (SBE-A/E) goal. The modification does not change the contract scope or value and as such the SBE measure for the contract remains the same.

Resolution No. R-1001-15 requires County contracts with small business measures meet at least 85 percent of the small business goals applicable to the portion(s) of the contract work performed to date before a change order or contract amendment is considered for Board approval. Resolution R-525-17 exempted change orders or amendments for non-compensatory time extensions from this requirement. The MOU does not increase the value of the contract or extend the time, as such R-1001-15 does not apply.

The prime contractor, HDR Engineering, Inc. (HDR) has requisitioned and been paid \$13,429,709. To date, the SBE-A/E firms have requisitioned and been paid \$4,217,270 or 31% of the paid to date to the prime. The prime is currently in compliance with the 30% SBE-A/E goal. Final goal compliance will be determined at project completion. For additional information, please contact Alice Hidalgo-Gato, SBD Section Chief.

c: Marisela Aranguiz, Deputy Director, WASD
Margaret Moss, Chief, Small Business, WASD
Edith Brown, Chief, Contract Compliance, WASD
Laura Verdaguer, Esq., Legislation & Municipal Affairs Manager, WASD
Patty Palomo, Chief, Intergovernmental Affairs, WASD
Donna Palmer, SPA1, WASD
Laurie Johnson, SBD Section Chief, ISD
Rossi Siewnarine, SBD Section Chief, ISD
Alice Hidalgo-Gato, SBD Section Chief, ISD



MEMORANDUM

(Revised)

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

DATE: June 14, 2022

FROM: 
Gen Bonzon-Keenan
County Attorney

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

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)(1)
6-14-22

RESOLUTION NO. _____ R-584-22

RESOLUTION RATIFYING THE EXECUTION OF A SETTLEMENT AGREEMENT BETWEEN MIAMI-DADE COUNTY AND HDR ENGINEERING INC. (HDR), WHICH RESOLVES ALL DISPUTED CLAIMS BETWEEN THE COUNTY AND HDR RELATED TO HDR'S DESIGN ERROR ON THE DESIGN OF A COOLING SYSTEM DESIGNED PURSUANT TO TASK AUTHORIZATION 25- PUMP STATION 187 ISSUED UNDER PROFESSIONAL SERVICES AGREEMENT NO. 14HDRE003 PURSUANT TO SECTION 2-8.2.12 OF THE CODE OF MIAMI-DADE COUNTY, MIAMI-DADE WATER AND SEWER DEPARTMENT'S CONSENT DECREE AND CAPITAL IMPROVEMENT PROJECT AT NO COST TO THE COUNTY; AND AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXERCISE THE TERMINATION AND OTHER PROVISIONS CONTAINED THEREIN

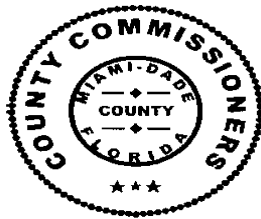
WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board (1) ratifies the execution of a Settlement Agreement between Miami-Dade County (the County) and HDR Engineering Inc. (HDR), which resolves all disputed claims between the County and HDR related to HDR's design error on the design of a cooling system designed pursuant to Task Authorization 25- Pump Station 187, issued under Professional Services Agreement No. 14HDRE003, pursuant to section 2-8.2.12 of the Code of Miami-Dade County; Miami-Dade Water and Sewer Department's Consent Decree and Capital Improvement Project, at no cost to the County; and (2) authorizes the County Mayor or County Mayor's designee to exercise the termination and other provisions contained in the executed Settlement Agreement as set forth in the accompanying memorandum.

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

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

The Chairperson thereupon declared this resolution duly passed and adopted this 14th day of June, 2022. 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

Basia Pruna

By: _____
Deputy Clerk

Approved by County Attorney
as to form and legal sufficiency.

A handwritten signature in dark ink, appearing to be "AB" followed by a flourish, written over a horizontal line.

Angela F. Benjamin