

MEMORANDUM

Agenda Item No. 3(B)(2)

TO: Honorable Chairman Oliver G. Gilbert, III
and Members, Board of County Commissioners

DATE: March 19, 2024

FROM: Geri Bonzon-Keenan
County Attorney

SUBJECT: Resolution ratifying, pursuant to Ordinance No. 19-122 codified as section 2-285.2 of the Code, the Acceptance and Execution of Change Order No. 001 to construction Contract No. MDAD-CIP-V009A between Miami-Dade County and H&R Paving Inc., authorizing the transfer of unused funds in the amount of \$353,138.00 from the Contract's Permit Allowance Account to the General Allowance Account and providing for a 414 day time extension; and authorizing the County Mayor to exercise all the provisions of section 2-285.2 of the Code including the authority to resolve disputes, negotiate claims and execute change orders to said Contract

Resolution No. R-205-24

The accompanying resolution was prepared by the Aviation Department and placed on the agenda at the request of Prime Sponsor Chairman Oliver G. Gilbert, III.



Geri Bonzon-Keenan
County Attorney

GBK/gh

MDC001

Memorandum



Date: March 19, 2024

To: Honorable Chairman Oliver G. Gilbert III,
and Members, Board of County Commissioners

From: Daniella Levine Cava
Mayor

A handwritten signature in blue ink that reads "Daniella Levine Cava".

Subject: Resolution Ratifying the Actions Related to Miami-Dade Aviation Department's Ordinance No. 19-122 Codified as Section 2-285.2 of the Code of Miami-Dade County

Executive Summary

In accordance with the provisions of Ordinance No. 19-122 codified as Section 2.285.2 of the Code of Miami-Dade County, this item seeks approval from the Board of County Commissioners (Board) to ratify Change Order No. 001 as issued by the Miami-Dade Aviation Department (Aviation Department or MDAD) to H&R Paving, Inc. (H&R Paving) for construction Contract No. MDAD-CIP-V009A entitled "Miami Executive Airport (TMB) Runway Incursion Mitigation (RIM), Alternative 1A" (Contract).

The Contract was awarded by the Board in August 2020 with a scope of work consisting of airfield improvement projects at TMB that included shortening Runway 13-31; modifications to intersections between Runway 13-31 and Taxiways E and H; relocation of the D connector; a new connector D2 for the relocated Runway 31 threshold; and extension of Taxiway H to the Runway 9R threshold. The construction project completion date was initially set for December 4, 2022.

On July 13, 2023, MDAD officials met H&R Paving staff to resolve a claim the firm had submitted to MDAD for \$1,671,481.69, which documented the unforeseen conditions noted below in addition to significant increases in the price of construction raw materials and services resulting from the impacts of the COVID-19 pandemic and other inflationary pressures. In order to avoid risk, more project delays and potential litigation costs, both parties agreed that additional monies and contract time were needed to cover certain work scope changes and mitigate the effects of global supply constraints issues and economic conditions. This was done without increasing the overall contract amount through the transfer of \$353,138.00 from the Contract's Permit Allowance Account to the General Allowance Account (to total \$1,530,264.68) and by extending the construction completion date by 414 days to January 22, 2024. The time extension granted consisted of an excusable non-compensable extension of 201 days for H&R Paving to complete the construction project, as well as an excusable compensable time extension of 213 days for the unforeseen conditions noted below, making for a total of 414 days. It should be emphasized that these are unforeseen conditions, not errors.

- Changes requested by the Federal Aviation Administration (FAA) to rework the lime rock on Runway 13-31 intersecting Taxiway E and H. (20 calendar days)

- The electrical duct bank on Taxiway J did not show-up on the original as-built drawings because it was too close to the surface, usually, electrical duct banks are between three to four feet below the surface. This unforeseen condition complicated the asphalt application as the elevation of the original design had to be adjusted. (26 calendar days)
- The conduits and wires inside the electrical duct banks noted above had to be re-routed. These are the wires and conduits that provide the lighting for the runways and taxiways. (15 calendar days)
- Additional construction phasing due to unforeseen heavy airport traffic. (41 calendar days)
- The elevation of the asphalt in Taxiway D was found at one and one-half (1½) inches as opposed to two (2) inches as required by the FAA, consequently, the elevation had to be reworked up to two (2) inches which included reworking the lime rock base and the asphalt. (49 calendar days)
- The electrical duct bank on Taxiway E did not show-up on the original as-built drawings because it was too close to the surface, usually, electrical duct banks are between three to four feet below the surface. This unforeseen condition complicated the asphalt application as the elevation of the original design had to be adjusted. (48 calendar days)
- Discrepancy with the existing drainage pipe size and required modifications to storm water concrete inlet. Originally, the work consisted of replacing an existing drainage pipe with a new pipe to the storm water inlet structure, however, the pipe identified in the as-builts drawings was different than the one installed requiring a modification to the storm water inlet structure. (14 calendar days)

It should be noted that the construction project reached substantial completion on November 12, 2023.

Recommendation

It is recommended that the Board ratify Change Order No. 001 to construction Contract No. MDAD-CIP-V009A, which is described in more detail in Exhibit A, as attached. Ratification of this change order is being requested pursuant to the provisions of MDAD Ordinance No. 19-122 codified as Section 2-285.2 of the Code of Miami-Dade County.

Scope

Miami Executive Airport (TMB) is located in District 11 which is represented by Commissioner Roberto J. Gonzalez. Because TMB is a regional asset, the impact of Change Order No. 001 is countywide.

Delegation of Authority

Pursuant to the provisions of Section 2-285.2 of the Miami-Dade County Code, the County Mayor or County Mayor's designee has the authority to execute, amend and terminate Contract No. MDAD-CIP-V009A as well as resolve disputes. Additionally, pursuant to provisions of Section 2-285.2 (4)(d) and (e), the County Mayor or County Mayor's designee has the authority to amend and/or extend the contract term to complete any unfinished work, waive liquidated damages, negotiate settle claims, and execute change orders that do not exceed ten (10%) percent of the base contract price.

Fiscal Impact/Funding Source

There is no fiscal impact to the County as this is a zero-cost change order meaning it does not affect the contracted price.

Track Record/Monitoring

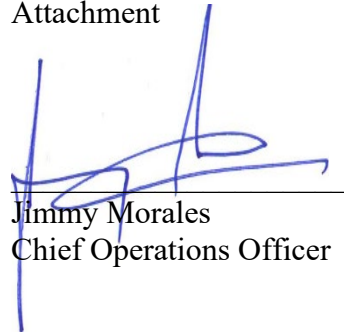
MDAD's Chief of Staff, Arlyn Rull Valenciaga, will oversee the ratification of Change Order No. 001.

Background

On August 31, 2020, the Board adopted Resolution No. R-842-20 approving Contract No. MDAD-CIP-V009A in an amount not to exceed \$13,301,531.44 with a contract period of 699 calendar days to substantial completion. As mentioned previously, a series of unforeseen conditions and price increases resulted in the submission of a claim to the County by H&R Paving. As a settlement to a potential dispute, Contract No. MDAD-CIP-V009A was amended to authorize the transfer of unused funds between two allowance accounts and the construction completion date was extended by 414 days to January 22, 2024. H&R Paving reached substantial completion on November 12, 2023.

Copies of the original contract documents for Contract No. MDAD-CIP-V009A are available upon request from MDAD's Intergovernmental Division.

Attachment



Jimmy Morales
Chief Operations Officer

**OFFICIAL FILE COPY
CLERK OF THE BOARD
OF COUNTY COMMISSIONERS
MIAMI-DADE COUNTY, FLORIDA**

Exhibit A

Change Order # 001

LOCATION: Miami Executive Airport (TMB)



PROJECT NO.	V009A	DATE:	11/17/23
PROJECT NAME:	Miami Executive Airport (TMB) Runway Incursion Mitigation (RIM), Alternative 1A	DESCRIPTION:	Claim Resolution
TO CONTRACTOR:	H&R Paving, Inc.	RCO:	N/A

The Contractor is hereby authorized to make the following changes to the current contract and perform the Work subject to all contract stipulations and covenants. Except as changed below, the Contract Documents remained unchanged.

RESOLUTION OF COMPENSABLE TIME AND PENDING AND POTENTIAL CLAIMS: In order for both parties to avoid the risk, time, and transactional costs associated with a formal legal process to resolve outstanding issues related to compensation for the delay associated with the items identified above, additional costs in excess of \$1.6 Million contained in a pending claim submitted by the Contractor dated 07/18/2022, pending Owner credits and/or offsets, time extension for adverse weather, and other issues, the parties have agreed to fully and finally settle any and all additional costs, claims, disputes, or other unresolved issues howsoever arising that have been asserted, or could have been asserted, by the Contractor through and including the date of this Change Order, as follows:

- 1- This Change Order amends the Contract to authorize the transfer of unused funds from the Permit Allowance Account total of \$353,138.00 to the General Allowance Account, to total \$1,530,264.68. Allowance Account to be used within the boundaries of the contract. The purpose for the Permit Allowance Account has been fulfilled and there is no remaining need in the contract for this allowance account. This amendment does not otherwise expand the funds allocated to this project or the total amount of the contract as approved by the Board of County Commissioners and is within the delegated authority of the Airport Director pursuant to Miami-Dade County Ordinance 2-285.2, subject to ratification of the Board of County Commissioners. In the event that the Board of County Commissioners does not ratify the Airport Director's approval of this Change Order, the County shall terminate this Change Order by written notice to the Contractor, such notice to be effective on the date sent by the County. In such event, the Contractor shall be entitled to compensation for work performed through the date of cancellation as per the terms of the Contract, the Contractor shall not be entitled to any monies paid pursuant to this Change Order, and the release of claims made by Contractor in this Change Order shall no longer be effective.
- 2- Provide an Extension of time as part of the Resolution of Potential Claim to complete all work up to no later than January 22, 2024. To close out the entire project.

SUPPORTING INFORMATION

Work Order Nos. 1-007, 1-016, 1-020 and 1-035: These Work Orders are hereby mutually agreed to be rescinded as null and void and replaced and supplemented by this CO # 1-001

FAA Requested Changes: Due to changes requested by the Federal Aviation Administration beyond the fault or control of the Contractor primarily impacting work related to ESI003 surveying information and rework of the Limerock from Sta 718+00 to RWY 13-31. These changes caused serious scheduling challenges that impacted the Contractor's ability to continue, or progress planned Work activity for twenty (20) calendar days, as reflected in the Contractor's schedule update of 10/26/2021, resulting in a revised Contract Completion Date of 12/23/2022.

UNFORESEEN CONDITIONS - RCO #19: The actual and demonstrated impacts included in the RCO #19 and the Contractor's Time Impact Analysis of May 2022 are as follows:

-- Duct bank not shown on either the as-builts or the GBR was found during the TWY J clearing and grubbing and excavation activities. RFI #108 was submitted and in response the Contractor was directed to remove the existing duct bank and build a new one. This conflict impacted the execution time of the Compacted Subgrade (P-1152-4.4), Stabilized Subgrade (P-154-5.2), and the Limerock base (P-211-2.2). Limerock base delivery (P-2112.2) was also impacted by a shortage of trucks from 02/20/2022 to 02/22/2022. These impacts pushed the Contract Completion date by twenty-six (26) calendar days.

-- The electrical work for the duct banks encased in concrete and the Casting in Place Bases Can in Phase 2 were impacted by an industry concrete shortage and delivery issues, which impacted the Contract Completion date by fifteen (15) calendar days.

-- ESI 008 Phase 5 Modifications included changes in the execution of Phase 5, including without limitation the division of the original Phases 5 and 5A into Phases 5A, 5B, 5C, and 5D, and adding the work originally included in sub-phase 2A to Phase 5A. ESI 008 also resulted in an increase in the time for performance of the Work in Phase 5 because Phases 5C and 5D had to be executed separately per request of MDAD management. The resulting time impact to the Contract Completion date due to the changes to Phase 5 was a total of forty-one (41) calendar days (25 days for Phase 5C and 16 days for Phase 5D).

UNFORESEEN CONDITIONS - RCO #24: In response to the Contractor's RFI #026R received on 04/26/2022, a design revision was issued to correct the existing vertical discrepancy between Taxiway D and D2. These revisions impacted the asphalt activities on Taxiway D due to the need to remove the remaining asphalt after milling and perform addition Limerock Work to achieve the final asphalt elevations show in the plans and increase the overlay to 4" in Sta 526+28.9 to Stat 538+42.98 to match the proposed pavement asphalt section. As evidenced in the Contractor's Time Impact Analysis of June 2022, the additional work started on 05/12/2022 and was completed on 07/08/2022. The impact to the Contract Completion date due to these unforeseen conditions is forty-nine (49) calendar days, resulting in a revised Contract Completion date of 05/04/2023.

UNFORESEEN CONDITIONS - RCO #041: This RCO arose out of the following items that, per the Contractor's Time Impact Analysis (Rev 03), impacted the Contract Completion date by a total of sixty-two calendar days, resulting in a revised Contract Completion date of 07/05/2023:

-- Discovery of an unknown duct bank discovered on TWY E3 just short of RRWY 9R to +/- 2" below the proposed existing asphalt elevation match point, running east/west from handhole to handhole with a width of approximately 24". This unforeseen condition impacted the Contract Completion date by forty-eight (48) calendar days.

-- Per the Contractor's RFI Nos. 34 and 37, the original Contract Documents and subsequent phasing revision issued with ESI 008 omitted a drainage section between structures S-9 and CB#16. The furnishing, installation, and completion of the omitted drainage system between structures S-9 and CB#16 impacted the Contract Completion date by fourteen (14) calendar days.

ADVERSE WEATHER: The parties agree that through the date of this Work Order the Contract Completion date was impacted by a total of twenty-eight (28) calendar days of adverse weather.

MDC005

Change Order # 001

LOCATION: Miami Executive Airport (TMB)



- 3- The Contractor shall receive the lump sum, aggregate total of \$241,500.00 from a General Allowance Account Work Order. To be provided following approval of this Change Order.
- 4- MDAD will forbear from pursuing a credit from the Contractor for the cost of a failed test for which the Contractor is responsible.
- 5- MDAD accepts the nonconforming Phase 2 asphalt installation Work performed by the Contractor and the Contractor agrees to (a) not to bill for or pursue any other compensation for the Phase 2 asphalt installation, and (b) to extend the warranty on the Phase 2 asphalt Work for a period of three (3) years after closing of the project.

REASON FOR CHANGE:

COUNTY REQUESTED CHANGES

In consideration for payment to the Contractor of the Work Order Amount and the agreed extension of the Contract Time, the Contractor unconditionally waives and relinquishes all claims, disputes, causes of action, damages, costs, and expenses of whatever kind or nature and however arising out of or related to the Description of Work set forth above, and all other claims, disputes, causes of action, damages, costs, and expenses that were or could have been asserted by the Contractor through the date of this Work Order. The scope of the Contractor's waiver shall be construed as broadly as permitted by applicable law, and for the avoidance of any doubt, includes but is not limited to all Direct and Indirect Costs, Liquidated Indirect Costs, escalation costs, cumulative or other impact costs, additional Work costs, unforeseen or unforeseeable conditions costs, and fines and penalties through and including as of the date of this Work Order.

REASON FOR CHANGE:

Regulatory Change
Other Agency Requested Change
Design Errors
Design Omissions
County Requested Changes
Unforeseen or Unforeseeable Conditions
Other

TOTAL CONTRACT AMOUNT.....	\$	13,301,531.44
PREVIOUS CHANGE ORDERS TO DATE	\$	0
AMOUNT OF THIS CHANGE ORDER NO.	\$	0
BALANCE IN ALLOWANCE ACCOUNT	\$	13,301,531.44

A/E CERTIFYING STATEMENT:

I hereby certify that the supporting cost data and information herein included is, in my considered opinion, accurate; that the prices quoted are fair and reasonable.

By: **Santiago O Lopez**
ACCEPTED: GENERAL CONTRACTOR (H&R Paving, Inc.)
PRINT NAME: SANTIAGO O. LOPEZ
DATE

By: **Emilio F Corrales**
Date: 2023.12.01 15:17:24-05'00'
APPROVED: PROJECT CONSULTANT (HDR)
PRINT NAME: EMILIO CORRALES
DATE

By: **Ricardo Solorzano**
RECOMMENDED: MDAD PROJECT MANAGER
PRINT NAME: RICARDO SOLORZANO
DATE

By: **N/A**
APPROVED: CONSULTING ENGINEER (IINTB)
PRINT NAME: PEDRO GORDO
DATE

By: **Richard Cabrera**
APPROVED: MDAD CHIEF OF CONSTRUCTION
PRINT NAME: RICHARD CABRERA
DATE

By: **Ana M. Finol**
APPROVED: ASST. DIRECTOR OF FACILITIES DEVELOP.
PRINT NAME: ANA FINOL, P.E.
DATE

By: **Ralph Cutie**
APPROVED: AVIATION DIRECTOR
PRINT NAME: RALPH CUTIE
DATE

By: **[Signature]**
APPROVED: COUNTY ATTORNEY
DATE

Juan Fernandez-Barquin,
Clerk of the Court and Comptroller

Attested by: **Olga Valverde** 12-26-23
Deputy Clerk: Olga Valverde - e18183





MEMORANDUM

(Revised)

TO: Honorable Chairman Oliver G. Gilbert, III
and Members, Board of County Commissioners

DATE: March 19, 2024

FROM: 
Gen Bonzon-Keenan
County Attorney

SUBJECT: Agenda Item No. 3(B)(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. 3(B)(2)
3-19-24

RESOLUTION NO. R-205-24

RESOLUTION RATIFYING, PURSUANT TO ORDINANCE NO. 19-122 CODIFIED AS SECTION 2-285.2 OF THE MIAMI-DADE COUNTY CODE, THE ACCEPTANCE AND EXECUTION OF CHANGE ORDER NO. 001 TO CONSTRUCTION CONTRACT NO. MDAD-CIP-V009A BETWEEN MIAMI-DADE COUNTY AND H&R PAVING INC., AUTHORIZING THE TRANSFER OF UNUSED FUNDS IN THE AMOUNT OF \$353,138.00 FROM THE CONTRACT'S PERMIT ALLOWANCE ACCOUNT TO THE GENERAL ALLOWANCE ACCOUNT AND PROVIDING FOR A 414 DAY TIME EXTENSION; AND AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXERCISE ALL THE PROVISIONS OF SECTION 2-285.2 OF THE CODE INCLUDING THE AUTHORITY TO RESOLVE DISPUTES, NEGOTIATE CLAIMS AND EXECUTE CHANGE ORDERS TO SAID CONTRACT

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:

Section 1. Ratifies the acceptance and execution of Change Order No. 001 to construction Contract No. MDAD-CIP-V009A (Contract) between Miami-Dade County and H&R Paving, Inc. which authorizes the transfer of unused funds in the amount of \$353,138.00 from the Contract's Permit Allowance Account to the General Allowance Account and extends the contract term by 414 days, of which 201 days consist of an excusable non-compensable time extension, and 213 days consist of an excusable compensable time extension, extending the construction completion date to January 22, 2024.

Section 2. Pursuant to the provisions of section 2-285.2 of the Miami-Dade County Code, the County Mayor or County Mayor's designee has the authority to execute, amend and terminate Contract No. MDAD-CIP-V009A as well as resolve disputes. Additionally, pursuant to provisions of section 2-285.2 (4)(d) and (e), the County Mayor or County Mayor's designee has the authority to amend and/or extend the contract term to complete any unfinished work, waive liquidated damages, negotiate settle claims, and execute change orders that do not exceed 10 percent of the base contract price.

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

Oliver G. Gilbert, III, Chairman	aye		
Anthony Rodríguez, Vice Chairman	aye		
Marleine Bastien	aye	Juan Carlos Bermudez	aye
Kevin Marino Cabrera	aye	Sen. René García	aye
Roberto J. Gonzalez	aye	Keon Hardemon	aye
Danielle Cohen Higgins	aye	Eileen Higgins	aye
Kionne L. McGhee	aye	Raquel A. Regalado	aye
Micky Steinberg	aye		

The Chairperson thereupon declared this resolution duly passed and adopted this 19th day of March, 2024. 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

JUAN FERNANDEZ-BARQUIN, CLERK

By: Basia Pruna
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

A handwritten signature in black ink, appearing to read "DMM", written over a horizontal line.

David M. Murray