

RESOLUTION NO. 2018-265

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, APPROVING THE TERMS, CONDITIONS, PROVISIONS, AND REQUIREMENTS OF SETTLEMENT AGREEMENT AND RELEASE BETWEEN ST. JOHNS COUNTY AND PETTICOAT-SCHMITT CIVIL CONTRACTORS, INC.; AUTHORIZING THE COUNTY ADMINISTRATOR, OR DESIGNEE, TO EXECUTE THE SETTLEMENT AGREEMENT AND RELEASE ON BEHALF OF ST. JOHNS COUNTY; AND APPROVING THE TRANSFER \$70,000.00 FROM TRANSPORTATION TRUST FUND RESERVES TO CAPITAL PROJECT SETTLEMENTS REPRESENTING THE COUNTY'S PAYMENT PURSUANT TO THE SETTLEMENT AGREEMENT AND RELEASE AND AUTHORIZING EXPENDITURE OF THE FUNDS.

RECITALS

WHEREAS, on or about December 19, 2013, Petticoat-Schmitt Civil Contractors, Inc. ("Petticoat-Schmitt") and St. Johns County ("County") entered into a Standard Agreement Between Owner and Contractor ("Standard Agreement") for the construction of Bid No. 13-25R County Road 210 at Interstate 95 – Phase 2 Improvement Re-Bid ("Project"); and

WHEREAS, during construction of the Project, a dispute arose between the County and Petticoat-Schmitt regarding payment and reconciliation of Change Order Nos. 1-3 under the Standard Agreement, including their associated purchase orders, for the direct-purchase of certain materials by the County on the project for sales tax and overall cost savings for the Project ("Direct Purchase of Materials Program"); and

WHEREAS, Petticoat-Schmitt completed the project notwithstanding the dispute, but continues to contend that amounts are due and owing, totaling in excess of \$98,000, including interest and fees, while the County contests that any amount is due and owing; and

WHEREAS, the County and Petticoat-Schmitt desire to finally and fully resolve and settle all disputes between them through payment by the County in the amount of \$70,000 as full satisfaction of the disputed amounts and in exchange for a full and complete release of any claims, controversies, demands, and causes of action relating to or arising out of the Direct Purchase of Materials Program; and

WHEREAS, the County and Petticoat-Schmitt wish to formally memorialize this settlement by entering into the Settlement Agreement and Release attached hereto as Exhibit A; and

WHEREAS, to facilitate payment pursuant to the settlement, funds in the amount of \$70,000.00 must be transferred from the Transportation Trust Fund to Capital Project Settlements; and

WHEREAS, approval of the Settlement Agreement and Release and transfer of the funds necessary for performance under the agreement is in the best interest of the County and the public.

NOW, THEREFORE BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, AS FOLLOWS:

Section 1. The above Recitals are incorporated by reference into the body of this Resolution and such Recitals are adopted as finds of fact.


Section 2. The Board of County Commissioners hereby approves the terms, conditions, provisions, and requirements of the Settlement Agreement and Release with Petticoat-Schmitt Civil Contractors, Inc., and authorizes the County Administrator, or designee, to execute the Settlement Agreement and Release on behalf of the County, in substantially the form and format as attached.

Section 3. The Board of County Commissioners authorizes the transfer of \$70,000.00 from Transportation Trust Fund Reserves to Capital Projects Settlements to be used for payment of the funds pursuant to the Settlement Agreement and Release.

Section 4. To the extent that there are typographical and/or administrative errors that do not change the tone, tenor, or concept of this Resolution, then this Resolution may be revised without subsequent approval by the Board of County Commissioners.

PASSED AND ADOPTED by the Board of County Commissioners of St. Johns County, Florida, this 21st day of August, 2018.

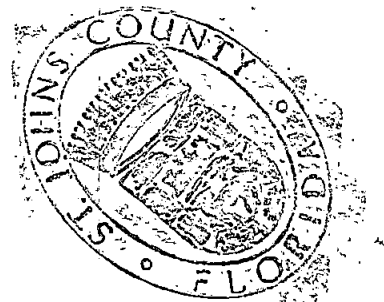
**BOARD OF COUNTY COMMISSIONERS
OF ST. JOHNS COUNTY, FLORIDA**

By: 
Henry Dean, Chair

ATTEST: Hunter S. Conrad, Clerk.

By: 
Deputy Clerk

RENDITION DATE 8/24/18



SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release is made by and between Petticoat-Schmitt Civil Contractors, Inc., a Florida profit corporation, and St. Johns County, a political subdivision of the State of Florida ("St. Johns County").

Background Facts

A. On or about December 19, 2013, Petticoat-Schmitt Civil Contractors, Inc., Inc. and St. Johns County entered into a Standard Agreement Between Owner and Contractor for the construction of Bid No. 13-25R County Road 210 at Interstate 95 – Phase 2 Improvement Re-Bid ("the project").

B. During construction of the project, a dispute arose between Petticoat-Schmitt Civil Contractors, Inc. and St. Johns County regarding payment and reconciliation of Change Orders Nos. 1-3 and their associated purchase orders for the direct purchase of certain materials by St. Johns County on the project to avoid sales tax, as allowed under Florida law, and achieve cost savings as a result thereof ("the direct purchase of materials program").

C. Petticoat-Schmitt Civil Contractors, Inc., Inc., and St. Johns County desire to settle all disputes, claims, controversies, demands, and causes of action existing between them relating to or arising out of the direct purchase of materials program.

Terms And Conditions

1. In consideration for, and conditioned upon, the payment by St. Johns County to Petticoat-Schmitt Civil Contractors, Inc., in the total amount of \$70,000.00, Petticoat-Schmitt Civil Contractors, Inc., hereby releases and discharges forever St. Johns County from all disputes, claims, controversies, demands, and causes of action which Petticoat-Schmitt Civil Contractors, Inc. has, had, or may have relating to or arising out of the project or the direct purchase of materials program.

2. St. Johns County shall deliver a check in the amount of \$70,000.00 to Lippes & Bryan, P.A., 700 Ponte Vedra Lakes Boulevard, Ponte Vedra Beach, FL 32082, and made payable to Petticoat-Schmitt Civil Contractors, Inc., within fourteen (14) days after approval of this Settlement Agreement and Release by the St. Johns County Board of County Commissioners.

3. The parties agree that there is no entitlement on the part of either party to the recovery of attorney's fees and costs, including under the Local Government Prompt Payment Act, Fla. Stat. § 218.70-79, the Standard Agreement Between Owner and Contractor for the project, or otherwise, and that each party shall bear its own attorney's fees and costs in this matter.

4. The parties acknowledge that the obligation for St. Johns County to make any payment under this Settlement Agreement and Release is subject to the availability of lawfully appropriated funds. While St. Johns County will make all reasonable efforts

in order to provide funds needed for such payment, St. Johns County makes no express commitment to provide such funds in any given year, and it is expressly acknowledged that Petticoat-Schmitt Civil Contractors, Inc. cannot demand that St. Johns County provide any such funds in any given St. Johns County fiscal year. However, this Settlement Agreement and Release shall be deemed null and void, with each party returned to their respective positions as if this Settlement Agreement and Release had not been entered into and without waiver of, or prejudice to, any rights or defenses, if payment under this Settlement Agreement and Release is not made within sixty (60) days after approval of this Settlement Agreement and Release by the St. Johns County Board of County Commissioners.

5. Neither Petticoat-Schmitt Civil Contractors, Inc. nor St. Johns County admits any liability, guilt, or breach by virtue of this Settlement Agreement and Release or any payment hereunder. Rather, this is a Settlement Agreement and Release intending to settle and release disputed claims.

6. This Settlement Agreement and Release shall be governed by the laws of the State of Florida without respect to choice of law principles. Any claim, cause, action, or proceeding which is brought relating to or arising out of this Settlement Agreement and Release shall be brought exclusively in St. Johns County, Florida, and not in any other venue.

7. This Settlement Agreement and Release shall be binding upon and shall inure to the benefit of all parties hereto, their successors and assigns, and the parties agree, for themselves and their successors and assigns, to execute any instruments and perform any acts which may be necessary or proper to carry out the purposes of this Settlement Agreement and Release.

8. The Settlement Agreement and Release contains the final, complete, and exclusive understanding and agreement among the parties with respect to the settlement of their dispute referenced herein and supercedes any prior or contemporaneous agreements, representations, understandings, oral or written, by any of them. There are no terms, conditions, warranties, or representations other than those contained herein.

9. The parties acknowledge that they have read this Settlement Agreement and Release and understand it, that they have the lawful authority to enter into this Settlement Agreement and Release and have authorized its execution by the representative noted below, and that they have entered into this Settlement Agreement and Release knowingly and voluntarily and free from duress or coercion. The parties further acknowledge that they are represented by, and have been advised by, their respective attorneys regarding their rights, privileges, and liabilities under this Settlement Agreement and Release.

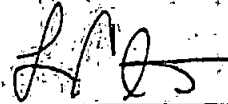
10. This Settlement Agreement and Release may be executed in one or more counterparts, each of which shall constitute an original and all of which, when taken together, shall constitute a fully executed original.

11. This Settlement Agreement and Release is entered into and effective as of the later of (a) the date on which the last party hereto executes it, and (b) the date this Settlement Agreement and Release is approved by the St. Johns County Board of County Commissioners.

12. This Settlement Agreement and Release was negotiated, prepared, and the text agreed to by both parties, and none of the provisions hereof shall be construed against either party on the ground that such party is the author of this Settlement Agreement and Release or any part thereof.

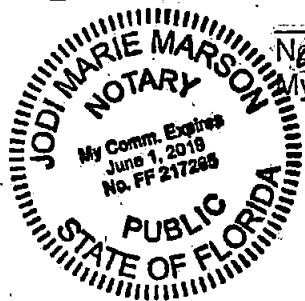
13. The access to, disclosure, non-disclosure, or exemption of records, data, documents, and/or materials, associated with this Agreement shall be subject to the applicable provisions of the Florida Public Records Law (Chapter 119, Florida Statutes) and other applicable State or Federal law. Access to such public records may not be blocked, thwarted, and/or hindered by placing the public records in the possession of a third party, or an unaffiliated party.

PETTICOAT-SCHMITT CIVIL
CONTRACTORS, INC., a Florida profit
corporation


By: Lauren C. Atwell
Its: COO

STATE OF FLORIDA
COUNTY OF Duval

The foregoing instrument was acknowledged before me this 1st day of August, 2018, by Lauren C. Atwell as COO of Petticoat-Schmitt Civil Contractors, Inc., a Florida profit corporation, on behalf of Petticoat-Schmitt Civil Contractors, Inc., who is personally known to me or has produced [Signature] as identification.



[Signature]
Notary Public
My Commission expires: 06-01-19

ST. JOHNS COUNTY, a political
subdivision of the State of Florida

By: Michael D. Wanchick
County Administrator

STATE OF FLORIDA
COUNTY OF ST. JOHNS

The foregoing instrument was acknowledged before me this ____ day of _____, 2018, by Michael D. Wanchick, as County Administrator of St. Johns County, Florida, on behalf of St. Johns County, Florida, who is personally known to me.

Notary Public
My Commission expires: _____