

RESOLUTION NO. 2023-416

A RESOLUTION BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, APPROVING THE TERMS, CONDITIONS, PROVISIONS, AND REQUIREMENTS OF A SETTLEMENT AGREEMENT BETWEEN CONTINENTAL HEAVY CIVIL CORP. AND ST. JOHNS COUNTY REGARDING THE HURRICANE MATTHEW AND HURRICANE IRMA FEMA EMERGENCY BERM RESTORATION PROJECT; AUTHORIZING THE COUNTY ADMINISTRATOR, OR DESIGNEE, TO EXECUTE THE SETTLEMENT AGREEMENT ON BEHALF OF ST. JOHNS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Continental Heavy Civil Corp. (“CHC”) and St. Johns County (“County”) entered into that certain Standard Form Agreement Between Owner and Design-Builder (Document No. 530), dated July 1, 2021, as amended by the First Amendment to Agreement Between St. Johns County, Florida and Continental Heavy Civil Corp, dated April 14, 2022, for Design-Build Services for Hurricane Matthew and Irma FEMA CAT. B Emergency Berm Restoration Project (hereinafter “Contract”); and

WHEREAS, all required work under the Contract has been completed; and

WHEREAS, disputes arose during the Contract between CHC and the County regarding CHC’s claims to have incurred additional unforeseen costs, including claims that CHC has described as arising from extra work items and trucking shortage impacts and that it contends are recoverable and due from the County under the Contract; and

WHEREAS, CHC and the County wish to forever resolve the above disputes between them in accordance with the terms and conditions of a Settlement Agreement, attached hereto as Exhibit A and incorporated herein; and

WHEREAS, the County determines that entering into the Settlement 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:

Section 1. The above recitals are hereby incorporated into the body of this resolution and are adopted as findings of fact.

Section 2. The Board of County Commissioners of St. Johns County hereby approves the terms, provisions, conditions, and requirements of the Settlement Agreement between Continental Heavy Civil Corp. and St. Johns County, and authorizes the County Administrator, or designee, to execute the agreement on behalf of the County in substantially the same form and format as attached hereto.

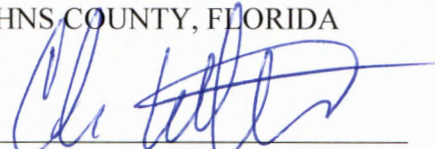
Section 3. To the extent that there are scrivener, typographical, or administrative errors that do not change the tone, tenor, or concept of this Resolution, then this Resolution may be revised without subsequent approval by the Board of County Commissioners.

Section 4. This Resolution shall become effective immediately upon adoption.

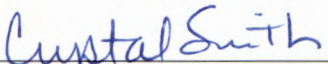
PASSED AND ADOPTED by the Board of County Commissioners of St. Johns County, Florida, this 17th day of October, 2023.

BOARD OF COUNTY COMMISSIONERS OF
ST. JOHNS COUNTY, FLORIDA

Rendition Date: OCT 25 2023

By: 
Christian Whitehurst, Chair

Attest: Brandon J. Patty,
Clerk of the Circuit Court & Comptroller

By: 
Deputy Clerk



SETTLEMENT AGREEMENT

This Settlement Agreement (hereinafter "Agreement") is entered on this ____ day of _____, 2023 (hereinafter "Effective Date") by and between Continental Heavy Civil Corp. (hereinafter "CHC") and St. Johns County, Florida, a political subdivision of the State of Florida (hereinafter "County," and collectively with CHC, "Parties").

In consideration of the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

RECITALS

A. CHC and the County entered into that certain Standard Form Agreement Between Owner and Design-Builder (Document No. 530), dated July 1, 2021, as amended by the First Amendment to Agreement Between St. Johns County, Florida and Continental Heavy Civil Corp, dated April 14, 2022, for Design-Build Services for Hurricane Matthew and Irma FEMA CAT. B Emergency Berm Restoration Project (hereinafter "Contract").

B. All required work under the Contract has been completed.

C. Disputes arose during the Contract between CHC and the County regarding CHC's claims to have incurred additional unforeseen costs, including claims that CHC has described as arising from extra work items (\$4,624,322.23) and arising from trucking shortage impacts (\$2,292,957.70) and that it contends are recoverable and due from the County under the Contract.

D. The Parties wish to forever resolve the above disputes between them in accordance with the terms and conditions of this Agreement and have determined for purposes of this Agreement that CHC is due \$3,670,208.10 (hereinafter "Settlement Amount") for valid claims made under the Contract.

COVENANTS

1. Recitals. The above Recitals are true and correct and incorporated herein by reference and are a material part of this Agreement.

2. Settlement Consideration. Within 14 days of the Effective Date, CHC shall submit to the County a Final Application for Payment in accordance with the Contract for the Settlement Amount, including all required supporting documentation. Within 20 days of receipt of a complete and accurate Final Application for Payment, the County shall pay to CHC the Settlement Amount as follows:

A. ~~\$830,000.00~~ shall be paid directly to CHC through wire transfer; and

B. \$2,840,208.10 shall be paid to the Trust Account of CHC's law firm, VLP Copenhaver Espino (for the benefit of CHC) through wire transfer.

The wire transfer instructions for each of the above payments are attached hereto as Exhibit A. VLP Copenhaver Espino shall hold the funds wired to its Trust Account pursuant to Section 2.B, above, and shall only disburse the funds in accordance with the directions contained in this Agreement.

3. FEMA Reimbursement.

A. CHC shall work cooperatively and in good faith with the County to provide such true and accurate information and documentation as needed to prepare a submittal of a claim for reimbursement to the Federal Emergency Management Agency (hereinafter "FEMA") for the full Settlement Amount, to respond to any request from FEMA for additional information or documentation, and to appeal any rejection or denial by FEMA of reimbursement of any portion of the Settlement Amount. The claim for reimbursement to FEMA shall be submitted by the County to FEMA immediately after the County determines it has the information and documented needed.

B. Approval of FEMA Reimbursement. If, within a period of 120 calendar days after submittal of the claim for reimbursement to FEMA (hereinafter "Submittal Period"), FEMA either (i) issues to the County an acceptance of reimbursement for the full Settlement Amount, or (ii) fails to issue to the County a rejection of reimbursement of any portion of the Settlement Amount, the Parties shall jointly provide written direction to VLP Copenhaver Espino to disburse to CHC the funds held in its Trust Account referenced in Section 2.B, above.

Upon disbursement of such funds to CHC, (i) the full Settlement Amount shall become the absolute property of CHC without any restriction, (ii) CHC shall be deemed to have received full and final payment under the Contract from the County with no claim remaining unsettled or unresolved, and (iii) the County shall be forever released, waived, discharged, and held harmless by CHC and its successors and assigns from any and all claims, demands, liabilities, losses, lost profits, costs, expenses, or any amounts of any nature related to the Contract.

C. Rejection or Non-Acceptance of FEMA Reimbursement. If FEMA takes action on the claim for reimbursement to FEMA within the Submittal Period by issuance to the County of a communication rejecting all or any portion of the claim for reimbursement, CHC shall not be entitled to the full Settlement Amount, but shall be required to take either of the actions set forth in Section 3.C.i or 3.C.ii, below, though the election of which action shall be in CHC's sole discretion:

i. Rescind and cancel this Agreement. In the event CHC elects to rescind and cancel this Agreement pursuant to this Section 3.C.i, it shall direct the immediate return to the County of the full Settlement Amount, including the funds paid directly to CHC pursuant to Section 2.A, above, and the funds held in the VLP Copenhaver Espino Trust Account pursuant to Section 2.B, above.

Upon the return to the County of the full Settlement Amount, this Agreement shall terminate automatically with no further action required by either CHC or the County. The Parties shall return to each of their respective positions as if they had not entered into this Agreement, and neither Party shall in any way be prejudiced by having entered into this Agreement. CHC may thereafter pursue legal proceedings against the County for any and all claims CHC has for monetary compensation, without being deemed to have granted to the County a release or waiver of claims of any nature related to the Contract. The County shall retain any and all claims or defenses it has or may have in such legal proceedings.

ii. Not rescind and cancel this Agreement and keep only that portion of the funds paid pursuant to Section 2.A and B, above, equal to the amount approved for reimbursement by FEMA and return to the County that portion equal to the amount not approved for reimbursement by FEMA.

Upon the return of such funds to the County, the funds kept by CHC shall become the absolute property of CHC without any restriction, and CHC may thereafter pursue legal proceedings against the County for a claim for monetary compensation not to exceed the amount of the funds not approved for reimbursement by FEMA. The County shall retain any and all claims or defenses it has or may have in such legal proceedings. Further, the statement in Recital D, above, that the Parties have determined for purposes of this Settlement that CHC is due the Settlement Amount for valid claims made shall not be admissible or relied upon by CHC in such legal proceedings. The County, however, shall be forever released, waived, discharged, and held harmless by CHC and its successors and assigns from any and all claims, demands, liabilities, losses, lost profits, costs, expenses, or any amounts of any nature related to the Contract, except for the amount of the funds not approved for reimbursement by FEMA.

iii. CHC shall notify the County in writing of its election between the actions set forth in Section 3.C.i and 3.C.ii, above, no later than 7 calendar days after the expiration of the Submittal Period.

4. CHC and the County are deemed to have participated in the drafting of this Agreement. In the event of any ambiguity in any term or provision of this Agreement, CHC and the County agree that such ambiguity shall be construed without regard to which of them drafted the term or provision in question.

5. All persons signing this Agreement represent that he/she has full authority to sign this Agreement on behalf of the Party and to bind the Party to this Agreement.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

IN WITNESS WHEREOF, this Agreement shall be deemed executed as of the date written above.

Continental Heavy Civil Corp.

**St. Johns County, Florida, a political
subdivision of the State of Florida**

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____