RESOLUTION NO. 12-04-22


WHEREAS, in 2008 the Village filed suit against WPC Industrial Contractors, LTD (“WPC”) and W.F. McCain & Associates (“McCain”), on a claim pertaining to the improper design and construction of the North Plantation Key Wastewater Vacuum Collection System Phase-I Project (the “Project”) pursuant to the design build agreement between the Village and WPC (the “Contract”); and

WHEREAS, the suit styled as Islamorada, Village of the Islands v. WPC Industrial Contractors, Ltd., and W.F. McCain & Associates, Defendants, et al, Case Number 2007-CA-873-P, is pending in the Circuit Court of the 16th Judicial Circuit in and for Monroe County, Florida (the “Litigation”); and
WHEREAS, WPC and McCain have in turn raised claims against other parties to the Contract providing design and construction services relating to the Project; and

WHEREAS, to avoid the expense and delay of continued lengthy litigation, the parties to the Litigation desire to resolve and settle the claims on an amicable basis, subject to certain terms and conditions set forth within a proposed Settlement Agreement and Release; and

WHEREAS, in exchange for the payment of $1,075,000.00 to the Village, the Village Council desires to settle the Litigation, the terms of which are contained in the Settlement Agreement and Release (the “Settlement Agreement”) attached hereto as Exhibit “A”; and

WHEREAS, the Village Council desires to have the Litigation dismissed pursuant to the Joint Stipulation for Order of Dismissal with Prejudice (“Stipulation”) attached hereto as Exhibit “B”.

NOW THEREFORE, BE IT RESOLVED BY THE VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA, AS FOLLOWS:

Section 1. Recitals. The above Recitals are true and correct and are incorporated herein by this reference.

Section 2. Approval of the Settlement Agreement and Release. The Village Council approves the Settlement Agreement.

Section 3. Authorization. The appropriate Village officials including the Mayor, Village Manager and Village Attorney are authorized to execute the Settlement Agreement and to execute any additional documents pertaining to the settlement, to file with the Circuit Court the Joint Stipulation for Order of Dismissal of the Village’s claims, and to take all actions
necessary to implement the terms and conditions of the Settlement Agreement and to conclude the Litigation.

Section 4. Effective Date. This Resolution shall be effective immediately upon its adoption.

The foregoing Resolution was offered by Vice Mayor Philipson, who moved for its adoption on first reading. This motion was seconded by Councilman Achenberg, and upon being put to a vote, the vote was as follows:

FINAL VOTE AT ADOPTION

VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS

Mayor Michael Reckwerdt Yes
Vice Mayor Ken Philipson Yes
Councilman Don Achenberg Yes
Councilman Ted Blackburn Yes
Councilman Dave Purdo Yes

PASSED AND ADOPTED THIS 12TH DAY OF APRIL, 2012.

KEN PHILIPSON, VICE MAYOR

ATTEST:

DEBRA EASTMAN, MMC
VILLAGE CLERK

APPROVED AS TO FORM AND LEGALITY
FOR THE USE AND BENEFIT OF ISLAMORADA,
VILLAGE OF ISLANDS ONLY:

VILLAGE ATTORNEY
IN THE CIRCUIT COURT OF THE 16th JUDICIAL CIRCUIT,  
IN AND FOR MONROE COUNTY, FLORIDA  

CASE NO.: 2007-CA-873-P  
GENERAL JURISDICTION DIVISION

ISLAMORADA, VILLAGE OF ISLANDS, a municipality of the State of Florida, Plaintiff, 

v. 

WPC INDUSTRIAL CONTRACTORS, LTD., a Florida Corporation, W.F. McCAIN & ASSOCIATES, and FIDELITY AND DEPOSIT COMPANY OF MARYLAND 

Defendant. 

/  

WPC INDUSTRIAL CONTRACTORS, LTD  

Third Party Plaintiff, 

v. 

W.F. McCAIN & ASSOCIATES, PABON ENGINEERING, INC. and AMERICAN DIRECTIONAL BORING, INC. d/b/a ADB UTILITY CONTRACTORS, 

Third Party Defendants. 

/  

W.F. McCAIN & ASSOCIATES  

Fourth Party Plaintiff, 

v. 

REISS ENGINEERING, INC., 

Fourth Party Defendant.
SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (hereinafter "Settlement Agreement") is entered into as of the ___ day of April, 2012 by and between ISLAMORADA, VILLAGE OF ISLANDS, a municipality of the State of Florida ("VILLAGE"); WPC INDUSTRIAL CONTRACTORS, LTD. ("WPC"); FIDELITY AND DEPOSIT COMPANY OF MARYLAND ("FIDELITY"); W.F. MCCAIN & ASSOCIATES ("MCCAIN"); REISS ENGINEERING, INC. ("REISS"); PABON ENGINEERING, INC. ("PABON"); and AMERICAN DIRECTIONAL BORING, INC., d/b/a ADB UTILITY CONTRACTORS ("ADB") (collectively the "Parties"), WITNESSETH:

WHEREAS, on September 12, 2003, ISLAMORADA, VILLAGE OF ISLANDS, a municipality of the State of Florida ("VILLAGE"), entered into that certain Design-Build Agreement titled the Plantation Key Colony/North Plantation Key Wastewater Treatment & Collection System Project (hereinafter the "Contract") with WPC INDUSTRIAL CONTRACTORS, LTD. ("WPC"). As part of that Contract, WPC subcontracted with W.F. MCCAIN & ASSOCIATES ("MCCAIN") and REISS ENGINEERING, INC. ("REISS") to design the VILLAGE's wastewater treatment and collection system under the design plans titled: Plantation Key Colony Wastewater Collection System Record Drawings and Record Drawings for Plantation Key Colony/North Plantation Key WWTF in Plantation Keny, Florida (hereinafter collectively referred to as the "Project" or "Phase I System"); and

WHEREAS, in furtherance of its construction obligations under the Contract, WPC hired PABON ENGINEERING, INC. ("PABON") and AMERICAN DIRECTIONAL BORING, INC., d/b/a ADB UTILITY CONTRACTORS ("ADB") as subcontractors to perform the work; and

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WHEREAS, WPC, as principal, and FIDELITY AND DEPOSIT COMPANY OF MARYLAND ("FIDELITY"), as surety, furnished certain payment, performance and maintenance bonds for the Project (hereinafter the "Bonds"); and

WHEREAS, the VILLAGE has asserted certain claims against WPC, MCCAIN and FIDELITY concerning alleged design and construction defects with the Phase 1 System; and

WHEREAS, WPC, MCCAIN, ADB, PABON, and REISS have in turn asserted certain claims against one another regarding the VILLAGE's claims; and

WHEREAS, the above claims, cross-claims, counter-claims, third-party and fourth-party claims are now pending in the above case styled: Islamorada, Village of Islands v. WPC Industrial Contractors, Ltd., et al, Case No.: 2007-CA-873-P, in the Circuit Court in and for Monroe County, Florida (the "Lawsuit"); and

WHEREAS, without admitting any liability or wrongdoing, the parties wish to resolve their disputes and claims, and enter into this Settlement Agreement.

NOW THEREFORE, in consideration of the mutual covenants and promises contained herein, and the below consideration the receipt and sufficiency of which is hereby acknowledged, the Parties agree as set forth below.

1. The above recitals are true and correct and relied upon in entering into this Settlement Agreement.

2. WPC, PABON, ADB, MCCAIN, REISS and their respective insurers, have agreed to contribute certain specified and agreed upon amounts to pay the VILLAGE the combined total of ONE MILLION SEVENTY FIVE THOUSAND DOLLARS AND NO CENTS ($1,075,000.00) ("Settlement Amount") and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the VILLAGE, for settling and resolving
any and all claims, cross claims, counter claims, third-party and fourth-party claims in the Lawsuit. No Party to this release shall be deemed to be responsible for payment in excess of each Party’s agreed-to contribution, and no Party should be deemed to be responsible for payment of the entire settlement amount.

3. The Parties hereby mutually release and forever unconditionally and irrevocably release and discharge each of the other Parties, and covenant not to sue each of the other Parties, and their respective directors, officers, employees, principals, agents, managers, general and limited partners, members, representatives, attorneys, successors, heirs, assigns, sureties, successors, affiliates, and any other individuals or entities from whom each of the Parties could be vicariously liable to any other party, and each of their respective insurers, (including but not limited to Fara Insurance Services, Everest Indemnity Insurance Co., Nautilus Insurance Company, Zurich North America, Fidelity and Deposit Company of Maryland, James River Insurance Company, Fireman’s Fund Insurance Companies, Continental Casualty Company, and National Casualty Insurance Company), each Parties’ respective agents, past and present, dependants, sureties, heirs, successors, representatives, employees, affiliates, and assigns, from any and all claims, cross claims, counter claims, third-party and fourth-party claims arising out of, regarding, or relating to, the Phase I Vacuum Sewer Collection and Effluent Disposal System, and any component(s) thereof, including but not limited to design, construction, engineering, consulting work, construction services, construction administration and its various related components, customer back-ups, and including any claim for attorney fees/costs, that were or could have been asserted in or as a part of the Lawsuit, claims known and unknown, and unanticipated damages or losses as well as damages or losses resulting now, known or disclosed, directly or indirectly, in connection with or for damages arising out of said design or
construction, obligations, defects, warranties, losses, accounts, latent defects, and patent defects, from now until the end of time, including any claim involving any customer back-up who is considered part of the Phase I Sewer Collection and Effluent Disposal System including but not limited to design, construction, engineering, consulting work, construction administration and construction services. There are no exceptions to the release provided herein with respect to the Phase I System.

4. Settlement among and between the above Parties identified herein shall not be construed as an admission of liability by any Party, and all Parties expressly deny any liability, wrongdoing or unlawful conduct. The Parties acknowledge that this Agreement has been entered into to settle disputed claims by them and to avoid the costs and expenses of continued litigation.

5. This settlement is not, and may not, be construed as an admission of liability for, or the existence of, insurance coverage for the claim(s) made against any insured, under any Nautilus Insurance Company policy of insurance.

6. The Parties further expressly waive and assume the risk of any and all claims for damages against the Parties which exist as of this date but of which the Parties do not know or suspect to exist, whether through ignorance, oversight, error, negligence or otherwise, and which, if known, would materially affect the respective Parties’ decision to enter into this Settlement Agreement. The Parties understand that this claim is being settled as a business decision only and that payment of the sums specified herein are being made as a complete compromise of matters involving disputed issues of law and fact and the Parties thereby assume the risk that the facts or law may be otherwise than the Parties believes.
7. Upon full execution of this Settlement Agreement, respective counsel for the Parties shall execute on behalf of their clients a Joint Stipulation for Order of Dismissal with Prejudice pursuant to Florida Rule of Civil Procedure 1.420(a), as to each of their respective claims, cross-claims, counter-claims, third-party and fourth-party claims. The Stipulation shall provide that the Lawsuit is dismissed with prejudice, the Court retaining jurisdiction to enforce the terms of this Settlement Agreement, and with the Parties to bear their own fees and costs.

8. This Agreement may be executed in multiple counterparts.

9. All Parties are to bear their own attorney fees and costs in the Lawsuit and in the drafting of this Settlement Agreement and related settlement documents.

10. The Parties through their respective representatives and counsel, execute this Settlement Agreement of their own free will and acknowledge by their signature that they have read and understand this entire Settlement Agreement and that they have reviewed the terms and conditions hereof.

11. To the extent the VILLAGE's current officers, councilmen or mayor are asked to give a reference or comment on WPC, MCCAIN, ADB, PABON or REISS with regard to the Phase I System, they will respond by stating "No Comment". This provision is not intended to prevent the VILLAGE from responding to any public records requests pursuant to Florida Statutes.

12. This Settlement Agreement constitutes the entire agreement between the Parties relating to the resolution of the Lawsuit and above claims, and supersedes any and all prior agreements, arrangements, negotiations, and understandings, whether written or oral, relating to the Lawsuit and claims. There are no other understandings, statements, promises or inducements, oral or otherwise, in addition to the terms of this Settlement Agreement. No
representations, warranties, covenants, or conditions, expressed or implied, other than as set forth herein have been made by any of the Parties. Notwithstanding anything herein to the contrary, FIDELITY expressly reserves all rights, of whatever kind or nature, it may have against its principal under any indemnification agreement, or similar agreement, between FIDELITY and its principal. FIDELITY and its principal each reserve any and all rights, claims and defenses which each of them may have against one another.

13. The Parties make no representation to one another regarding tax consequences associated with the terms of this Settlement Agreement. Each of the Parties understands that the other Parties have no responsibility for any tax liability that any of the Parties may incur as a consequence of this Settlement Agreement or any release hereunder.

14. This Settlement Agreement is the result of a collaborative effort between the Parties and/or their respective legal counsel. In the event of any claimed ambiguity or dispute, this Settlement Agreement shall not be constituted to favor any party, either as the author of this Settlement Agreement or otherwise.

15. If any provision of this Settlement Agreement is invalidated by a Court of competent jurisdiction, then all of the remaining provisions of this Settlement Agreement shall remain in full force and effect, provided that the Parties may still substantially realize the benefit of the promises and considerations conferred hereby, and provided further that the Village received the monetary consideration set forth in paragraph 2 above.

16. The Parties agree that this Settlement Agreement is made and entered into in the State of Florida, and shall in all respects be interpreted, construed, enforced and governed by the laws of the State of Florida, and where applicable, Federal law. Any suit or proceeding arising
out of this Settlement Agreement shall only be commenced in the Circuit Court for Monroe County, Florida, upper keys division.

17. If any action in law or equity, is necessary between the Parties to enforce or interpret the terms of this Settlement Agreement, the prevailing party (the party entitled to recover costs of suit; at such time as all appeals have been exhausted or the time for taking such appeals have expired) shall be entitled to recover attorney’s fees, costs and disbursements (at both trial and appellate level) in addition to any other relief that may be awarded.

[SIGNATURES APPEAR ON FOLLOWING PAGES]
ISLAMORADA, VILLAGE OF ISLANDS

By: Edward Kacenis

Printed Name: Edward Kacenis
Title: Village Manager

STATE OF FLORIDA:
COUNTY OF Monroe

The foregoing instrument was acknowledged before me this 27th day of April, 202, by Edward Kacenis, as representative of ISLAMORADA, VILLAGE OF ISLANDS, who is personally known to me, and/or who has produced Florida Driver’s License No. ______________________, respectively, as identification and he/she (did) (did not) take an oath.

Debra Eastman
Signature of Person Taking the Acknowledgment
Debra Eastman
Name of Officer Taking Acknowledgment

Notary Public, State of Florida
Serial Number: DD 901903
WPC INDUSTRIAL CONTRACTORS, LTD.

By: ______________________________

Printed Name: Jonathan Belliot

Title: President

STATE OF FLORIDA:

COUNTY OF Duval:

The foregoing instrument was acknowledged before me this ___ day of April, 20_, by Jonathan Belliot, as representative of WPC INDUSTRIAL CONTRACTORS, LTD., who is personally known to me and/or who has produced Florida Driver's License No. ______________, respectively, as identification and he/she (did) (did not) take an oath.

(SEAL)

Signature of Person Taking the Acknowledgment

Cheryl Asher

Name of Officer Taking Acknowledgment

Notary Public, State of Florida

Serial Number: 

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W.F. MCCAIN & ASSOCIATES

By: Wm. E. McCain P.E.
Printed Name: William E. McCain P.E.
Title: President

STATE OF FLORIDA:
COUNTY OF St. Lucie

The foregoing instrument was acknowledged before me this 30th day of April, 2012, by William E. McCain, as representative of W.F. McCain & Associates, who is personally known to me, and/or who has produced Florida Driver's License No. __________________________, respectively, as identification and he/she (did) (did not) take an oath.

(SEAL)

Signature of Person Taking the Acknowledgment

Name of Officer Taking Acknowledgment

Notary Public, State of Florida

Serial Number: PD 7850 54
FIDELITY AND DEPOSIT COMPANY OF MARYLAND

By: [Signature]
Printed Name: NICHOLAS KOKINAKIS
Title: CLAIMS COUNSEL

STATE OF NEW YORK:
COUNTY OF [REPLACE]:

The foregoing instrument was acknowledged before me this 29th day of JUNE, 2012, by NICHOLAS KOKINAKIS, as representative of FIDELITY AND DEPOSIT COMPANY OF MARYLAND, who is personally known to me, and/or who has produced New York Driver’s License No. 1676581300, respectively, as identification and he/she (did) (did not) take an oath.

[Signature]
Signature of Person Taking the Acknowledgment

[Name]
Name of Officer Taking Acknowledgment

Notary Public, State of New York
Serial Number: 01FU6119930
PABON ENGINEERING, INC.

By: [Signature]
Printed Name: Anibal Pabon
Title: President

STATE OF FLORIDA:
COUNTY OF Miami Dade:

The foregoing instrument was acknowledged before me this 7 day of May, 2012 by Anibal Pabon, as representative of PABON ENGINEERING, INC., who is personally known to me, and/or who has produced Florida Driver's License No. P150 000 74 3793, respectively, as identification and he/she (did) (did not) take an oath.

(SEAL)

Signature of Person Taking the Acknowledgment

Name of Officer Taking Acknowledgment
Notary Public, State of Florida
Serial Number: EE 144299
The foregoing instrument was acknowledged before me this 27th day of April, 2018 by Lawrence P. Keeley Jr., as representative of American Directional Boring, Inc., d/b/a ADB Utility Contractors, who is personally known to me, and/or who has produced Florida Driver's License No. ________________, respectively, as identification and he/she (did) (did not) take an oath.
REISS ENGINEERING, INC.

By: [Signature]
Printed Name: MARC A. CANNATA
Title: CFO, SECRETARY, TREASURER

STATE OF FLORIDA:

COUNTY OF Seminole:

The foregoing instrument was acknowledged before me this 15 day of May 2017 by MARC A. CANNATA, who is personally known to me, and/or who has produced Florida Driver's License No. , respectively, as identification and he/she (did) (did not) take an oath.

[Signature]
Signature of Person Taking the Acknowledgment

Name of Officer Taking Acknowledgment

Notary Public, State of Florida

Serial Number: DD 852880

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