



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Consent

F.10.

8/27/2024

Subject:

Approval RE: Ratification of Emergency Change Order 5 for the West Bay Drainage Improvements Project and Limited Settlement Agreement - District 2

Fiscal Impact:

\$313,697.35 to be paid by DRMP, Inc. to the County for outstanding incurred costs.

Dept/Office:

Public Works Department/Finance and Contracts Administration

Requested Action:

It is requested the Board of County Commissioners 1) ratify Emergency Change Order 5 for the West Bay Box Culvert project; 2) approve the Limited Settlement Agreement with DRMP, Inc., and authorize the County Manager to execute; and 3) Authorize the County Manager to approve any necessary Budget Change Requests associated with this action.

Summary Explanation and Background:

The County authorized DRMP, Inc. to perform surveying and engineering services for the West Bay Drainage Improvements. Upon completion of the design, the County issued a Task Order to RUSH Construction, Inc. on April 26, 2023, for Construction Management services. During construction, an error was identified in DRMP's design of the Northwest Gravity Wall (West Wall) of the project. Change Order 3 was executed on April 22, 2024, for \$170,813.02 for the redesign of the West Wall. An additional design error was later identified in DRMP's design of the East Gravity Wall (East Wall) in late May 2024. The work associated with the redesign of the East Wall required the demolition of the newly constructed gravity wall, additional sheet piling, dewatering, excavation, backfill/compaction, and concrete work. In accordance with Board Policy BCC-27, the County Manager executed Emergency Change Order 5 on June 11, 2024, for \$313,697.35 in order to avoid a substantial delay in the construction schedule and potentially increased costs. Per BCC-27, Emergency Change Order 5 requires after-the-fact ratification by the Board, because it exceeds \$200,000.

After numerous rounds of discussions and negotiations between the County, RUSH, and DRMP, it was agreed that: (1) RUSH release the County from any claims relating to the Project; and, (2) DRMP and the County enter into a limited settlement agreement wherein DRMP will reimburse the County \$313,697.35 for the issues pertaining to the East Wall (after previously providing \$170,813.02 for the issues pertaining to the West Wall), and the County will grant a limited release to DRMP for claims pertaining to the East Wall and West Wall.

The Limited Settlement Agreement has been reviewed and approved by the County Attorney's Office, Risk Management, and Purchasing Services in accordance with Administrative Order 29.

Clerk to the Board Instructions:

Please return the executed Limited Settlement Agreement to the Public Works Department.



Kimberly Powell, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

Telephone: (321) 637-2001
Fax: (321) 264-6972
Kimberly.Powell@brevardclerk.us

August 28, 2024

M E M O R A N D U M

TO: Marc Bernath, Public Works Director

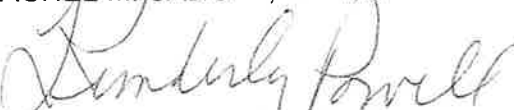
RE: Item F.10., Approval for Ratification of Emergency Change Order 5 for the West Bay Drainage Improvements Project and Limited Settlement Agreement

The Board of County Commissioners, in regular session on August 27, 2024, approved ratifying Emergency Change Order 5 for the West Bay Box Culvert Project; approved the Limited Settlement Agreement with DRMP, Inc.; authorized the County Manager to execute the Agreement; and authorized the County Manager to approve any necessary Budget Change Requests associated with this action. Enclosed is the fully-executed Agreement.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
RACHEL M. SADOFF, CLERK


Kimberly Powell, Clerk to the Board

/ds

Encl. (1)

cc: County Manager
Budget
Finance
Contracts Administration

LIMITED SETTLEMENT AGREEMENT AND RELEASE

This Limited Settlement Agreement and Release (the "**Agreement**") is entered into by and between DRMP, Inc. ("DRMP") and Brevard County, Florida (the "County"). Individually, DRMP and the County shall be referred to as a "**Party**" and collectively, shall be referred to as the "**Parties**."

BACKGROUND

WHEREAS, on or about December 3, 2020, DRMP submitted a proposal to the County for DRMP to provide survey services for the West Bay Drive Drainage Improvements Project (the "**Project**").

WHEREAS, on or about December 9, 2020, the County accepted DRMP's proposal and provided DRMP with a notice to proceed for the proposed survey services.

WHEREAS, on or about October 18, 2021, the County provided DRMP with a notice to proceed for change order 1, which specifically included the design and permitting of a replacement box culvert under West Bay Drive.

WHEREAS, the County executed a Task Order through the continuing construction manager contract with RUSH Construction, Inc. ("Rush") for Rush to serve as the Construction Manager for the Project.

WHEREAS, prior to construction of the west wall of the Project, there was a dispute regarding the design of the west wall (the "West Wall") for the Project.

WHEREAS, the Parties agreed the West Wall design required revision and additional work on the Project (the "West Wall Claims").

WHEREAS, DRMP paid the County \$170,813.02 for the additional costs and expenses required by or related to the West Wall Claims.

WHEREAS, during construction, there was a dispute regarding DRMP's design of the east gravity wall (the "East Wall") for the Project.

WHEREAS, the Parties agreed to demolish the east gravity wall and replace it with a cast-in-place cantilever wall (the "East Wall Claims").

WHEREAS, the Parties desire to settle and resolve disputes between them related specifically to the West Wall, the West Wall Claims, the East Wall, and the East Wall Claims.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and intended to be legally bound, the Parties agree as follows:

AGREED TERMS

1. Settlement Payment. In full settlement of the claims held by the Parties related to the West Wall, the West Wall Claims, the East Wall, and the East Wall Claims, and in consideration of the covenants contained in this Agreement, the Parties agree as follows:

(a) DRMP has previously paid the County the total sum of One Hundred Seventy Thousand Eight Hundred Thirteen Dollars and Two Cents (\$170,813.02 USD) for remediation of the West Wall (the "**West Wall Payment**").

(b) DRMP shall pay the County the total sum of Three Hundred Thirteen Thousand Six Hundred Ninety-Seven Dollars and Thirty-Five Cents (\$313,697.35) for remediation of the East Wall not later than fourteen (14) days after full execution of this Agreement by the Parties (the "**East Wall Payment**") (collectively, the West Wall Payment and the East Wall Payment shall be referred to as the "**Settlement Payment**").

(c) Upon receipt and clearance of the Settlement Payment, as well as the County's final approval of the remediation work performed by Rush on both the West Wall and East Wall, the Settlement Payment will be used to offset the costs incurred by the County with respect to the additional work needed for the West Wall and East Wall.

(d) The Parties acknowledge and agree that they are each solely responsible for paying any attorneys' fees and costs that they incurred as a result of disputes related to the West Wall, the West Wall Claims, the East Wall, and the East Wall Claims, and that no Party, nor its attorney(s), will seek any award of attorneys' fees or costs from another Party for said disputes, except as provided herein.

2. County Release. The County, on behalf of itself, its insurers, attorneys, agents, representatives, assigns, predecessors, successors, and all persons acting by, through, under, or in concert with it, hereby forever releases and discharges DRMP, together with its insurers, predecessors, successors, direct and indirect parent companies, direct and indirect subsidiary companies, companies under common control with any of the foregoing, affiliates, assigns, and their past, present, and future officers, directors, shareholders, interest holders, members, partners, attorneys, agents, employees, managers, representatives, assigns, successors in interest, and all persons acting by, through, under, or in concert with it, from all known charges, complaints, claims, grievances, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts, penalties, fees, wages, expenses (including attorneys' fees and costs actually incurred), and punitive damages, of any nature whatsoever, that are related to the West Wall, the West Wall Claims, the East Wall, and the East Wall Claims, which the County has against DRMP. However, nothing herein shall be construed as a release of any other claim related to the Project that may become known to the County after the Effective Date of this Agreement. The County expressly represents that, as of the Effective Date, it is not aware of any issues that could give rise to a future claim at this time relating to the West Wall or the East Wall.

3. DRMP Release. DRMP, on behalf of itself, its insurers, attorneys, agents, representatives, assigns, predecessors, successors, and all persons acting by, through, under, or in concert with it, hereby forever releases and discharges the County with their insurers, predecessors, successors, direct and indirect parent companies, direct and indirect subsidiary companies, companies under common control with any of the foregoing, affiliates, assigns, and their past, present, and future officers, directors, shareholders, interest holders, members, partners, attorneys, agents, employees, managers, representatives, assigns, successors in interest, and all persons acting by, through, under, or in concert with them, from all known charges, complaints, claims, grievances, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts, penalties, fees, wages, expenses (including attorneys' fees and costs actually incurred), and punitive damages, of any nature whatsoever, that are related to the West Wall, the West Wall

Claims, the East Wall, and the East Wall Claims, which DRMP has against the County. However, nothing herein shall be construed as a release of any other claim related to the Project that may become known to DRMP after the Effective Date of this Agreement. DRMP expressly represents that, as of the Effective Date, it is not aware of any issues that could give rise to a future claim at this time relating to the West Wall or the East Wall.

4. Ownership of Claim. The Parties represent and warrant that they have not transferred, conveyed, assigned, or otherwise prejudiced any of the rights or claims addressed in this Agreement.

5. No Admission of Liability. The Parties acknowledge that the Settlement Payment is a compromise and final settlement of the disputed claims specifically identified herein and are limited to the West Wall, the West Wall Claims, the East Wall, and the East Wall Claims as they are known on the Effective Date of this Agreement. The Parties further acknowledge that payment of the Settlement Payment is not, and may not be construed as, an admission of liability by any Party, all of whom specifically disclaim and deny engaging in any wrongful, tortious, or unlawful activity.

6. Agreement is Legally Binding. The Parties intend this Agreement to be legally binding and shall inure to the benefit of each of them and their respective successors, assigns, executors, administrators, heirs, and estates. Moreover, the persons and entities referred to in paragraphs 2, 3, and 4 above, but not a Party, are third-party beneficiaries of this Agreement.

7. Entire Agreement. The recitals set forth at the beginning of this Agreement are incorporated by reference and made a part of this Agreement. This Agreement constitutes the entire agreement and understanding of the Parties and supersedes all prior negotiations and/or agreements, proposed or otherwise, written or oral, concerning the subject matter hereof. Furthermore, no modification of this Agreement shall be binding unless in writing and signed by each of the Parties hereto.

8. Interpretation. Should any provision of this Agreement be declared or be determined by any court to be illegal or invalid, the validity of the remaining parts, terms, or provisions shall not be affected thereby and said illegal or invalid part, term, or provision shall be deemed not to be a part of this Agreement. The headings within this Agreement are purely for convenience and are not to be used as an aid in interpretation. Moreover, this Agreement shall not be construed against any Party as the author or drafter of the Agreement.

9. Choice of Law. This Agreement and all related documents, as well as all matters arising out of or relating to this Agreement, whether sounding in contract, tort, or statute, shall be governed by and construed in accordance with the laws of the State of Florida, without giving effect to the conflict of laws provisions thereof.

10. Jury Waiver. The Parties hereby forever waive any right they may have to trial by jury in connection with any claim arising out of or related to this Agreement.

11. Reliance on Own Counsel. In entering into this Agreement, the Parties acknowledge that the terms of this Agreement are fully understood and voluntarily accepted by them, and that other than the consideration set forth herein, no promises or representations of any kind have been made to them by another Party. The Parties represent and acknowledge that in executing this Agreement, they did not rely, and have not relied, upon any representation or statement, whether oral or written, made by any other Party or by any other Party's agents,

representatives, or attorneys with regard to the subject matter, basis, or effect of this Agreement or otherwise.

12. Counterparts. This Agreement may be executed by the Parties in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Agreement may be executed by electronic and PDF signatures, each of which shall have the same force and effect as an original signature.

13. Authority to Execute Agreement. By signing below, each Party warrants and represents that the person signing this Agreement on its behalf has the authority to bind that Party and that the Party's execution of this Agreement is not in violation of any by-law, covenants, and/or other restrictions placed upon them by their respective entities.

14. Effective Date. The terms of the Agreement will be effective when fully executed by the Parties.

***** THE REMAINDER OF THIS PAGE IS LEFT INTENTIONALLY BLANK — SIGNATURE
PAGE TO FOLLOW *****

[Signature Page to Settlement Agreement and Release]

IN WITNESS WHEREOF, and intending to be legally bound, each of the Parties hereto has caused this Agreement to be executed as of the date(s) set forth below.

WITNESS

BREVARD COUNTY, FLORIDA

Kimberly Powell

By: Frank Abbate
Frank Abbate, County Manager
Date: AUG 27 2024
As approved by the Board on 8/27/2024

Reviewed for legal form and content
solely for Brevard County:

Alex Essee
Alex Essee, Deputy County Attorney

DRMP, Inc.

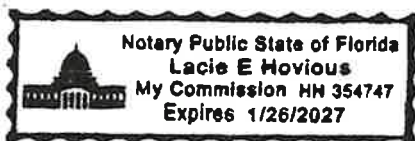
By: Glenn Lusink
Glenn Lusink, President

STATE OF Florida
COUNTY OF Orange

The foregoing instrument was witnessed before me by means of ☒ physical presence or
☐ online notarization, this 16th day of August, 2024 by Glenn Lusink at DRMP,
Inc., a corporation authorized to conduct business in Florida, on behalf of the
corporation. He is personally known to me or has produced personally known as
identification.

[Notary Seal]

Lacie E. Hovious
Notary Public Signature
Lacie E. Hovious
Name typed, printed or stamped
My Commission Expires: 01/26/2027



**BREVARD COUNTY
BOARD OF COUNTY COMMISSIONERS**

CONTRACT REVIEW AND APPROVAL FORM

SECTION I - GENERAL INFORMATION

1. Contractor: DRMP, Inc.		2. Amount: \$313,697.35	
3. Fund/Account #: Public Works		4. Department Name: Public Works	
5. Contract Description: Limited Settlement Agreement and Release - West Bay Drainage			
6. Contract Monitor: Robby Hendricks / Jeanette Scott		8. Contract Type: Select from pulldown:	
7. Dept/Office Director: Marc Bernath			
9. Type of Procurement: Select from pulldown:			

SECTION II - REVIEW AND APPROVAL TO ADVERTISE

APPROVAL

COUNTY OFFICE

YES

NO

SIGNATURE

User Agency

☐
☐

Purchasing

☐
☐

Risk Management

☐
☐

County Attorney

☐
☐

SECTION III - REVIEW AND APPROVAL TO EXECUTE

APPROVAL

COUNTY OFFICE

YES

NO

SIGNATURE

User Agency

☒
☐

Thomas-Wood, Tammy

Digitally signed by Thomas-Wood, Tammy
DN: cn=Thomas-Wood, tammy, email=tammy@brevard.gov
Date: 2024.08.15 14:24:45 -04'00'

Purchasing

☒
☐

Wall, Katherine

Digitally signed by Wall, Katherine
Date: 2024.08.16 11:42:34 -04'00'

Risk Management

☐
☐

County Attorney

☒
☐

Esseesse, Alexander

Digitally signed by Esseesse, Alexander
Date: 2024.08.15 17:00:46 -04'00'

SECTION IV - CONTRACTS MANAGEMENT DATABASE CHECKLIST

CM DATABASE REQUIRED FIELDS	Complete ✓
Department Information	<input type="checkbox"/>
Department	<input type="checkbox"/>
Program	<input type="checkbox"/>
Contact Name	<input type="checkbox"/>
Cost Center, Fund, and G/L Account	<input type="checkbox"/>
Vendor Information (SAP Vendor #)	<input type="checkbox"/>
Contract Status, Title, Type, and Amount	<input type="checkbox"/>
Storage Location (SAP)	<input type="checkbox"/>
Contract Approval Date, Effective Date, and Expiration Date	<input type="checkbox"/>
Contract Absolute End Date (No Additional Renewals/Extensions)	<input type="checkbox"/>
Material Group	<input type="checkbox"/>
Contract Documents Uploaded in CM database (Contract Form with County Attorney/ Risk Management/ Purchasing Approval; Signed/Executed Contract)	<input type="checkbox"/>
"Right To Audit" Clause Included in Contract	<input type="checkbox"/>
Monitored items: Uploaded to database (Insurance, Bonds, etc.)	<input type="checkbox"/>

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7. Dept/Office Director: Marc Bernath		Select from pull-down:	
9. Type of Procurement: Select from pull-down:			

SECTION II - REVIEW AND APPROVAL TO ADVERTISE

APPROVAL

COUNTY OFFICE

YES

NO

SIGNATURE

User Agency

☐☐

Purchasing

☐☐

Risk Management

☐☐

County Attorney

☐☐

SECTION III - REVIEW AND APPROVAL TO EXECUTE

APPROVAL

COUNTY OFFICE

YES

NO

SIGNATURE

User Agency

☐☐

Purchasing

☐☐

Risk Management

☒☐

Watson, Michael

Digitally signed by Watson, Michael
Date: 2024.08.20 13:46:00 -04'00'

County Attorney

☒☐

Esseesse, Alexander

Digitally signed by Esseesse, Alexander
Date: 2024.08.15 17:00:46 -04'00'

SECTION IV - CONTRACTS MANAGEMENT DATABASE CHECKLIST

CM DATABASE REQUIRED FIELDS	Complete ✓
Department Information	<input type="checkbox"/>
Department	<input type="checkbox"/>
Program	<input type="checkbox"/>
Contact Name	<input type="checkbox"/>
Cost Center, Fund, and G/L Account	<input type="checkbox"/>
Vendor Information (SAP Vendor #)	<input type="checkbox"/>
Contract Status, Title, Type, and Amount	<input type="checkbox"/>
Storage Location (SAP)	<input type="checkbox"/>
Contract Approval Date, Effective Date, and Expiration Date	<input type="checkbox"/>
Contract Absolute End Date (No Additional Renewals/Extensions)	<input type="checkbox"/>
Material Group	<input type="checkbox"/>
Contract Documents Uploaded in CM database (Contract Form with County Attorney/ Risk Management/ Purchasing Approval; Signed/Executed Contract)	<input type="checkbox"/>
"Right To Audit" Clause Included in Contract	<input type="checkbox"/>
Monitored items: Uploaded to database (Insurance, Bonds, etc.)	<input type="checkbox"/>