

BOARD OF COUNTY COMMISSIONERS • COLUMBIA COUNTY

AGENDA ITEM REQUEST FORM

The Board of County Commissioners meets the 1st and 3rd Thursday of each month at 5:30 p.m. in the Columbia County School Board Administrative Complex Auditorium, 372 West Duval Street, Lake City, Florida 32055. All agenda items are due in the Board's office one week prior to the meeting date.

Today's Date: 2/24/16 Meeting Date: 3/3/16

Name: Ben Scott Department: Administration

Division Manager's Signature: Ben Scott

1. Nature and purpose of agenda item: Settlement agreement - Anderson Columbia Co., Inc. and associated budget amendment (\$1,750,000).

Attach any correspondence information, documents and forms for action i.e., contract agreements, quotes, memorandums, etc.

2. Fiscal impact on current budget.

Is this a budgeted item?

☐ N/A

☐ Yes Account No. _____

☒ No Please list the proposed budget amendment to fund this request

Budget Amendment Number: BA 16-39

<u>FROM</u>	<u>TO</u>	<u>AMOUNT</u>
301-0000-389.04-00	301-5010-541.60-63	
BASCOM NORRIS / CASH BALANCE FORWARD	BASCOM NORRIS / CONSTRUCTION IMPROV.	\$1,000,000
301-0000-381.90-01	301-5010-541.60-63	
BASCOM NORRIS / TRANSFER IN	BASCOM NORRIS / CONSTRUCTION IMPROV.	\$500,000
001-8400-584.90-98	001-8100-581.91-93	
GF / CASH BALANCE FORWARD	GF / INTERFUND TRANSFERS OUT	\$500,000
101-8400-584.90-99	101-4300-541.31-58	
TRANS TRUST / CONTINGENCY	TRANS TRUST / MILLING	\$250,000

For Use of County Manger Only:

[] Consent Item

[X] Discussion Item

IN THE CIRCUIT COURT FOR COLUMBIA COUNTY, FLORIDA

ANDERSON COLUMBIA CO., INC.,

Plaintiff,

v.

CASE NO. 2015-CA-000386

COLUMBIA COUNTY, FLORIDA,

Defendant.

_____ /

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT, dated _____, 2016, is made and entered by and between Anderson Columbia Co., Inc. ("ACCI") and Columbia County, Florida (the "County")(individually, "Party"; collectively, the "Parties").

PURPOSE


The purpose of this Agreement is to memorialize the resolution of all disputes of whatever nature asserted by and between the Parties relating to the project commonly known as the Bascom Norris Drive project in Columbia County, Florida (the "Project") and relating to the litigation styled above, that have been raised or could have been raised in this Lawsuit.

RECITALS

A. In November 2012, the County entered a prime contract with ACCI (the "Contract") for the construction of the Project.

B. During construction of the Project, disputes arose between the Parties regarding, *inter alia*, the importation of offsite fill material and the construction of the embankments for the Project.

C. In September 2015, ACCI filed suit against the County in the action styled above (the "Litigation"), seeking recovery of the Contract retainage and damages for alleged breaches by the County as set forth in the complaint. In turn, the County filed a counterclaim, seeking recovery of damages for alleged breaches by ACCI as set forth in the counterclaim.

 D. In January 2016, by agreement of the Parties, a mediation was held for the purpose of facilitating a compromise and settlement of the disputes between the Parties related to the Contract and the Project.




E. As a result of that mediation and follow-on good-faith negotiations between the Parties, an agreement has been reached as set forth below.

AGREEMENT


The Parties agree as follows, subject only to approval by the Columbia County Board of County Commissioners:



1. **RELEASE.** With the exception only of the reserved rights and obligations set forth in the immediately following Paragraph 2 (the “Reserved Rights”), the Parties fully, finally, and mutually release, acquit, and forever discharge each other and their agents, consultants, sub-consultants, subcontractors, sub-subcontractors, attorneys, employees, officers, partners, members, shareholders, parents, affiliates, subsidiaries, principals, trustees, owners, directors, sureties, guarantors, indemnitors, successors, and all other persons and entities in privity with any of them, of and from any and all disputes, claims, demands, claims of subrogation, contribution or indemnity, claims to any contract balances or retainage, claims for attorney’s fees or defense, and causes of action of any kind whatsoever, whether known or unknown, whether heretofore or hereafter accruing or arising, whether held by assignment or otherwise, whether for latent or patent known or patent defects, and whether sounding in tort, contract, or trespass, or arising by operation of law or statute, that any Party has, had, or may ever have against any other Party, in any way related to or arising out of the matters raised or which could have been raised in the above-styled case, including construction, completion, repairs and/or warranty work of the Project or the services, labor, material, and equipment furnished in connection therewith, and all of the contracts, subcontracts and sub-subcontracts, purchase orders, bonds, and any and all litigation among or between the Parties relating in any way thereto.

2. **RESERVED RIGHTS.** The following Reserved Rights are not released hereby and shall survive the execution of this Settlement Agreement:

-  a. **SETTLEMENT SUM.** The County will pay ACCI: (a) \$750,000.00 cash payment within 30 days of approval of this Agreement by the Columbia County Board of County Commissioners, and (b) retainage in the sum of \$739,207.19 upon completion of the embankment repairs described in Paragraph 2.b. below.
- b. **ONE-TIME MAINTENANCE REPAIR.** ACCI will perform one-time maintenance repairs on the Project embankment beginning no later than March 30, 2016, as follows: ACCI will return eroded material to the as-built condition of the slopes of the embankment, smooth the slopes, and provide any necessary additional vegetative coverage.
-  c. **STRUCTURAL WARRANTY.** ACCI will provide a two-year warranty for structural integrity of the roadway and embankment on the Project commencing on the date the one-time maintenance repairs described in Paragraph 2.b. are completed.
-  d. **ONGOING MAINTENANCE.** ACCI will provide a two-year maintenance warranty commencing on the date the one-time maintenance repairs described in Paragraph 2.b. are completed under which ACCI will correct at its expense any

erosion damage, not to include fingerling trenches, occurring within five feet of the Project pavement edge or curb line. Concurrent with the two-year timeframe, ACCI will repair any embankment erosion measuring a depth of three feet or more in a defined contiguous area of 500 square feet or more, occurring as a result of a single weather event.

- e.  **PURCHASE OF RAP MILLINGS.** The County agrees to an annual purchase of 16,667 tons of fresh asphalt millings per year from ACCI for a 3 year period at the price of \$15.00 per ton to be delivered to County Public Works yard as requested by Public Works (\$250,000.00 per year for 3 years = \$750,000.00). The County will remit the annual payment for 2016 in the amount of \$250,000.00 cash within 30 days of approval of this Agreement by the Columbia County Board of County Commissioners. Each subsequent annual payment in the annual installment amount of \$250,000.00 will be due on or before the anniversary of the 2016 payment.

- f. 
 **PROJECT FILL IN OFF-SITE WETLANDS.** Through the expiration of the Structural Warranty period set forth in Paragraph 2.c., ACCI and the County shall share equally (50/50) in any claim asserted within that time that might result in liability, remediation, or mitigation responsibilities imposed upon either of them by third parties and in any way related to embankment fill from the Project in off-site wetlands.

3. **NO ASSIGNMENT OF RIGHTS.** ACCI declines any assignment by the County of the County's rights or causes of action against either HDR, Inc. or Donald F. Lee & Associates, Inc. in connection with the Project. Any and all such rights shall remain with the County.

-  4. **ATTORNEY'S FEES AND COSTS.** The Parties will bear their own attorney's fees, costs and mediator fees incurred in connection with the Litigation and the Project.

5. **AGREEMENT COMPROMISES DISPUTED CLAIMS.** This Agreement is made and entered by the Parties as a compromise of disputed claims between them. Neither this Agreement, the payment provided by it, nor any document, pleading or paper prepared and signed pursuant to the provisions of this Agreement will constitute or be construed or asserted as an admission of liability on the part of either Party. The Parties expressly acknowledge and agree that all claims relating to the Project, asserted or unasserted between them, will be fully and amicably resolved pursuant to this Agreement, except for the Reserved Rights provided for in Paragraph 2.

6. **GOVERNING LAW.** This Agreement will be governed and construed in accordance with the laws of the State of Florida.

7. **JURISDICTION AND VENUE.** Any and all legal actions arising from or relating to this Agreement will be commenced and remain in Columbia County Circuit Court.

8. DISMISSAL OF ACTION. Following execution of this Agreement and receipt and clearance of all payments due under Paragraph 2(a) of the Agreement, the Parties will file a mutually agreed upon joint notice or stipulation of voluntary dismissal with prejudice, stating that each Party shall bear its respective attorney's fees and costs and containing a reservation of jurisdiction by the Court related to enforcement of the terms and conditions of this Agreement.

Anderson Columbia Co., Inc.



By: E. Tony Williams Jr.

Its: U.P.

Date: 2/26/14

Columbia County Board of County Commissioners

By: _____

Its: _____

Date: _____