



COUNTY ATTORNEY'S OFFICE

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May 17, 2024

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Katherine Latorre

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Andrew F. Lanius

Robert McHugh

LEGAL SERVICES MANAGER

Sharon J. Sharrer

Liberty Mutual Insurance Company
P.O. Box 34526
Seattle, WA 98124

Liberty Mutual Insurance Company
175 Berkeley Street
Boston, MA 02116

Re: Notice of Breach – Construction Services Agreement
Country Club Heights Sewer and Water Main Replacement (CC-3999-21/TAD)

Dear John O'Donnell,

This letter is to provide formal Notice of Breach (“Notice”) pursuant to the terms of the subject contract between Benchmark Construction Co., Inc. (“Contractor”) and Seminole County (“County”), dated May 3, 2022 (“Contract”).

Pursuant to the Contract, a Notice to Proceed was issued to Contractor on June 13, 2022 with substantial completion to occur within 540 calendar days (December 4, 2023) and final completion to occur within 30 days after actual date of substantial completion (January 3, 2024). Two change orders were issued by the County: (1) on May 17, 2023 (for an additional 22 days under the Contract) and (2) on June 26, 2023 (for additional 94 days under the Contract). The second change order extended the substantial completion date to March 29, 2024 and the final completion date to April 28, 2024. Section 9 (“Liquidated Damages”) of Contract specifies liquidated damages to be assessed in the amount of \$500 per day for each day Contractor exceeds the contract time for substantial completion until the work is substantially complete and for \$125 per day after the final completion date.

As you are aware, the Contract outlines the obligations and responsibilities of the parties. Regrettably, the Contractor has failed to timely fulfill their obligations in accordance with the Contract. Despite the County’s repeated attempts in communicating the time and performance deficiencies to the Contractor, the services have not been performed as contractually agreed upon. As of this Notice, the Contractor has been and continues to incur liquidated damages.

As you recall, the County most recently agreed to meet with you and the Contractor via a virtual meeting in good faith to amicably resolve the County’s concerns. The County left the meeting hopeful the Contractor would be able to provide a complete and robust plan of action in accordance with the original agreed upon terms in order to rectify the deficiencies and to expeditiously complete the contractually agreed upon work; however, upon receipt of Contractor’s “proposal” to Bill White (County staff), dated April 22, 2024 and emailed to County staff on May 8, 2024, the document provided by Contractor is incomplete and deficient and therefore, gives the County no assurance or confidence the Contractor is capable of performing the work in a workmanlike manner in accordance with the agreed upon terms.

In accordance with the terms outlined in the Contract, including, but not limited to, the Bond (#285068858), the County hereby demands that Liberty Mutual Insurance Company

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fulfill its obligations as the surety and remedy the situation promptly. More specifically, the County desires to select a Contractor that has the expertise and capability to be able to promptly rectify the deficiencies and to proceed in completing the work to minimize and, to the extent possible, eliminate the negative impacts on the community where the project is located. Consequently, please let this serve as notice the County intends to terminate the Contract pursuant to Section 15 ("Suspension of Work and Termination") of the General Conditions part of the Contract. As such, by way of this Notice, the County is requesting the Contractor and all of its subcontractors to immediately, but no later than within 7 business days, vacate the project site in a professional manner to avoid endangering the health and safety of the public. Prior to vacating the project site, but within this timeframe, Contractor and its subcontractors must not begin any new work and any ongoing work affecting service to residents should be immediately restored.

Please note, any failure or delay by the County in exercising any right or remedy under the Contract shall not constitute a waiver of that right or remedy. The County reserves all rights and remedies available under the Contract and at law.

Please be advised that failure to rectify this breach promptly may result in further damages to the County and thereby the surety and/or the Contractor. As such, the County may be forced to pursue legal action and seek appropriate remedies to protect the County's interests.

The County anticipates your immediate attention to this matter and requests that you contact us at your earliest convenience to discuss the necessary next steps.

Thank you for your prompt attention to this matter.

Sincerely,



Brijesh Patel
Senior Assistant County Attorney

cc: Mark Atkins Sr., President, Benchmark Construction Co., Inc.
Robert Reiss, Vice President, CHA Solutions
Jeff Birenbaum, Vice President, CHA Solutions
Kristian Swenson, Assistant County Manager
Gerlin Kahn, Assistant County Attorney
Bill White, Utilities Engineering Division Manager
Johnny Edwards, Interim Director, Utilities
Steve Koontz, Purchasing and Contracts Division Manager
Robert Bradley, Procurement Administrator