



January 21, 2021

Vincent Burke, P.E., Utilities Director
Indian River County
1801 27th Street
Vero Beach, FL 32960

**RE: *Indian River County South Oslo Road Water Treatment Plant Floridan Aquifer Wells Rehabilitation Project
Project Delays and Liquidated Damages
IRCU Contract 2016-031***

Dear Mr. Burke,

This letter serves as a re-cap of All Webb Enterprises, Inc. Contract Deficiencies for the above referenced project. As of January 6, 2021, All Webb's Enterprises, Inc. (AWE) has completed the project work. A timeline of events as it pertains to scheduling and mobilization of this project has been provided below.

- Wednesday, August 24, 2016 – Pre-construction meeting. NTP was set to be August 25, 2016, and an additional 30 days were added to the contract due to delivery of rig delays, putting Substantial Completion at March 23, 2017 and Final Completion at May 22, 2017. Pre-construction meeting minutes indicate AWE anticipated mobilization to the site in early October 2016.
- Tuesday, April 4, 2017 – **Change Order No. 1** executed, adding 250 days to the Contract Time, putting Substantial Completion at November 28, 2017 and Final Completion at January 27, 2018.
- Monday, July 2, 2018 – **Change Order No. 2** executed, adding 380 additional days to the Contract Time, putting Substantial Completion at December 13, 2018 and Final Completion at February 11, 2019.
- Thursday, February 7, 2019 – At progress meeting No. 10, a timeline of 30 days from mobilization to demobilization of each remaining well rehabilitation was decided upon. It has now been 19 months since that meeting.
- Wednesday, January 6, 2021 – Final Completion; AWE completed all project work.

On January 6, 2021, AWE was **695 days late** on the contractual Final Completion date. According to Article 3.03 of the Contract Agreement, AWE shall pay IRCU liquidated damages for delay at \$450 per calendar day that expires after Final Completion. Should liquidated damages be assessed to end on the date of Final Completion, the amount totals **\$312,750**.

The amendment to the Kimley-Horn contract for additional engineering and hydrogeological services associated with time added to the project cost IRCU **\$67,277**. It has been previously discussed with

AWE that they would be responsible for the additional engineering costs as well as liquidated damages. IRCU is currently withholding **\$306,703.98** which includes Pay Application 25 for **\$153,897.15** and 5% retainage of **\$152,806.83**.

Although AWE has done a good job on completed work and has achieved great results with well production and quality, they continued to miss promised deadlines and completion dates and are nearly 2 years late on a 2-year project duration. In their defense, they did not adjust pricing on any of the new work since the beginning of the project and were idle during the Scrub Jay delay without any additional request for time. Therefore, it is not recommended to enforce the full liquidated damage amount and that the following options be considered as a discount in liquidated damages for negotiating a settlement with AWE:

- **Fulfill Pay Application 25 but keep retainage – Total Damages \$152,806.83.** The retainage amount is withheld to ensure contractual obligations are met, and in this case, would not be returned to AWE for inability to meet schedule requirements. The retainage would cover the amount of the Kimley-Horn amendment and represents approximately 49% of the total liquidated damages, thereby offering AWE a concession on the total amount owed.
- **Assess 50% Discount of liquidated damages – Total Damages \$156,375.00.** Keep half of the total liquidated damages, which amounts to \$156,375. This option also covers the amount of the Kimley-Horn amendment and offers AWE a concession on the total amount owed.

It is our recommendation that IRCU employ the first option. While the dollar amounts are comparable, this option to keep the retainage is slightly less, with the goal of preserving a working relationship with AWE. We hope that these options provide a solution that is amenable to both IRCU and AWE. If you have any questions, please don't hesitate to reach out at your earliest convenience.

Sincerely,



Mark D. Miller, P.E.



Vaughn Hayduk, P.E.

cc: Terry Southard,(IRCU)
Jon Friedrichs, P.G. (JLA)