

TOLLING AGREEMENT

THIS TOLLING AGREEMENT is entered into by and between Manatee County Government (“Manatee”), Balfour Beatty Construction, LLC, f/k/a Centex Rooney Construction Company (“BBC”) and Travelers Casualty and Surety Company of America (“Travelers”), Fidelity and Deposit Company of Maryland (“Fidelity”) and Zurich American Insurance Company (“Zurich”), (Travelers, Fidelity and Zurich hereinafter referred to collectively as “the Sureties”) for the purpose of tolling the statutes of limitations on Manatee’s claims against BBC, and against the Sureties on Performance Bond No.104645247/PRF08774756 (hereinafter, the “Performance Bond”).

WHEREAS, on or about June 21, 2005, BBC and Manatee entered into a Construction Contract (hereinafter, “the Construction Contract”) for the construction of Manatee County Judicial Center, RFP#03-8322 (hereinafter, “the Project”); and

WHEREAS, on or about September 27, 2005, the Sureties issued the Performance Bond naming BBC as Principal, and Manatee as Obligee, concerning BBC’s work pursuant to the Construction Contract; and

WHEREAS, Manatee has asserted or will assert claims against BBC and the Sureties arising out of or related to cracks/dimpling of the stucco and pieces of stucco failing on the Project (such claims referred to hereinafter as “Claims”); and

WHEREAS, BBC and Manatee have entered into a Remediation and Access Agreement pursuant to which BBC has agreed to repair the stucco defects at no cost to Manatee, and work has begun or will begin thereunder; and

WHEREAS, the Parties desire to allow BBC a reasonable time to correct the stucco defects under the Remediation and Access Agreement; and

WHEREAS, in order to allow time to attempt an informal resolution of the Parties’ disputes and potential disputes, to conserve their financial resources, and to

preserve all Claims to the extent such Claims exist as of March 26, 2013, the Parties desire to toll the applicable statutes of limitation and deadlines related to the Claims on the Project as hereinafter set forth.

NOW, THEREFORE, IN ORDER TO ALLOW ALL PARTIES SUFFICIENT TIME TO RESOLVE THE PENDING CLAIMS AND OTHER VALUABLE CONSIDERATION, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. Subject to the provisions of this Tolling Agreement, all limitations or repose periods which may be applicable to the Claims, including but not limited to those set forth in the Performance Bond or relevant Florida Statutes, relating in any way to the filing of an action on the Construction Contract or the Performance Bond regarding the claims on the Project (collectively "Limitation Periods") are tolled from March 26, 2013, through and including September 1, 2014 (the "Tolling Period").
2. Nothing in this Agreement is intended to waive any otherwise applicable procedural or substantive limitations on any Claims, other than the tolling of the time to bring suit on such Claims, in accordance with this Tolling Agreement, and the Parties' execution of this Tolling Agreement will not extend nor revive any time periods that may have expired, if any, prior to March 26, 2013. The parties further agree that by entering into this Tolling Agreement, they are not waiving the right to commence legal action against one another after the termination of this Tolling Agreement in accordance with its terms; nor are any of the Parties waiving any claims, defenses or counterclaims, including but not limited to, defenses on the basis of any applicable limitations deadline as may exist as of March 26, 2013.
3. The Tolling Period may be terminated prior to September 1, 2014 by any Party with at least 30 days prior written notice delivered to all other Parties in advance of the early termination date. The Tolling Period will be

modified in such case to be from March 26, 2013, through and including the early termination date. Notices required by this Tolling Agreement will be made in writing and delivered to Counsel for the respective Parties to be notified.

4. The Parties have mutually drafted this Tolling Agreement and to the extent that there are any ambiguities or uncertainties contained herein, they will not be construed for or against either party hereto as the drafter of the agreement.
5. The persons executing this Tolling Agreement warrant and represent that they have the authority to bind their respective principals hereto and have such authorization to do so.
6. If any part of this Tolling Agreement is adjudicated invalid, unenforceable or illegal by a court of competent jurisdiction, such adjudication will not affect or impair, in whole or in part, the validity, enforceability, or legality of any remaining portions of this Tolling Agreement. All remaining portions remain in full force and effect as if the original Tolling Agreement had been executed without the invalidated, unenforceable or illegal part.
7. Notwithstanding its place of execution or performance, this Tolling Agreement will be governed by and construed in accordance with the laws of the State of Florida.
8. This written Tolling Agreement contains the entire, integrated, agreement between the Parties concerning tolling of limitations periods. All prior negotiations and dealings between the Parties concerning tolling of limitations periods are merged in, integrated and superceded by this Tolling Agreement. There will be no modifications to this Tolling Agreement except those that are made in writing signed by all Parties, or

except as set forth in paragraph 3, above, regarding early termination of the Tolling Period. This Tolling Agreement does not affect the Performance Bond except to toll limitations periods and deadlines during the Tolling Period, as set forth hereinabove.

It is so agreed:

Dated: March 20, 2013

Balfour Beatty Construction, LLC

By: R. Stegert

Dated: _____

Zurich American Insurance Company /
Fidelity and Deposit Company of Maryland

By: _____

Dated: _____

Travelers Casualty and Surety Company of
America

By: _____

MANATEE COUNTY, FLORIDA,
a political subdivision of the State of Florida

By: Board of County Commissioners

By: Larry Bustle
Larry Bustle, Chairman 3/20/2013

ATTEST:

R.B. SHORE, Clerk of the Circuit Court

By: Debi Jessner
Deputy Clerk



except as set forth in paragraph 3, above, regarding early termination of the Tolling Period. This Tolling Agreement does not affect the Performance Bond except to toll limitations periods and deadlines during the Tolling Period, as set forth hereinabove.

It is so agreed:

Dated: _____

Balfour Beatty Construction, LLC

By: _____

Dated: 3/19/13

Zurich American Insurance Company /
Fidelity and Deposit Company of Maryland

By: *Joe C. Quinn*

Dated: _____

Travelers Casualty and Surety Company of
America

By: _____

MANATEE COUNTY, FLORIDA,
a political subdivision of the State of Florida

By: Board of County Commissioners

By: *Larry Bustle*
Larry Bustle, Chairman 3210013

ATTEST:

R.B. SHORE, Clerk of the Circuit Court

By: *Debi Jessner*
Deputy Clerk



except as set forth in paragraph 3, above, regarding early termination of the Tolling Period. This Tolling Agreement does not affect the Performance Bond except to toll limitations periods and deadlines during the Tolling Period, as set forth hereinabove.

It is so agreed:

Dated: _____

Balfour Beatty Construction, LLC

By: _____

Dated: _____

Zurich American Insurance Company /
Fidelity and Deposit Company of Maryland

By: _____

Dated: 3/19/13

Travelers Casualty and Surety Company of
America

By: Kaitly Yui

MANATEE COUNTY, FLORIDA,
a political subdivision of the State of Florida

By: Board of County Commissioners

By: Larry Bustle
Larry Bustle, Chairman 03262013

ATTEST:

R.B. SHORE, Clerk of the Circuit Court

By: Vicki Jessner
Deputy Clerk



Manatee County Government Administrative Center
Commission Chambers, First Floor
9:00 a.m. - March 26, 2013

March 26, 2013 - Regular Meeting
Agenda Item #12

Subject

Approve Tolling Agreement in re RLS 12-201

APPROVED IN OPEN SESSION

March 26, 2013

Briefings

Briefing Provided Upon Request

BOARD OF COUNTY COMMISSIONERS
MANATEE COUNTY, FLORIDA

Contact and/or Presenter Information

James A. Minix, Chief Assistant County Attorney
Jo Ann Grace, Legal Assistant, Ext. 3750

Action Requested

Motion to approve the Tolling Agreement between Balfour Beatty Construction, Inc., Traveler's Casualty and Surety Company of Amercia, Fidelity and Deposit Company of Maryland, and Zurich American Insurance Company and Manatee County for repairs to the Manatee County Judicial Center.

Enabling/Regulating Authority

Florida Statute 125.01

Background Discussion

Several months ago Manatee County discovered that stucco on the facade of the Manatee County Judicial Center Buildings, formally known as the County Jail Building and the Hensley Public Safety Complex Building, was cracking and pieces of the stucco were falling off the buildings. Manatee County notified the builder, Balfour Beatty Construction (BBC), regarding the cracking and falling of pieces of stucco and the County Attorney's Office was directed to take all appropriate legal action to enforce its rights under the construction contract. After much discussion, Manatee County staff and BBC agreed to enter into a Remediation and Access Agreement pursuant to which BBC agreed to repair the stucco defects at no cost to Manatee County. After much delay the work has finally commenced on the buildings and is anticipated to be completed before March 2014.

In Order to protect the County's right to enforce its original contract with BBC and its sureties, the parties agreed to enter into a Tolling Agreement that would toll any claim(s) that Manatee County may have under its original contract with BBC until September 1, 2014. In other words, the Statute of Limitations on potential claims would be held in abeyance by agreement of the parties for a period of fifteen (15) months in order for Manatee County to ensure that the stucco work required under the Remediation and Access Agreement is properly completed. If it is not, Manatee County would still have the ability to file a lawsuit pursuant to its original contract against both BBC and its sureties without the limitations period expiring. The County Attorney's Office therefore recommends the approval of the Tolling Agreement attached hereto.

County Attorney Review

Other (Requires explanation in field below)

Explanation of Other

See attached unexecuted Tolling Agreement. Executed Agreement will be provided subsequently.

Reviewing Attorney

N/A

Instructions to Board Records

Please return a fully approved copy of this agenda package with all supporting documents to:

joann.grace@mymanatee.org. Emailed 03/28/2013/jr

Thank you.

Cost and Funds Source Account Number and Name

N/A

Amount and Frequency of Recurring Costs

N/A

Attachment: [Executed Tolling Agreement- BBC Judicial Ctr.pdf](#)

From: Juanita Reinhold
To: [Juanita Reinhold](#)
Subject: RE: Tolling Agreement
Date: Thursday, March 28, 2013 11:38:00 AM
Attachments: [BC20130326DOCA12.pdf](#)

Sorry about that..

From: Juanita Reinhold
Sent: Thursday, March 28, 2013 10:55 AM
To: 'joann.grace@mymanatee.org'
Subject: Tolling Agreement

Please find attached Tolling Agreement Item 12 Board of County Commissioners Meeting 03/26/2013.

Thank you,

Juanita "Nita" Reinhold
Board Secretary

"The true soldier fights not because he hates what is in front of him, but because he loves what is behind him." - *G. K. Chesterton*