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November 5, 2024

VIA E-MAIL & U.S. CERTIFIED MAIL

RRR # 7019-1120-0000-4433-7770:

Hernando County Board of County
Commissioners

Attn: Pamela Hare, Esq.

20 N. Main Street, Room # 462

Brooksville, FL 34601

phare@hernandocounty.us

VIA U.S. CERTIFIED MAIL

RRR # 7019-1120-0000-4433-7800:

Hernando County Board of County
Commissioners

15470 Flight Path Drive

Brooksville, FL 34604

**Re: New Vista Builders Group, LLC
Hernando County Fire Station No.5 (the “Project”)
Contract Number 21-C00008 (the “Contract”)
Our File No. 2804-000**

Dear Ladies and Gentlemen:

The undersigned law firm represents New Vista Builders Group, LLC (“New Vista”) in connection with this matter. Please direct all correspondence and communication concerning this matter to the attention of the undersigned law firm.

This correspondence supplements New Vista’s prior claim against the Hernando County Board of County Commissioners (“Owner”) for violation of Chapter 218, Florida Statutes, the Local Government Prompt Payment Act (the “Act”). As you know, on July 13, 2021, Owner and New Vista executed the Contract for the construction of the Project. New Vista submitted all payment applications in accordance with the requirements of the Contract, and Owner consistently issued payments to New Vista under the Contract without a meeting of the Owner’s Board.

On February 27, 2024, New Vista submitted its payment application number 19 in the amount of \$317,493.74. Owner did not reject or dispute, in writing or otherwise, the payment application within 20 business days as required by Fla. Stat. §218.735(2). Thus, Owner was obligated to issue payment in full to New Vista in the amount of \$317,493.74 within 25 business days from February 27, 2024 – i.e. by April 2, 2024 – pursuant to Fla. Stat. §218.735(1). Owner failed to do so.

On April 18, 2024, the Architect finally approved and certified the payment application outside the requirements of Fla. Stat. §218.735. Owner failed to issue prompt payment to New Vista despite the certificate of payment issued by the Architect.

On August 28, 2024, the Owner sent New Vista an email communicating its objection to the payment application. This was the Owner's first written notice to New Vista of any objection to the payment application. Specifically, the Owner instructed New Vista to revise the payment application by separating the \$317,493.74 amount into two (2) separate payment applications – payment application 19 in the amount of \$24,948.86 and payment application 20 in the amount of \$293,044.87 for the release of retainage. Owner failed to identify any reason for this adjustment or otherwise point to any provision in the Contract which required such adjustment. Rather, Owner unilaterally determined that the “retainage will be paid out when it goes to the board for final payment.” There is nothing in the Contract which conditions payment on a meeting of the Owner's Board, nor have any of the prior payments issued by the Owner required such a meeting. New Vista subsequently submitted revised payment applications under protest in an effort to mitigate the potential loss.

New Vista submitted its claim to Owner for violations of the Act. On September 30, 2024, Owner responded to the claim arguing that because New Vista, per the Owner's demand, submitted a revised payment application 19 on September 9, 2024, and the Owner paid the revised payment application 19 on September 13, 2024, the Owner is somehow absolved of its failure to object to the payment application for several months since its original delivery in February 2024. New Vista did not waive the Owner's violation of the Act; to mitigate its damages it complied with the Owner's unlawful demand. The Owner's position is further misplaced and conveniently ignores the requirements of Fla. Stat. §218.735(2)(2021), which holds:

If a payment request or invoice does not meet the contract requirements, the local governmental entity ***must reject the payment request or invoice within 20 business days*** after the date on which the payment request or invoice is stamped as received as provided in s. 218.74(1). The rejection ***must be written and must specify the deficiency and the action necessary to make the payment request or invoice proper.***

New Vista originally submitted the payment application to Owner on February 27, 2024. Owner first disputed the payment application several months later on August 28, 2024. Owner clearly violated the Act by failing to reject or dispute the payment application within 20 business days of receipt. Therefore, statutory interest is owed on payment application number 19 per the Act.

New Vista previously submitted its final payment application number 20 in the amount of \$293,044.87 for the release of retainage, along with all close-out documents for the payment. To date, Owner has failed to present payment application 20 to the Owner's Board as the public records show this item has not been placed on the agenda for the upcoming Board meeting set November 19, 2024.

Owner failed to pay New Vista \$317,493.74 by April 2, 2024, in violation of the Act. Pursuant to Florida Statute §218.735(9)(2021), New Vista is entitled to statutory interest at the rate of 2% per month on the principal amount owed. For the time period from April 2, 2024, through September 2, 2024, New Vista is owed \$31,749.37 in statutory interest. In September 2024, New Vista received payment from Owner in the amount of \$24,948.86, leaving a remaining balance of \$292,544.88. For the time period from September 2, 2024, through the present date, New Vista is owed \$11,701.80 in statutory interest. The total statutory interest owed to New Vista is \$43,451.17. The interest amount will continue to accrue at the rate of 2% per month until Owner finally issues payment to New Vista.

Accordingly, New Vista demands payment from Owner in the amount of **\$335,996.05** within seven (7) days from the date of this correspondence. Should Owner fail to issue the payment in full by that date, New Vista will proceed with all legal recourse to recover all damages incurred, including attorneys' fees and costs as permitted by the Act. New Vista reserves all rights and remedies available to it under the Contract and Florida law.

Sincerely,



Daniel A. Marquez, B.C.S.
VLP Copenhaver Espino

DAM/yp

cc: New Vista Builders Group, Inc. *(via e-mail)*
Carla Rossiter-Smith, Chief Procurement Officer *(via email)*
Erik van de Boogaard, Construction Projects Coordinator *(via email)*
Kelly Trout, Hernando County Fire Rescue Finance Manager *(via email)*