



**COUNTY ATTORNEY'S OFFICE  
MEMORANDUM**

To: Board of County Commissioners

Through: Robert A. McMillan, County Attorney

From: Susan E. Dietrich, Assistant County Attorney  
Ext. 7254

Date: July 10, 2003

Subject: St. Johns River Water Management District and Seminole County v. Continental Aerial Surveys, Inc. of Florida, et al.

This memorandum requests authorization to settle this case by execution of a general release in full of all Seminole County (County) and St. Johns River Water Management District (District) claims against Continental Aerial Surveys, Inc. of Florida (Continental of Florida) and a subsequent stipulated dismissal by all parties upon payment of a total settlement sum of \$66,666.00 to the County and \$33,333.00 to the District by Continental of Florida.

**I BACKGROUND/CASE IN CHIEF/LEGAL ISSUE**

The County and the District jointly executed an Agreement with the Defendant, Continental of Florida in September, 1992, as amended in February, 1993, and April, 1994, for the provision of photogrammetric mapping of certain land sections in Seminole County. The Agreement included compensation for the total sum of \$271,216.00, with the County responsible for \$210,734.83 (77.7%) and the District paying \$60,481.17 (22.3%). Additionally, the First Amendment to the Agreement required the District to pay the sum of \$14,740.00 for mapping five (5) more sections. Prior to filing suit, the County and District had paid Continental of Florida the sums of \$188,523.37 and \$54,106.45, respectively. The discrepancy between the Agreement amount and the total monies paid results because a portion of the committed funds were reserved by the County and District for release upon completion of the Agreement.

The scope of work required by Agreement consisted of production of ninety-seven (97) aerial contour maps and overlays in digital form. Maps were to be developed by a process that included ground surveying of reference points, aerial over-flights and photography with highly specialized equipment, and a photogrammetric process that utilized the established points of reference to derive the contour of the land based upon the aerial photographs. The Agreement was to be completed in 1995 but work continued well into 1996.

The Complaint, filed by the County and District on March 25, 1998, contained thirteen (13) specific allegations of contractual breaches wherein Continental had consistently failed to meet express technical specifications of the Agreement. Accordingly, the deliverables (aerial maps) produced by Continental were defective and so inaccurate that the work was wholly inadequate for the purposes and uses intended by the County and the District and essentially worthless.

In the course of discovery, the County and District discovered that the real party in interest in the performance of the Agreement was Continental Aerial Surveys, Inc., a Tennessee corporation, (Continental of Tennessee) and that Continental of Florida existed primarily in name only. The County and District amended the Complaint to include further claims of joint venture between the two corporate identities and fraud. Numerous motions and hearings and much discovery and negotiations have occurred over the course of several years, including discussions concerning Continental re-flying or re-mapping some or all of the Seminole County land sections.

Finally, on October 25, 2002, a favorable ruling by the Fifth District Court (5<sup>th</sup> DCA) of Appeal reversed the earlier dismissal of the breach of contract claim, upheld the earlier dismissal of the fraud action, remanded the case to the circuit court for further proceedings and granted the County and District leave to file a fourth amended complaint. Subsequent to action by the 5<sup>th</sup> DCA, settlement negotiations commenced again.

## **II COSTS OF DISMISSAL**

The General Release requires that all parties bear their own attorneys' fees and costs. The receipt of \$66,666.00 by the County and \$33,333.00 by the District in settlement of the suit and subsequent filing of a stipulated dismissal by all parties will fully resolve all outstanding issues in this matter.

## **III REASONING**

It is my understanding that the costs of re-flying or re-mapping some or all of the land sections would approximate over a million dollars today. Accordingly, in view of the time elapsed since the County and District entered the Agreement in 1992, and the prohibitive costs associated with requiring specific performance of the Agreement by Continental as an option to resolve the litigation, staff believes that it is in the County's best interest to settle this case.

## **IV RECOMMENDATION**

This office recommends and the Department of Public Works, Stormwater Division concurs with settlement of this matter for the sum stated above.