

RESOLUTION #05-23

Settlement Agreement and Mutual Release

Floyd County Board of Supervisors V. Prochaska & Associates, Inc.

Whereas, the Floyd County Board of Supervisors (“County”) engaged Prochaska & Associates, Inc. (“Prochaska”) to provide design services for the Floyd County Law Enforcement Center and courthouse updates (the “Project”), and;


Whereas, the County disputed the price for the design services that Prochaska provided prior to the construction phase of the Project, the conformance to the standard of care of those designs, and whether Prochaska should be liable for the amount that construction costs exceeded Floyd County’s budget and on July 27, 2021 filed a petition in the Iowa District Court for Floyd County against Prochaska for breach of contract, professional negligence and equitable indemnity, and;

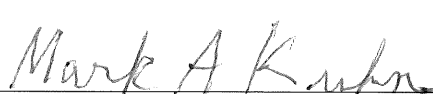
Whereas, on August 17, 2021, Prochaska removed the case to the Federal District Court of the Northern District of Iowa and filed an answer and counterclaim against the County alleging breach of contract, and;

Whereas, in December 2022, the County and Prochaska engaged mediation services and are now prepared to settle their differences.

Now, therefore be it resolved by the Floyd County Board of Supervisors to adhere to the terms and conditions disclosed in the Settlement Agreement and Mutual Release – Floyd County Board of Supervisors v. Prochaska & Associates and authorize the Chair of the Board of Supervisors to sign said agreement which is hereto and by reference made a part hereof.

Passed and approved this 17th day of January, 2023.

ATTEST: 
Gloria A. Carr, Auditor


Mark A. Kuhn, Chair
Board of Supervisors

Settlement Agreement and Mutual Release

Floyd County Board of Supervisors v. Prochaska & Associates, Inc.

Floyd County Board of Supervisors (“Floyd County”) agrees to settle and release all claims against Prochaska & Associates, Inc., (“Prochaska”) except as expressly reserved in this Agreement, in exchange for which Prochaska agrees to settle and release all claims against Floyd County except as expressly reserved in this agreement. In addition, each Party agrees to pay the other in the amounts and under terms set forth below.

Recitals

- A. In 2017, Floyd County and Prochaska engaged in the development of a Program for the Floyd County Law Enforcement Center (the “Project”) which consisted of a Needs Assessment Study and a Facility Development document.
- B. On or about May 1, 2018, the voters of Floyd County approved a bond referendum for the purpose of financing the design and construction of the Project.
- C. On or about June 6, 2018, Floyd County and Prochaska entered into a written Agreement Between Owner and Architect (the “Agreement”) for design services related to the Project.
- D. Prochaska provided design services to Floyd County for the Project, and continues to provide construction administration services to Floyd County for the Project.
- E. The Parties dispute the price for the design services that Prochaska provided prior to the construction phase of the project.
- F. The Parties dispute the conformance to the standard of care of those Prochaska designs that Floyd County altered by Change Order after construction contracts were awarded to contractors.
- G. The Parties dispute whether Prochaska should be liable for the amount that construction costs exceeded Floyd County’s budget.
- H. On or about July 27, 2021, Floyd County filed a Petition against Prochaska in the Iowa District Court for Floyd County alleging breach of contract, professional negligence and equitable indemnity.
- I. On or about August 17, 2021, Prochaska removed the case to the Federal District Court for the Northern District of Iowa in thereafter filed an Answer and Counterclaim alleging breach of contract.

Floyd County and Prochaska agree to settle and release all of their respective claims arising from the matter recited above, except as expressly reserved, and further agree as follows:

1. Floyd County, acting by a Resolution of the Board of Supervisors, hereby releases and waives all past, present and future claims it has or may have against Prochaska arising from the Project, the Agreement, or the matters recited above, except for those claims that are expressly reserved. This release is binding on all boards, commissions, departments and agencies of Floyd County to the extent that such entities may have any claims arising from the Project, the Agreement, or the matter recited above. This release, subject to the reservation below, extends to protect Prochaska as a corporate entity, and all past and present employees of Prochaska including but not limited to all licensed design professional who provided services for the Project, all consultants who supplied services Prochaska for the Project, all shareholders, and all insurers of Prochaska including but not limited to Admiral Insurance and any entities that are affiliated or associated with Admiral.

2. Floyd County represents that it is not aware of any deficiency arising from the Project, the Agreement, or the matters recited above, except for those alleged deficiencies that are the subject of this release. Based on that representation, Prochaska agrees that the scope of Floyd County's release in this matter does not include claims arising from latent or unknown deficiencies in the design or other services provided by Prochaska related to the Project, and Floyd County expressly reserves the right to make such claims under the applicable law.

3. Prochaska, acting by and through its designee below, hereby releases and waives all past, present and future claims it has or may have against Floyd County arising from the Project, the Agreement, or the matters recited above, except for those claims that are expressly reserved. This release is binding on Prochaska as a corporate entity, and all past and present employees of Prochaska including but not limited to all licensed design professional who provided services for the Project, all consultants who supplied services Prochaska for the Project, all shareholders, and all insurers of Prochaska including but not limited to Admiral Insurance and any entities that are affiliated or associated with Admiral. This Release, subject to the reservation below, extends to protect all boards, commissions, departments and agencies of Floyd County to the extent that such entities may have any claims arising from the Project, the Agreement, or the matter recited above.

4. Prochaska represents that it continues to supply construction administration services to Floyd County for the Project, and that such services have been uninterrupted by the lawsuit. Prochaska intends to invoice Floyd County for the balance of 4% of the construction administration fee, which currently equals \$8,718.96, on a monthly basis until completion. Floyd County agrees that the scope of this release does not include the fee for construction administration services described in this paragraph, and Floyd County agrees to pay the construction administration fee in addition to the payment amounts set forth below.

5. Prochaska, by and through its insurer Admiral, will pay the sum of \$67,500 to the Floyd County Board of Supervisors by January 30, 2023.

6. Floyd County will pay the sum of \$230,000 to Prochaska & Associates, Inc., by January 30, 2023.

7. The net amount of the above payments is the equivalent of a \$162,500 payment from Floyd County to Prochaska & Associates, Inc.

8. Prochaska and Floyd County both deny liability of the matter recited above and both agree that this Agreement should not be construed as an admission of any wrongdoing, breach, error or omission.

9. Upon execution of this Agreement, both Prochaska and Floyd County shall file, in the appropriate court, a joint motion or stipulation for dismissal of all claims made in the litigation.

10. Prochaska and Floyd County each agree to bear their own fees and costs incurred in filing or defending the claims and enriching this Settlement Agreement.

11. This Settlement Agreement contains the entire agreement of the parties with respect to the settlement of the claims and supersedes any and all other prior oral or written, communications agreements, or understandings related to the settlement. This Agreement may only be amended or modified, if done so in writing, executed by all parties.

12. Prochaska and Floyd County have both relied upon the advice of legal counsel of its own choosing in preparing, reviewing and executing this Agreement. The representatives of each party understand and voluntarily accept the terms of the agreement.

13. The persons signing the agreement represent and warrants that he or she has full authorization to sign on behalf of the party for whom they are acting. The parties agree to take all necessary steps to carry out the terms of the settlement agreement.

14. This Agreement may be executed in one or more counterparts all of which was executed and delivered, shall be the original, and shall constitute one and the same instrument. Signatures delivered by digital means shall have the same effect as an original signature.

The signatures below indicates the acceptance of the terms of this agreement, and the intent to be legally bound:

[Signatures to follow on separate page]

FLOYD COUNTY BOARD OF SUPERVISORS

By: Mark A Kuhn
Mark A. Kuhn, its Chair

Dated: 1/17/2023

PROCHASKA & ASSOCIATES, INC.

By: David C. Maguire
David C. Maguire, its Chief Operating Officer

Dated: 01/24/2023