

## Regular [ ]

**Department:** Water Utilities Department

1. Three (3) Original Settlement and Release Agreements

Recommended By: Jim Stiles 6-3-16  
Department Director Date

Approved By: Sharon R. B. 6-2-16  
Assistant County Administrator Date

## II. FISCAL IMPACT ANALYSIS

**A. Five Year Summary of Fiscal Impact:**

Fiscal Years	2016	2017	2018	2019	2020
Capital Expenditures	<u>\$139,057</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
External Revenues	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
Program Income (County)	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
In-Kind Match County	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
NET FISCAL IMPACT	<u>\$139,057</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
# ADDITIONAL FTE					
POSITIONS (Cumulative)	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>

**Budget Account No.:** Fund 4011 Dept 721 Unit W031 Object 6547

Is Item Included in Current Budget?      Yes   X        No       

Reporting Category N/A

**B. Recommended Sources of Funds/Summary of Fiscal Impact:**

The Settlement Agreement will be funded by Water Utility Department User fees.

C. Department Fiscal Review: Melissa M. West


### III. REVIEW COMMENTS

**A. OFMB Fiscal and/or Contract Development and Control Comments:**

Sherry Ann  
OFMB ET 6/06  
A 6/6/06

Contract Development and Control

### B. Legal Sufficiency:

 6/14/16  
Assistant County Attorney

**C. Other Department Review:**

Department Director

This summary is not to be used as a basis for payment.

## SETTLEMENT AND RELEASE AGREEMENT

THIS SETTLEMENT AND RELEASE AGREEMENT ("Agreement"), is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2016, by and between PALM BEACH COUNTY, a political subdivision of the State of Florida, hereinafter referred to as "County", the address of which is c/o Palm Beach County Water Utilities Department, P.O. Box 16097, West Palm Beach, FL 33416-6097 and AKA Services, Inc, a Florida corporation, hereinafter referred to as "Contractor", the address of which is 15551 Okeechobee Blvd., Loxahatchee, FL 33470 (hereinafter, each may individually be referred to as a "Party" or collectively as the "Parties").

### WITNESSETH

**WHEREAS**, on August 18, 2015, County and Contractor entered into a Contract for SR 15 (Main Street) and Gator Boulevard 16" and 12" Water Main Extension (County Resolution R2015-1033)(the "Contract") for the Contractor to perform certain pipeline installation and related services for the County (the "Project"); and

**WHEREAS**, County issued a notice to proceed on September 21, 2015 to Contractor to begin services under the Contract with a start date of September 28, 2015 (the "Initial NTP"); and

**WHEREAS**, due to the discovery of extended contaminated soils along the Project route and the need to re-design the Project to relocate portions of the required infrastructure, the County rescinded the Initial NTP and did not reissue a subsequent notice to proceed until November 23, 2015 with a start date of November 30, 2015 ("Second NTP"); and

**WHEREAS**, the Contractor has incurred damages due to the delay between the Initial NTP and the Second NTP; and

**WHEREAS**, the Parties are in agreement that Contractor is due the amount of \$139,057.08, which is equivalent to the labor and equipment costs of Contractor for twenty three (23) days of the Project, as full settlement for any damages related to the delay between the Initial NTP and Second NTP; and

**WHEREAS**, Contractor, in exchange for the payment of \$139,057.08, will release the County for any claims related to the delay between the Initial NTP and the Second NTP.

**NOW THEREFORE**, for and in consideration of the covenants set forth herein, County and Contractor hereby agree as follows:

1. **Recitals.** The foregoing Recitals are true and correct and are incorporated herein by reference.

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2. **Effective Date/Term.** This Agreement shall become effective upon its execution by both Parties. The effective date of this Agreement (the "Effective Date") shall be the date that it is fully executed by County.

3. **Payment by County.** Within ten (10) days of the Effective Date of this Agreement, County shall provide payment of \$139,057.08 to Contractor, as full settlement of any damages related to the delay between the Initial NTP and Second NTP.

4. **Release by Contractor.** Contingent upon the timely payment to Contractor by County as set forth in Paragraph 3 above, and upon such timely payment, Contractor hereby releases, remises and forever discharges, and does by these presents, release, remise and forever discharge County and its agents, managers, members, consultants, engineers, attorneys, officers, directors, employees, trustees, nominees, successors and assigns, its insurers and reinsurers, of and from all manner of actions, cause and causes of action, suits, debts, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, controversies, agreements, promises, variances, trespasses, damages, judgments, executions, claims and demands, whatsoever, in law or in equity, whether presently known or unknown, whether matured, unmatured or contingent, and whether in tort, in contract or otherwise, that Contractor has, or will have, against County or its agents, managers, members, consultants, engineers, attorneys, officers, directors, employees, trustees, nominees, successors or assigns, its insurers and reinsurers, related to the delay between the Initial NTP and the Second NTP.

5. **Interpretation.** The drafting of this Agreement constitutes a joint effort of Contractor and County, and the Agreement's interpretation shall assume that neither had any more input or influence. All words, terms, and conditions are to be read in concert, each with the other, and a provision contained under one heading may be considered to be equally applicable under another heading in the interpretation of this Agreement. In the event any term or provision of this Agreement is determined by appropriate judicial authority to be illegal or otherwise invalid, such provision shall be given its nearest legal meaning or be construed as deleted, as such authority determines, and the remainder of this Agreement shall be construed to be in full force and effect.

6. **Amendment.** This Agreement may be amended only if executed in writing and signed by Contractor and County.

7. **Integration.** This Agreement and any documents referred to herein, collectively embody the entire agreement and understandings between Contractor and County, and there are no other agreements or understandings, oral or written, with reference to this Agreement that are not merged into and superseded by this Agreement. This Agreement may be executed in one or more counterparts, each of which shall be considered an original.

8. **Applicable Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. Unless otherwise required by law or otherwise agreed to by all parties hereto, venue for any action or proceeding to construe or enforce the provisions of this Agreement shall be in a state court of competent jurisdiction in Palm Beach County, Florida.

9. **No Third Party Beneficiary.** No provision of this Agreement is intended to, or shall be construed to, create any third party beneficiary or to provide any rights to any person or entity not a party to this Agreement, including but not limited to any citizen or employees of Contractor or County.

10. **Palm Beach County Office of the Inspector General.** Pursuant to Palm Beach County Code, Sections 2-421 through 2-440, as amended, Palm Beach County's Office of Inspector General is authorized to have the power to review past, present and proposed Palm Beach County contracts, transactions, accounts and records. The Inspector General's authority includes, but is not limited to, the power to audit, investigate, monitor, and inspect the activities of entities contracting with Palm Beach County, or anyone acting on their behalf, in order to ensure compliance with contract requirements and to detect corruption and fraud. Failure to cooperate with the Inspector General or interfering with or impeding any investigation shall be a violation of Palm Beach County Code, Section 2-421 through 2-440, and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor.

11. **Headings.** The headings used are for convenience only and shall be disregarded in the construction and interpretation of this Agreement.

**THE REST OF THIS PAGE INTENTIONALLY LEFT BLANK**

IN WITNESS WHEREOF, the Parties have executed this Agreement on the day and year first above written.

**PALM BEACH COUNTY, FLORIDA:**

**ATTEST:**

**SHARON R. BOCK, CLERK AND  
COMPTROLLER**

**PALM BEACH COUNTY, BY ITS  
BOARD OF COUNTY  
COMMISSIONERS**

By: \_\_\_\_\_  
Clerk

By: \_\_\_\_\_  
Mary Lou Berger, Mayor

(SEAL)

**APPROVED AS TO FORM AND TO  
LEGAL SUFFICIENCY**

By: \_\_\_\_\_  
County Attorney

**APPROVED AS TO TERMS AND  
CONDITIONS**

By: Jim Stiles  
Director of Water Utilities

**WITNESSES:**

Signed, sealed and delivered  
in the presence of:

Michael Heitzler  
Witness Signature  
MICHAEL HEITZLER  
Print Name  
[Signature]  
Witness Signature  
Carlo Basile  
Print Name

**CONTRACTOR:**

**AKA SERVICES, INC.**

By: Josephine Basile  
Signature  
Josephine Basile  
Print Name  
President  
Title

**NOTARY CERTIFICATE**

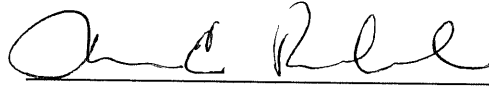
STATE OF Florida  
COUNTY OF Palm Beach

The foregoing instrument was acknowledged before me this 16<sup>th</sup> day of May, 2016 by Josephine Basile

who is personally known to me or who has produced \_\_\_\_\_ as  
identification.

My Commission

Expires: 2/27/2018



Signature of Notary

Typed, Printed or Stamped Name of Notary

