



**II. FISCAL IMPACT ANALYSIS**

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

Fiscal Years	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>2020</u>	<u>2021</u>
Capital Expenditures	-0-	-0-	-0-	-0-	-0-
Operating Costs	-0-	-0-	-0-	-0-	-0-
External Revenues	-0-	(\$359,000)	-0-	-0-	-0-
Program Income (County)	-0-	-0-	-0-	-0-	-0-
In-Kind Match (County)	-0-	-0-	-0-	-0-	-0-
<b>NET FISCAL IMPACT</b>	-0-	(\$359,000)	-0-	-0-	-0-
No. ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included In Current Budget? Yes \_\_\_\_\_ No \_\_\_\_\_  
 Budget Account No.: Fund \_\_\_\_\_ Department \_\_\_\_\_ Unit \_\_\_\_\_  
 Object \_\_\_\_\_ Reporting Category \_\_\_\_\_

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

**C. Departmental Fiscal Review:** \_\_\_\_\_

**III. REVIEW COMMENTS**

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

*[Handwritten signature]* 7/24/17  
 8/7/17 OFMB 7/21 8/21/17  
*[Handwritten signature]* 8/2/17  
 Contract Development and Control

**B. Legal Sufficiency:**

*[Handwritten signature]* 8/3/17  
 Assistant County Attorney

**C. Other Department Review:**

\_\_\_\_\_  
 Department Director

## SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Mutual Release (the "Agreement") is made and entered into, effective the Effective Date below, by and between Palm Beach County, a political subdivision of the State of Florida ("PBC"), and Centerline Utilities Inc. ("CUI"), Mathews Consulting Inc. (MCI) and Last Devenport Inc. ("LDI") (each referred to as a "Party" and collectively referred to as the "Parties").

**WHEREAS**, PBC and CUI entered into a contract dated June 21, 2016 (County Resolution No. R2016-0780)(the "Construction Contract") to provide construction services related to the extension of a new reclaimed water transmission main from PBCWUD Southern Region Water Reclamation Facility to west of the Florida Turnpike involving a directional drill of the Florida Turnpike, Project No. WUD 15-084 (the "Project");

**WHEREAS**, PBC and MCI entered into Consultant Services Authorization No. 17 (the "CSA") issued under the annual Contract for Engineering/Professional Services dated June 3, 2014 (County Resolution No. R2014-0823) for engineering services related to the Project; and

**WHEREAS**, MCI entered into a Subcontractor Agreement with LDI to perform engineering services related to the Project;

**WHEREAS**, the Project was to include installation of a 30" casing pipe and a 24" carrier pipe under the Florida Turnpike; however, a section of the 30" casing pipe collapsed precluding the installation of the 24" carrier pipe; and

**WHEREAS**, PBC asserted claims against CUI, MCI and LDI; and

**WHEREAS**, CUI made claims against PBC for unpaid services relating to the Project; and

**WHEREAS**, MCI made a demand for contractual indemnification against LDI arising from the PBC allegations against MCI; and

**WHEREAS**, CUI, MCI and LDI have all asserted defenses to each and every claim presented by the PBC and admit no liability whatsoever and the Parties acknowledge that none of their respective claims or defenses have yet been proven; and

**WHEREAS**, PBC has asserted defenses to each and every claim presented by CUI and admits no liability whatsoever and the Parties acknowledge that none of their respective claims or defenses have yet been proven; and

**WHEREAS**, in an effort to amicably resolve PBC's claims and avoid the risks and costs inherent in litigation, the Parties agreed to settle all claims related to the Project and exchange mutual releases for any claims arising from the project.

**NOW THEREFORE**, with the intent to be legally bound hereby, in consideration of the

mutual promises and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **Payment.**

- a. LDI shall cause to be paid \$287,000.00 to PBC toward a total settlement of \$359,000.00.
- b. CUI shall cause to be paid \$72,000.00 to PBC toward the total settlement sum.
- c. CUI hereby releases any claim for final payment on the Construction Contract, including, but not limited to, any claim for unpaid work completed and remaining retainage. Within 30 days of the Effective Date of this Agreement, CUI shall provide a final pay request to County showing a balance of \$0.00, along with customary documentation required by County for Project close-out. Any parts or materials procured under the Construction Contract and in the current possession of PBC shall remain the property of PBC.

2. **Mutual Releases.** The Parties do hereby remise, release, and forever discharge, and by these presents, do for their heirs, affiliates, agents, partnerships, servants, employees, representatives, parents, attorneys, predecessors, successors, and any other related or affiliated entities, remise, release, and forever discharge each of the other Parties and their respective past, present, and future insurers, reinsurers, agents, lawyers, employees, successors, officers, directors, and any and all other persons, firms, or corporations with whom any of the former have been, are now, or hereafter may be affiliated, together with any and all other persons, firms or corporations, of and from any and all past, present, or future claims, demands, obligations, actions, causes of action, liens, rights, damages, costs, expenses, and compensation of any nature whatsoever, whether based on a tort, contract or other theory of recovery, and whether for compensatory or punitive damages, which the Releasing Parties now have, or which may hereafter accrue or otherwise be acquired, on account of, or in any way growing out of, or which relate to the Project, the Construction Contract, the CSA, or the Subcontractor Agreement.

3. **Counterparts/Facsimile Signatures.** This Agreement may be executed in any number of counterparts; each of which when duly executed and delivered shall be an original, but all such counterparts shall constitute one and the same agreement. Any signature page of the Agreement may be detached from any counterpart without impairing the legal effect of any signatures, and may be attached to another counterpart, identical in form, but having attached to it one or more additional signature pages. This Agreement may be executed by signatures provided by facsimile or electronic mail, including portable document format (pdf), and such signatures shall be as binding and effective as original signatures.

4. **Non-Disparagement.** The Parties further agree that they will make no disparaging statements about any other Party to any third party regarding any matters that are subject to this Agreement, including the Lawsuit. "Disparage" shall mean any statements, actions or insinuations, made either directly or as expressly directed through a third party, that

materially lessen the standing or stature of an institution or individual in the eyes of reasonable person. PBC, CUI, MCI, and LDI, for purposes of this Non-Disparagement obligation, shall mean their officers and directors. Testimony or other sworn statements, if reasonably responsive to an inquiry, or any statements made in relation to a bid, RFP, or other procurement, shall not constitute disparagement under this Agreement, even if such statements would lessen the standing of an individual or institution. Notwithstanding the foregoing, it is acknowledged that PBC is subject to Florida's Open Records Laws, including but not limited to the provisions of Chapter 119, Florida Statutes, and any release of records required by Florida's Open Records Laws shall not be in violation of this paragraph.

5. **Reliance on Own Judgment.** The Parties acknowledge herein that they have relied wholly upon their own judgment, belief and knowledge as to the nature, extent and duration of the issues, claims, defenses, rights and obligations, and causes of action, released herein, and have not been influenced to any extent whatsoever in making this Agreement by any representations or statements made by persons, firms, or corporations who are hereby released, or by any person or persons representing them.

6. **Authority to Execute.** In making this Agreement, each of the Parties covenant and warrant, which representations, covenants and warranties shall survive the execution of this Agreement, that:

- a. They have all the required power, capacity and authority to enter into and execute this Agreement, including the releases provided herein;
- b. The execution of this Agreement is and was free and voluntary;
- c. All recitals herein are true and correct; and
- d. They have not assigned or transferred to any person any matter released under this Agreement or any part or portion of any matter released under this Agreement.

7. **Legal Representation.** The Parties each acknowledge that they were fully and competently represented by legal counsel of their own choosing in negotiating and preparing this Agreement and certify to all others that they have had the opportunity to consult an attorney, and appreciate the legal significance and consequences of signing this Agreement as set forth herein. Therefore, the rule regarding construing ambiguities against the drafter of the agreement does not apply as it relates to this Agreement. Each of the Parties hereto has contributed equally to the drafting of this Agreement. Other than the recitals, each of the terms of this Agreement is contractual, not a mere recital, and is the result of even-handed negotiations among and between the Parties.

8. **Entire Agreement; No Waiver.** This Agreement constitutes the entire understanding between the Parties relating to the subject matter contained herein and supersedes all prior or contemporaneous agreements, representations and understanding of the Parties. No waiver of any of the provisions of this Agreement shall be deemed, nor shall such waiver constitute, a waiver of any other provision, whether or not similar, nor shall an amendment of this Agreement be binding unless executed in writing by all the Parties. The Parties expressly

agree that the provisions of this section precluding modification of this Agreement may not be waived orally or by course of conduct, notwithstanding any law to the contrary.

9. **Partial Invalidity.** If any term of this Agreement or the application of any term of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, all provisions, covenants and conditions of this Agreement, and all of its applications, not held invalid, void or unenforceable, shall continue in full force and effect and shall not be affected, impaired or invalidated in any way.

10. **Captions.** The captions appearing at the commencement of the sections of this Agreement are descriptive only and for convenience and shall not define, limit, or describe the scope or intent of this Agreement, nor in any way affect this Agreement.

11. **Governing Law.** This Agreement shall be governed by the laws of the State of Florida, and the venue and jurisdiction for any action to enforce this Agreement shall be in the County or Circuit Court in and for Palm Beach County, Florida.

12. **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 PBC, CUI, MCI, or LDI.

13. **Plural / Singular; Masculine / Feminine.** Whenever and wherever the context of this Agreement requires, any references to the singular shall be read, construed, and interpreted to mean the plural and vice-versa; any reference to the masculine gender shall be read, construed and interpreted to mean the feminine gender and vice-versa; and any references to the neuter gender shall be read, construed and interpreted to mean the masculine or feminine gender and vice-versa, whichever is applicable.

14. **Effective Date/Subject to Approval.** This Agreement is subject to approval by the Palm Beach County Board of County Commissioners. Staff shall recommend approval. This Agreement shall become effective upon the approval of all the parties. The Effective Date of this Agreement shall be the date on which the last Party executes the Agreement.

15. **Payment.** All payments hereunder shall be payable on or before 60 calendar days after the date of final approval by Palm Beach County Board of County Commissioners.

16. **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.

IN WITNESS WHEREOF, the Parties hereto have caused their duly authorized representatives to execute this Agreement to be effective as of the Effective Date.

WITNESSES:

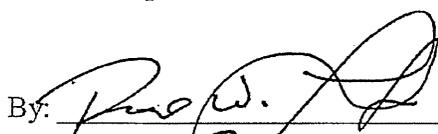
Last Devenport Inc.

Lisa Martin

Print Name: Lisa Martin

Diane K Nast

Print Name: Diane K Nast

By: 

Print Name: RONALD W. LAST

Title: PRESIDENT

Date: 7/10/17

WITNESSES:

Mathews Consulting Inc.

\_\_\_\_\_  
Print Name: \_\_\_\_\_

\_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_  
Print Name: \_\_\_\_\_

WITNESSES:

Centerline Utilities Inc.

\_\_\_\_\_  
Print Name: \_\_\_\_\_

\_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_  
Print Name: \_\_\_\_\_

IN WITNESS WHEREOF, the Parties hereto have caused their duly authorized representatives to execute this Agreement to be effective as of the Effective Date.

WITNESSES:

Last Devenport Inc.

\_\_\_\_\_  
Print Name: \_\_\_\_\_

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

Print Name: \_\_\_\_\_

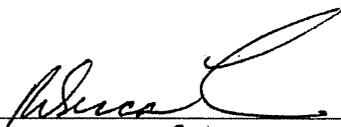
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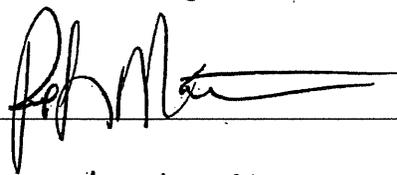
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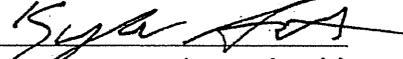
\_\_\_\_\_  
Print Name: \_\_\_\_\_

WITNESSES:

Mathews Consulting Inc.

  
\_\_\_\_\_  
Print Name: Rebecca Travis

  
\_\_\_\_\_  
Date: 6-27-17

  
\_\_\_\_\_  
Print Name: Kyle Scott

WITNESSES:

Centerline Utilities Inc.

\_\_\_\_\_  
Print Name: \_\_\_\_\_

\_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_  
Print Name: \_\_\_\_\_

IN WITNESS WHEREOF, the Parties hereto have caused their duly authorized representatives to execute this Agreement to be effective as of the Effective Date.

WITNESSES:

Last Devenport Inc.

\_\_\_\_\_  
Print Name: \_\_\_\_\_

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

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
Print Name: \_\_\_\_\_

WITNESSES:

Mathews Consulting Inc.

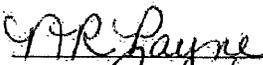
\_\_\_\_\_  
Print Name: \_\_\_\_\_

\_\_\_\_\_  
Date: \_\_\_\_\_

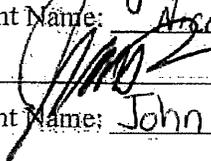
\_\_\_\_\_  
Print Name: \_\_\_\_\_

WITNESSES:

Centerline Utilities Inc.

  
\_\_\_\_\_  
Print Name: \_\_\_\_\_

Print Name: Nicole Payne

  
\_\_\_\_\_  
Print Name: \_\_\_\_\_

Print Name: John Fraser

  
\_\_\_\_\_

Date: 7-10-17

Randy Stringer

Vice President

ATTEST:

PALM BEACH COUNTY, BY ITS  
BOARD OF COUNTY  
COMMISSIONERS

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

By: \_\_\_\_\_  
Paulette Burdick, Mayor

(SEAL)

APPROVED AS TO FORM AND TO  
LEGAL SUFFICIENCY

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

APPROVED AS TO TERMS AND  
CONDITIONS

By: \_\_\_\_\_  
Director of Water Utilities  
FOR