

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: September 18, 2018 Consent Regular
 Ordinance Public Hearing
Department: County Attorney's Office
Submitted By: County Attorney's Office

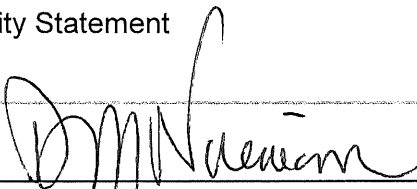
I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve a Settlement Agreement with J.W. Cheatham, LLC in the amount of \$1,200,000.00 to settle a breach of contract lawsuit against Palm Beach County for damages arising out of a road construction project.

Summary: In August 2010 J.W. Cheatham and the County entered into a contract for J.W. Cheatham to complete the construction of Seminole Pratt Whitney Road from S.R. 80 to N. of Sycamore Drive and 110th Avenue N. Berm (for the future S.R. 7 extension) from Persimmon Blvd. to 60th Street N. in Palm Beach County for approximately \$9,733,669 ("the Construction Project"). The Construction Project was delayed for various reasons. J.W. Cheatham alleged that it suffered damages due to the delays, and filed a breach of contract lawsuit against the County. The parties conditionally settled the Pending Lawsuit during Court ordered mediation for \$1,200,000.00, subject to the approval of the Palm Beach County Board of County Commissioners. Countywide (AP)

Background and Justification: The Construction Project commencement date was December 29, 2010. J.W. Cheatham was required to complete the Construction Project in 730 calendar days, or by December 28, 2012. The Construction Project was delayed for various reasons, including approximately 302 days caused by utility companies. J.W. Cheatham alleged in the Pending Lawsuit, styled *J.W. Cheatham, LLC v. Palm Beach County, Florida*, Case No. 502015CA004297XXXMB, that it sustained damages due to these delays and that the no damages for delay clause in the contract was ambiguous and unenforceable. The Construction Project was ultimately completed on April 10, 2014. On August 7, 2018, the parties attended Court ordered mediation to attempt to resolve the Pending Lawsuit. J.W. Cheatham demanded \$2,820,473.14 in damages for unpaid retainage, unpaid work, delays caused by the utility companies, and interest. The parties conditionally settled the Pending Lawsuit at mediation for \$1,200,000.00, subject to the approval of the Palm Beach County Board of County Commissioners. The settlement amount includes \$99,290.63, the for the extra work J.W. Cheatham performed, as well as the retainage the County withheld on the project of, \$477,607.75 for a total of \$576,898.38. Staff recommends approval of the settlement agreement.

- Attachments:**
1. Settlement Agreement
 2. Release of All Claims
 3. Budget Availability Statement

Recommended By:  Department Director 9/5/18 Date

Approved By: N/A County Administrator Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2018	2019	2020	2021	2022
Capital Expenditures	<u>\$1,200,000</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
Operating Costs	<u>-0-</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>\$1,200,000</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included in Current Budget? Yes X No
 Does this item include the use of federal funds? Yes No X

Budget Account No:

Fund 3503 Dept 361 Unit 0699 Object 6551

Recommended Sources of Funds/Summary of Fiscal Impact:

Road Impact Fee Fund - Zone 3
Seminole Pratt- Okeech/Sycamore

J.W. Cheatham, LLC

Final Payment-Settlement \$1,200,000.00

Final payment includes \$477,607.75 in held retainage.

C. Departmental Fiscal Review: D. White

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Dev. and Control Comments:

 D. Brown 9/7/18 [Signature] for David Jacobowitz
 OFMB 9/9/18 9/11/18
 9/17 9/17

B. Approved as to Form and Legal Sufficiency:

 [Signature]
 Assistant County Attorney

C. Other Department Review:

 Department Director

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

**INTEROFFICE COMMUNICATION
PALM BEACH COUNTY
BUDGET AVAILABILITY STATEMENT**

DATE: August 21, 2018
TO: Mark Tomlinson, Director
Construction Coordination
Attn: Vicki Goulet
FROM: Alice Kovalainen, Fiscal Manager *af*
Administrative Services
RE: Seminole Pratt Whitney/SR 80 to Sycamore
110th Ave Berm (SR 7 Extension)
Project # 1997511A, B, C1, and 2004507A
J.W. Cheatham, LLC (JWCH0001)
Final Payment-Settlement \$1,200,000.00

BOARD MEETING DATE: September 18, 2018

FISCAL IMPACT LOCATION: F:\COMMON\WP\AgendaPage2\ JWC ,

FUNDING STATUS: FULLY FUNDED

Is Item Included in Current Budget? Yes No
Does this item include the use of federal funds? Yes No

Budget Account No:
Fund 3503 Dept 361 Unit 0699 Object 6551

Recommended Sources of Funds/Summary of Fiscal Impact:
Road Impact Fee Fund - Zone 3
Seminole Pratt- Okeech/Sycamore

J.W. Cheatham, LLC
Final Payment-Settlement \$1,200,000.00

NOTE: Final payment includes \$477,607.75 in held retainage.

This BAS is valid for up to ninety days from its date of issuance.
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SETTLEMENT AGREEMENT

THIS AGREEMENT made and entered into this _____ day of August, 2018, by and between PALM BEACH COUNTY (hereinafter referred to as the "COUNTY"), a political subdivision of the State of Florida, and J.W. Cheatham, LLC. (hereinafter referred to as "J.W. CHEATHAM, LLC").

WHEREAS, J.W. CHEATHAM, LLC sued the COUNTY in a lawsuit presently styled J.W. Cheatham, LLC. v. Palm Beach County, Florida Case No. 502015CA004297XXXXMB AA in the Circuit Court of Palm Beach County, Florida (hereinafter referred to as the "Pending Lawsuit"), for damages arising from the August 17, 2010 Agreement to complete the construction of Seminole Pratt Whitney Road, from S.R. 80 to N. of Sycamore Drive and 110th Avenue N. Berm (for the future S.R. 7 extension) from Persimmon Blvd. to 60th Street N. Palm Beach County Project Nos. 1997511A, 1997511B, 1997511C1 & 2004507A. (hereinafter referred to as "the Project");

WHEREAS, the COUNTY has denied liability and raised several affirmative defenses to the Project in the Pending Lawsuit; and

WHEREAS, the parties hereto wish to amicably resolve the Pending Lawsuit without further litigation of the claims made and defenses raised therein.

NOW, THEREFORE, in consideration of the mutual covenants hereinafter set forth, the sufficiency of which are hereby acknowledged, the parties agree as follows:

1. The foregoing recitals are true and correct and incorporated herein by reference.
2. The proposed settlement of the Pending Lawsuit and Project is subject to written Administrative approval as well as written Palm Beach County Board of County Commissioners approval. After the COUNTY receives a fully executed original of this Settlement Agreement, the County will endeavor to present the Settlement Agreement to the Palm Beach County Board of County Commissioners for their consideration during their September 2018 regular board meeting.
3. Within thirty (30) days of receiving written Administrative as well as Palm Beach County Board of County Commissioners approval of this Settlement Agreement, the COUNTY shall pay to J.W. CHEATHAM, LLC the amount of ONE MILLION TWO HUNDRED THOUSAND DOLLARS AND ZERO CENTS (\$1,200,000.00), by a check made payable to the Trust Account of Robert A. Cedeno, P.A. (IOLTA), P.A., Tax I.D. No. 0037 6817 0842, and J.W. CHEATHAM, LLC.
4. Within ten (10) days of receipt of the COUNTY'S payment, Robert Cedeno, Esq., shall execute and deliver to the Palm Beach County Attorney's Office (i) a Release of All Claims in the form of the attached hereto as Exhibit A, and (ii) the Stipulation and Final Order of Dismissal with Prejudice, in the form of the attached hereto as Exhibit B, which, in turn, the

Palm Beach County Attorney's Office will file with the court.

5. Robert Cedeno, Esq. shall not disburse, and J.W. CHEATHAM, LLC shall not accept, any proceeds from the settlement check described in paragraph 3 above unless and until the Release of All Claims has been signed and delivered to the COUNTY and the Final Order of Dismissal with Prejudice has been signed by the Circuit Court Judge assigned to the Pending Lawsuit.

6. J.W. CHEATHAM, LLC acknowledges and agrees that they are responsible for the payment of any and all liens concerning, pertaining, or relating to the Project and Pending Lawsuit and that the COUNTY shall not be responsible for any portion of said liens. J.W. CHEATHAM, LLC, on behalf of corporation and its' officers, agents, employees, heirs, executors, administrators and assigns, further agrees to indemnify, defend, and hold the COUNTY and its officers, commissioners, agents, elected officials, employees, heirs, executors, administrators and assigns, harmless from and against all suits, actions, proceedings, claims, demands, and damages, including attorney's fees, arising out of or related to any such liens or claims of lien concerning, pertaining, or relating to the Project and Pending Lawsuit.

7. Each party shall bear its respective attorney's fees and costs.

8. This Settlement Agreement does not constitute an admission of liability by any party. Rather, the COUNTY expressly denies liability, and has entered into this Settlement Agreement in order to buy its peace.

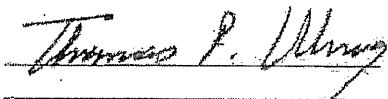
9. In any litigation brought to enforce the terms or remedy a violation of this Settlement Agreement, the prevailing party shall be entitled to an award of reasonable attorney's fees in addition to any other recovery.

10. J.W. CHEATHAM, LLC declares and acknowledges that the terms of this Settlement Agreement have been completely read, fully understood, discussed with counsel, and voluntarily accepted as a full and final compromise of any and all claims that she may have against the COUNTY arising out of or relating to the Project and Pending Lawsuit.

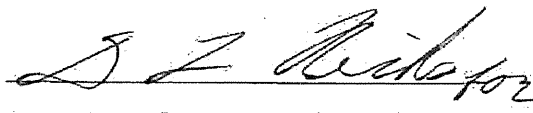
11. This Settlement Agreement shall be binding on the parties hereto, their assigns, transferees, heirs, and other successors in interest.

12. The parties represent that no claim that has been, or could have been, raised in the Pending Lawsuit, and no claim to which this Settlement Agreement applies, has been assigned or otherwise transferred to any other person or entity not a party hereto.

IN WITNESS WHEREOF, the parties have caused this Settlement Agreement to be executed as of the date first set forth above.



J.W. Cheatham, LLC
By: Thomas P. Uhrig, President



Palm Beach County
By: Tanya N. McConnell,
Deputy County Engineer
Engineering and Public Works

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

By: 
Senior Assistant County Attorney

RELEASE OF ALL CLAIMS

KNOW ALL MEN BY THESE PRESENTS:

That the undersigned, **J.W. CHEATHAM, LLC.** (hereinafter referred to as "**J.W. CHEATHAM, LLC**"), by and through its duly and legally authorized representative, being of lawful age and sound mind, for the sole consideration of **ONE MILLION TWO HUNDRED THOUSAND DOLLARS (\$1,200,000.00)**, inclusive of all attorney's fees and costs, to the undersigned in hand paid, the receipt and sufficiency whereof is hereby acknowledged, does hereby and for its owners, directors, officers, agents, executors, administrators, successors and assigns, release, acquit and forever discharge the **PALM BEACH COUNTY BOARD OF COUNTY COMMISSIONERS**, and their officers, agents, commissioners, employees, heirs, executors, administrators, successors and assigns (hereinafter referred to cumulatively as the "**COUNTY**"), none of whom admit any liability to the undersigned, but all of whom expressly deny any such liability, from any and all claims, demands, rights, damages, damages for delay, costs, loss of service, expenses, compensation, actions, causes of action or suits of any kind or nature whatsoever, which the undersigned asserted or could have asserted in the lawsuit presently styled **J.W. Cheatham, LLC. v. Palm Beach County, Florida** Case No. 502015CA004297XXXXMB AA in the Circuit Court of Palm Beach County, Florida, (hereinafter referred to as the "**LAWSUIT**"), for damages arising from the August 17, 2010 Agreement to complete the construction of Seminole Pratt Whitney Road, from S.R. 80 to N. of Sycamore Drive and 110th Avenue N. Berm (for the future S.R. 7 extension) from Persimmon Blvd. to 60th Street N. Palm Beach County Project Nos. 1997511A, 1997511B, 1997511C1 & 2004507A ("the Project").

FURTHERMORE, the undersigned agrees that each party shall bear their own costs and attorney's fees, and that the undersigned shall bear sole responsibility to pay for any and all liens and construction related expenses concerning, pertaining or relating to the Project, including but not limited to construction liens, subcontractor liens, and materials or supply liens, which are or may be outstanding and payable on the date of execution of this agreement, or which may be incurred and payable in the future. The undersigned further agrees to indemnify and save harmless the **COUNTY** from any requests for payment or attempts for collection therefrom. Should legal action be instituted against the **COUNTY** for payment or collection of the aforementioned liens or construction related expenses concerning the Project, the undersigned

agrees to indemnify and save harmless the COUNTY for any attorney's fees, costs and/or judgments which may be incurred and/or entered against the COUNTY.

FURTHERMORE, the undersigned understands and agrees that this settlement is the compromise of a doubtful and disputed claim, and that the payment made shall not be construed as an admission of liability on the part of the COUNTY, and that the COUNTY denies any liability therefor and merely intends to avoid further litigation and buy its peace.

FURTHERMORE, the undersigned hereby declares and represents that it has relied wholly upon the undersigned's own judgment, belief and knowledge of the nature, extent, effect and duration of the Project as well as any injuries, damages, or claims it may have suffered or sustained regarding same without reliance upon any statement or representation made by the COUNTY, or by its representatives. The undersigned further declares and represents that no promise, inducement or agreement not herein expressed has been made to the undersigned, and that this Release contains the entire agreement between the parties hereto, and that the terms of this agreement are contractual and not merely a recital.

THE UNDERSIGNED hereby declares that he has completely read, fully understood and voluntarily accepted the foregoing Release of All Claims for the purpose of making a full and final compromise, settlement, and adjustment of any and all claims, disputed or otherwise, **J.W. CHEATHAM, LLC** may have against the COUNTY arising out of, relating, or pertaining to the Project and the Lawsuit, or which could have and should have been alleged in the Lawsuit, and for the express purpose of precluding forever any further or additional claims against the COUNTY arising out of or related to the Project and Lawsuit.

THE UNDERSIGNED hereby accept the tendered settlement draft as final payment of the consideration set forth above.

IN WITNESS HEREOF, I, Thomas P. Uhrig, as President of J.W. CHEATHAM, LLC., have hereunto set my hand and seal this 29 day of August, 2018.

IN THE PRESENCE OF:

Joanne L. Graw
WITNESS

Thomas P. Uhrig
for
J.W. CHEATHAM, LLC.

STATE OF FLORIDA)
) ss.
COUNTY OF PALM BEACH)

The foregoing Release of All Claims was acknowledged before me, an officer duly authorized in the State and County aforesaid, to take acknowledgments, this 29 day of Aug, 2018, by Thomas P. Uhrig, who:

- is personally known to me; OR
- has produced _____, as identification; and who
- did take an oath; OR
- did not take an oath.

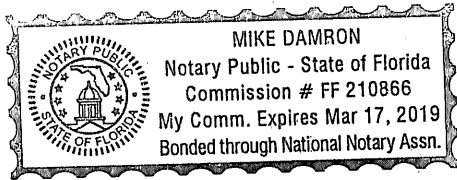
and who executed the within Release of All Claims, and who acknowledged the within Release of All Claims to be freely and voluntarily executed for the purposes therein recited.

[seal]



Notary Public in and for Palm Beach County, Florida

My commission expires: _____



STATEMENT OF ATTORNEY FOR RELEASOR

I, Robert Cedeno, Esquire, state that I am the attorney for J.W. CHEATHAM, LLC. the above-signed Releasor; that I have explained to representatives of J.W. CHEATHAM, LLC., including President Thomas P. Uhrig, all the terms of this Release and the Settlement Agreement upon which it is based; and that representatives of J.W. CHEATHAM, LLC. have represented to me that they understand all the terms and their significance. J.W. CHEATHAM, LLC.'s representative has signed this Release knowingly, voluntarily and on my advice.

DATED this 28 day of August, 2018.



Robert Cedeno, Esq.
Florida Bar No. 753963