



## II. FISCAL IMPACT ANALYSIS

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

Fiscal Years	2019	2020	2021	2022	2023
Capital Expenditures	<u>\$560,000</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>\$560,000</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 3500      Dept 361      Unit 1335      Object 6551

Recommended Sources of Funds/Summary of Fiscal Impact:

Transportation Improvement Fund  
Point Chosen Bridge Fender System Replacement

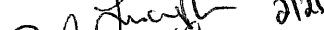
C & D Construction, Inc.	
Final Payment-Settlement	\$560,000.00


Final payment includes \$36,886.83 in held retainage.

C. Departmental Fiscal Review:                     

### III. REVIEW COMMENTS

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


 2/22/15  
 2/22/15  
 OB  
 2/22  
 OFMB  
 2/22/15  
 um 2/25


 3/4/19  
 Contract Dev. and Control  
 3/4/14

**B. Approved as to Form  
and Legal Sufficiency:**

  
Assistant County Attorney

**C. Other Department Review:**

**Department Director**

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

**Background and Justification (Continued from Page 1)**

unquestionably experienced harder rock,” for which an adjustment to the contract amount would be appropriate. C&D demanded \$1.635 million in damages for unpaid retainage, unpaid work, differing site conditions, and interest. They also demanded reimbursement for their attorney’s fees. On February 6, 2019, the parties attended mediation and conditionally settled the lawsuit, subject to the approval of the Palm Beach County Board of County Commissioners, for \$560,000.00. The settlement amount includes \$426,341.41 for the balance to finish plus retainage the County withheld on the Project due to the assessment of liquidated damages. The County’s consulting engineer valued the differing site conditions claim at approximately \$285,834.00. Staff recommends approval of the settlement agreement.

IN THE CIRCUIT COURT OF THE 15<sup>TH</sup>  
JUDICIAL CIRCUIT IN AND FOR PALM BEACH  
COUNTY, FLORIDA

Case No.: 2018-CA-007362 MB

C&D CONSTRUCTION, INC.,

Plaintiff,

v.

PALM BEACH COUNTY, a political  
Subdivision of the State of Florida,

Defendant,

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**MEDIATED SETTLEMENT AGREEMENT**

THIS MEDIATION SETTLEMENT AGREEMENT, dated this 6<sup>th</sup> day of February, 2019, was made and entered into by and between C&D CONSTRUCTION, INC., ("Plaintiff") and PALM BEACH COUNTY, ("Defendant") (Plaintiff and Defendant are collectively referred to as "the Parties").

**PURPOSE**

The Parties to this Settlement Agreement (the "Agreement") acknowledge that the purpose of this Agreement is to memorialize the resolution of all disputes of whatever nature asserted by and between the Parties arising out of or relating to the **Palm Beach County's Point Chosen Bridge Fender Replacement Project**, ("Project").

**AGREEMENT**

The Parties agree as follows:

1. **SETTLEMENT SUM.** Defendant agrees to pay to Plaintiff the sum of Five Hundred Sixty Thousand Dollars (\$560,000.00) (the "Settlement Sum") as full and final settlement of the disputes raised or which could have been raised between the Parties. The Settlement Sum shall be made payable to counsel for the Plaintiff, "Gray Robinson P.A, Trust Account", by check or wire transfer. The Settlement

Sum is due and payable within 30 days of approval of this Agreement by the Board of County Commissioners, Palm Beach County.

2. PERFORMANCE. Plaintiff agrees to provide Defendant with a video demonstrating that Row 7 of its performance scope (submerged) has been properly bolted in accordance with the Project Contract and Specifications. Plaintiff shall coordinate with Defendant, the date and time of recording the video so Defendant can have a representative present. This video shall be provided to counsel for Defendant on or before Thursday, February 18, 2019.

3. CONDITION PRECEDENT REGARDING BOARD APPROVAL. This Settlement Agreement in its entirety and in particular payment of the above Settlement Sum is strictly conditioned upon approval of all terms to this Agreement by the Board of County Commissioners in and for Palm Beach County, Florida. Defendant agrees to exercise best efforts to have this matter placed for consideration on the agenda for the first available forthcoming Board of County Commissioners meeting.

4. ATTORNEY'S FEES and MEDIATOR COSTS. All Parties are to bear their own attorneys' fees and costs incurred in this action and equally share the cost of the mediator.

5. RELEASE. Other than with respect to the payment obligations of Paragraph 1 and performance obligations of Paragraph 2 contained herein, the Parties do, as to one another (including any and all insurers of either Party), release each other from any and all claims, demands, and damages, whether arising out of law or equity arising out of or relating to claims asserted or which could have been asserted in the instant action. The sole exception to this Mutual Release is that Plaintiff is not discharged for latent defects arising out or relating to the performance of its work at the Project. Defendant is unaware of any other claims as of the date of this Agreement.

6. AGREEMENT COMPROMISES DISPUTED CLAIMS. This Agreement is made and entered by the Parties as a compromise of disputed claims between them. None of this Agreement, the payment provided by it, nor any document, pleading or paper prepared and signed pursuant to the provisions of this Agreement shall constitute or be construed or asserted as an admission of liability on

the part of any Party. The Parties expressly acknowledge and agree that all claims asserted or unasserted between them have been fully and amicably resolved.

7.       GOVERNING LAW. This Agreement shall be governed and construed in accordance with the laws of the State of Florida.

8.       JURISDICTION AND VENUE. Any and all legal actions arising from or relating to this Agreement shall be commenced in the Court of this action. The Court shall reserve jurisdiction solely to enforce the terms of this Agreement.

9.       DRAFTING OF THE AGREEMENT. The Parties participated in the drafting of this Agreement and/or had it reviewed by their respective counsel. Accordingly, no presumption shall be given in favor of: or against, any Party in interpreting this Agreement and the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting Party shall not be employed in the interpretation of this Agreement.

10.      SEVERABILITY. If any provision of this Agreement is found to be unenforceable, the remaining provisions hereof shall nevertheless be carried into effect.

11.      ENTIRE AGREEMENT. This Agreement constitutes the entire agreement and understanding of the Parties hereto, supersedes any prior agreement between the Parties, whether written or oral, and may not be changed, altered or modified except in writing and executed by the Parties hereto. Each Party acknowledges that no representation, inducement, promises or agreements, orally or otherwise, was made by any Party, or anyone acting on behalf of any Party, unless such representation, inducement, promises or agreements are embodied in this Agreement.


12.      REPRESENTATION BY COUNSEL. Each Party was represented by independent counsel in this matter or had the opportunity to consult with independent counsel. Furthermore, the Parties obtained advice from said counsel concerning the meaning, scope and effect of this Agreement, or voluntarily waived such an opportunity.


13. SECTION HEADINGS. The section headings contained in this Agreement are descriptive only and shall not be used to interpret, expand, modify, explain or limit any of the provisions of this Agreement.

14. DISMISSAL OF ACTION. Upon the timely receipt and clearance of Settlement Sum due pursuant to Paragraph 1 above and performance by Plaintiff as set forth in Paragraph 2 above, counsel for Plaintiff and Defendant shall thereupon file their Joint Notice of Voluntary Dismissal with prejudice, with each Party to bear its respective attorneys' fees and costs.

**This settlement is conditioned upon approval by the Board of County Commissioners, in and for Palm Beach County. Staff and Counsel for Palm Beach County will recommend that these Settlement terms be approved by the Board of County Commissioners.**

AGREED AND CONSENTED TO this 6th day of February, 2019.

  
\_\_\_\_\_  
Plaintiff, C&D Construction, Inc.

  
\_\_\_\_\_  
Tanya McConnell, Palm Beach County Engineering  
and Public Works

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY

By:   
\_\_\_\_\_  
Senior Assistant County Attorney

ATTEST:  
Sharon R. Bock, Clerk & Comptroller

PALM BEACH COUNTY BOARD  
OF COUNTY COMMISSIONERS

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

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

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

**DATE:** February 21, 2019

**TO:** Andrew Pelino, Senior Assistant County Attorney  
County Attorney Office, Attn: Lauren Dennis

**FROM:** Alexis T. Willhite, Director  
Administrative Services *A. Willhite*

**RE:** Point Chosen Bridge Fender System Replacement  
Project # 2010906  
C & D Construction, Inc.  
Final Payment-Settlement \$560,000.00

**BOARD MEETING DATE:** N/A

**FISCAL IMPACT LOCATION:** F:\COMMON\WP\AgendaPage2\

**FUNDING STATUS:** FULLY FUNDED

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Is Item Included in Current Budget? Yes ☒ No

**Budget Account No:**

Fund 3500 Dept 361 Unit 1335 Object 6551

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

Transportation Improvement Fund

Point Chosen Bridge Fender System Replacement

C & D Construction, Inc.

Final Payment-Settlement \$560,000.00

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