

PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: July 2, 2019

Consent [X]  
Public Hearing [ ]

Regular [ ]

Department: Water Utilities Department

I. EXECUTIVE BRIEF

**Motion and Title:** Staff recommends motion to approve: a Settlement Agreement and Mutual Release (Agreement) with Rohl Networks LP (Rohl) in the amount of \$242,394.89.

**Summary:** The County and Rohl entered into a contract dated September 13, 2016 (County Resolution No. R2016-1167) (Construction Contract) to provide construction services related to the SW Belle Glade Water Services Replacement Project Zone 2 East (Project). Certain disputes have arisen between the County and Rohl in relation to the Project, with the County asserting claims against Rohl related to the untimely completion of the Project, certain construction defects, and other issues. Rohl has asserted claims against the County related to preexisting field conditions, construction drawings, and other issues. In an effort to amicably resolve the claims and avoid the risks and costs inherent in litigation, the Agreement settles all claims related to the Construction Contract and the Project and provides for a mutual release of all related claims. Under the Agreement, the County agrees to pay Rohl \$242,394.89 as final payment for all sums owing under the Construction Contract. This amount includes a payment of \$160,731.29 for all remaining Retainage on the Construction Contract, \$73,881.60 for bid item #83 final quantity adjustment, and \$7,782.00 for Change Order #6. Rohl's original request for Change Order #6 was for \$721,776.00. In addition, there are currently \$460,000.00 in disputed Pay Application requests. The County will also waive Liquidated Damages for both Substantial Completion (56 days at \$1,000/day) and Final Completion (\$500/day). No Final Completion Date was set for the Project due to the ongoing dispute and Rohl not submitting the required documentation to achieve Final Completion. The project was placed in operation on February 1, 2018. In addition, Rohl agrees not to submit a bid, proposal, or any other response to any Initiation for Bids, Request for Proposals, or any other procurement issued by the Palm Beach County Water Utilities Department for two (2) years following the Effective Date of this Agreement. (WUD Project No 14-015) District 6 (MJ)

**Background and Justification:** The Project is part of improvements to the water distribution system in the Glades Region that are being undertaken to improve service levels and system reliability through the replacement of aging infrastructure. The Project will provide for the replacement of approximately 9,000 linear feet of water mains and the relocation of approximately 225 water services from the back to the front of properties in Belle Glade.

**Attachments:**

- 1. Three (3) Original Settlement Agreement and Mutual Release

Recommended By: Jim Steles Department Director Date 6-21-19

Approved By: Neil J. Blue Assistant County Administrator Date 6/26/19

**II. FISCAL IMPACT ANALYSIS**

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

Fiscal Years	2019	2020	2021	2022	2023
Capital Expenditures	\$242,395	0	0	0	0
Operating Costs	0	0	0	0	0
External Revenues	0	0	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>	<b>\$242,395</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
# ADDITIONAL FTE POSITIONS (Cumulative)	0	0	0	0	0
<b>Budget Account No.:</b>	<b>Fund 4011</b>	<b>Dept 721</b>	<b>Unit W038</b>	<b>Object 6543</b>	

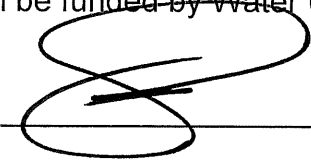
Is Item Included in Current Budget? Yes X No     

Does this item include the use of federal funds? Yes      No X

Reporting Category N/A



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

The Settlement Agreement will be funded by Water Utilities Department user fees.

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

**III. REVIEW COMMENTS**

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

 _____ OFMB 6/25/19 6/25/19	 _____ Contract Development and Control 6/25/19 6/25/19
--	---

**B. Legal Sufficiency:**

  
 \_\_\_\_\_  
 Assistant County Attorney  
 6/26/19

**C. Other Department Review:**

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

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

## SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Mutual Release (“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 (“County”), and Rohl Networks, LP, a limited partnership eligible to do business in the State of Florida (“Rohl”) (each referred to as a “Party” and collectively referred to as the “Parties”).

**WHEREAS**, County and Rohl entered into a contract dated September 13, 2016 (County Resolution No. R2016-1167) (the “Construction Contract”) to provide construction services related to the SW Belle Glade Water Services Replacement Project Zone 2 East (the “Project”); and

**WHEREAS**, County has asserted claims against Rohl related to the untimeliness of the Project, certain construction defects associated with the Project, and other issues; and

**WHEREAS**, Rohl has asserted claims against County related to preexisting field conditions, construction drawings, and other issues; and

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

**WHEREAS**, County has asserted defenses to each and every claim presented by Rohl 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 the Parties’ 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.** County shall pay to Rohl \$242,394.89 as final payment for all sums owing under the Construction Contract. This amount includes a payment of \$160,731.29 for all remaining Retainage on the Construction Contract, \$73,881.60 for bid item #83 final quantity adjustment, and \$7,782.00 for Change Order #6. Subject to receipt of all final closeout documentation required under the Construction Contract, the payment contemplated hereunder shall be made within fourteen (14) days of the Effective Date of this Agreement.

2. **Liquidated Damages.** The County hereby waives all Substantial Completion and Final Completion liquidated damages that have accrued under the Construction Contract.

3. **Covenant Not to Bid.** Rohl voluntarily agrees not to submit a bid, proposal, or any other response to any Initiation for Bids, Request for Proposals, or any other procurement issued by the Palm Beach County Water Utilities Department for two (2) years following the Effective Date of this Agreement. This covenant not to bid shall apply to Rohl, and any associated business entity, including but not limited to Rohl Networks GP, LLC, Rohl Global Group Inc., Rohl Group International, Inc., Rohl Global Networks LP, Rohl Global Networks GP LLC, or any other entity in which the principals of Rohl have greater than a 5% ownership interest. The parties agree and acknowledge that this covenant not to bid is a material and integral part of this Agreement, and that the County would not have entered into this Agreement absent the covenant. Any violation of this covenant permits the County to void this Agreement, seek reimbursement of any and all payments made hereunder, impose liquidated damages, and disclaim the County's release of claims set forth below.

4. **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, consultants, 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 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 or the Construction Contract. The foregoing shall not preclude any claims made pursuant to the Form of Guarantee or other warranty under the Construction Contract.

5. **Effective Date.** The Effective Date of this Agreement shall be the date that the last of the Parties executes this Agreement.

6. **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.

7. **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.

8. **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.

9. **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.

10. **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.

11. **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.

12. **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.

13. **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.

14. **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.

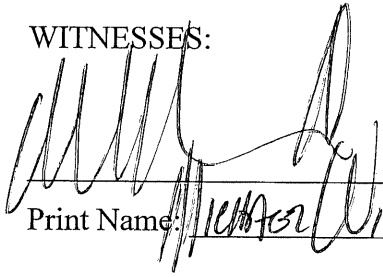
15. **Palm Beach County Office of the Inspector General.** Pursuant to Palm Beach County Code, Sections 2-421 through 2-440, as amended, Palm Beach County's Office of Inspector General is authorized to have the power to review past, present and proposed Palm Beach County contracts, transactions, accounts 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.

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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:

Rohl Networks LP

  
Print Name: Michael Libanski

By: 

Linda Snyder  
Print Name: Linda Snyder

Print Name: JASON ROHL  
Title: PRESIDENT  
Date: JUNE 18, 2019

ATTEST:

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

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

By: \_\_\_\_\_  
Mack Bernard, Mayor

(SEAL)

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

**APPROVED AS TO TERMS AND  
CONDITIONS**

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

By:   
KB Director of Water Utilities