

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Mutual Release (Agreement) is made and entered into on the Effective Date below, by and between Palm Beach County, a political subdivision of the State of Florida (County), and Engecon Construction, Inc., located in Palm Beach County, Florida, its successors, assigns, transferees, and grantees, eligible to do business in the State of Florida (Contractor) (each referred to as a "Party" and collectively referred to as the "Parties").

WHEREAS, County and Contractor entered into a contract dated July 10, 2018 (R2018-0969) (Construction Contract) for the construction of Palmetto Park Road from SW 7th Avenue to SW 5th Avenue, and the replacement of the bridge over the LWDD E-4/EI Rio Canal (Project); and

WHEREAS, changes requested to the final, permitted, and awarded Construction Contract by the City of Boca Raton, resulted in extensive utility delays that caused non-issuance of the Notice to Proceed to Contractor; and

WHEREAS, Contractor submitted a letter on September 4, 2019 for costs in the amount of \$736,180.94, which included overhead expenses such as materials purchased, shop drawing preparation, M.O.T. preparation and submittals, cost for bonds, workers compensation, and project insurance requirements, that were incurred after the award of the Construction Contract; and

WHEREAS, County issued a Notice of Termination of Contract on October 10, 2019, pursuant to Section 8-9.2 Termination of Contract, General Provisions; and

WHEREAS, County determined that the Contractor is entitled to \$129,148.27, in accordance with the Construction Contract; and

WHEREAS, Contractor requested \$387,481.16 as the total amount due for the above stated overhead expenses; and

WHEREAS, County has asserted defenses to each and every claim presented by Contractor 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 Contractor \$245,392.62 as final payment for all sums owing under the Construction Contract. This amount includes 30% of Contractor's requested overhead expenses of \$387,481.16, plus the \$129,148.27 payment amount determined by the County. Subject to receipt of all final closeout documentation required under the Construction Contract, the payment contemplated hereunder shall be made within sixty (60) days of the Effective Date of this Agreement.

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, 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.

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

4. **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.

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. **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.


13. **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:

Engecon Construction, Inc.


Print Name: Robert G. Waite

By: 
Print Name: RAOUL NATHAN
Title: President
Date: 05/20/2020


Print Name: Gina Drotleff

ATTEST:

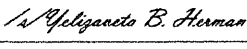
**PALM BEACH COUNTY, BY ITS
BOARD OF COUNTY
COMMISSIONERS**

By: _____
Deputy Clerk

By: _____
Dave Kerner, Mayor

(SEAL)

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

By: 
County Attorney

**APPROVED AS TO TERMS AND
CONDITIONS**

By: 
Deputy County Engineer 6/10/2020