

SETTLEMENT AGREEMENT

This Settlement Agreement (the "Settlement Agreement") by and among Broward County, a political subdivision of the State of Florida ("County") and Russell Engineering, Inc., a Florida corporation ("REI") (each a "Party" and collectively, the "Parties"), is entered into and effective as of the date it is fully executed by the Parties.

RECITALS

A. REI and County entered into a construction contract on or about December 5, 2017 (the "Contract") to widen Wiles Road from Riverside Drive to Rock Island Road from four to six lanes, including drainage, sidewalks, bike lanes, signalization, lighting, landscaping, and irrigation (the "Project").

B. REI has submitted a claim for alleged damages in the amount of One Million Six Hundred Five Thousand Nine Hundred Thirty Dollars (\$1,605,930.00) due to delays, additional and unpaid work performed, utility conflicts, and release of retainage.

C. County notified REI of County's claims in the amount of One Million Thirty-eight Thousand One Hundred Seventy-seven Dollars (\$1,038,177.00) for liquidated damages and additional construction administration costs due to delays in the completion of the Project.

D. The Parties have engaged in negotiations in an effort to amicably resolve all claims that the Parties have asserted against one another arising out of, or relating to, the Project.

E. The Parties desire to memorialize in writing their negotiations to resolve the Parties' respective claims so that they are binding upon them.

NOW, THEREFORE, in consideration of the foregoing representations and mutual covenants, promises, and considerations hereinafter set forth, the receipt and sufficiency of which are hereby acknowledged, and with the intent to be legally bound, it is hereby agreed between the Parties as follows:

1. **Representations:** The foregoing recitals are true and correct and by this reference thereto are incorporated herein and made a part hereof.
2. **Terms of Settlement:** The Parties do hereby covenant and agree as follows:
 - A. Within fifteen (15) calendar days after the date this Settlement Agreement has been fully executed by the Parties, County shall pay to REI the sum of Five Hundred Thirty-five Thousand Dollars (\$535,000.00) in full and final settlement of all matters addressed by this Settlement Agreement.
 - B. The payment of this sum specifically includes the retainage held by County in the amount of Three Hundred Seventy-four Thousand Four Hundred

Forty-two Dollars and Ninety-one Cents (\$374,442.91). Thus, no amount other than Five Hundred Thirty-five Thousand Dollars (\$535,000) shall be paid by County to REI.

- C. Part of REI's claim includes alleged delays caused by utility conflicts and failure of the utility companies to act in a timely manner as is required by Florida law. As such, the County does hereby sell, assign, transfer, and set over unto REI all of County's rights, title, and interest in and to all causes of action, suits, debts, dues, sums of money, accounts, reckonings, trespasses, damages, judgments, executions, claims and demands whatsoever in law or in equity, from the beginning of the world to the date hereof related to the alleged delays caused by utility conflicts. In exchange for such sale, assignment, and transfer, REI shall indemnify, defend and hold harmless County, its officers and employees, from all liabilities, damages, losses, claims, costs, and suits initiated by any and all utility companies that maintained, operated, or owned utility services on the Project site during construction, including AT&T Distribution, Advanced Cable Communications n/k/a Blue Stream, FPL Distribution, Comcast, FPL Fibemet n/k/a Crown Castle, and TECO People's Gas-South Florida, their employees, officers, agents, subconsultants, successors and assigns (hereinafter referred to as "utility companies"), in the event REI pursues a legal action against the utility companies for the alleged delays to the Project caused by utility conflicts and failure of the utility companies to act in a timely manner and the utility companies commence a legal proceeding against the County arising out of and in connection with REI's pursuit of the referenced legal action. County agrees to reasonably cooperate with REI in the prosecution or defense of any action resulting from the assignment described in this paragraph. The obligation by County to reasonably cooperate shall not require the County to spend money or provide any legal or professional services, but will provide documents, information, and fact **testimony**.
3. **No Admission:** By entering into this Settlement Agreement, neither Party admits fault, but rather the Parties have agreed to the terms of this Settlement Agreement as a compromise of the Parties' respective disputed claims in the interest of avoiding the costs and uncertainty of litigation.
4. **Release:** The Parties, by execution of this Settlement Agreement, hereby release, waive, and discharge each other from any and all claims, demands, damages, causes of action, actions, subrogation claims, litigation costs, including attorney's fees, and losses of every kind and nature, whether known or unknown, patent or latent, arising from or relating to the Project. The Parties further expressly covenant, promise, and agree, for themselves and their respective successors and assigns, that they shall be and are hereby forever barred and permanently enjoined from asserting any and all claims, supplemental claims, causes of action, subrogation rights, or damages arising from or relating to the Project. Notwithstanding the foregoing, specifically excluded

from this Release are any and all claims previously made or alleged by the Whispering Woods of Coral Springs Homeowners Association, Inc. ("WVHWA") related to property damages on the private property of WVHWA adjacent to the Project

5. **Default:** In the event of a default of any of the covenants and conditions set forth herein that is not cured by the defaulting Party within ten (10) business days after written notice thereof from the non-defaulting Party, any provision as to release of the defaulting Party is null and void. Attorney's fees and costs to enforce this Settlement Agreement will be recoverable by the prevailing Party.
6. **Binding Effect:** The undersigned represent that they have been empowered by the respective Parties to enter into this Settlement Agreement on behalf of the Parties, and to bind the Parties to the commitments and undertakings contained herein. The terms of this Settlement Agreement shall inure to the respective Parties' successors, assigns, trustees, receivers, and personal representatives.
7. **Full Disclosure:** The Parties acknowledge and agree that each is releasing certain rights and assuming certain duties and obligations which, but for this Settlement Agreement, would not have been released or assumed. Accordingly, the Parties agree that this Settlement Agreement is fully and adequately supported by consideration and is fair and reasonable and that the Parties have had the opportunity to consult with, and have in fact consulted with, such experts and legal counsel of their choice.
8. **Governing Law and Venue:** The Parties acknowledge and agree that this Settlement Agreement shall be governed by and interpreted and construed in accordance with Florida law. Any action arising out of or related to this Settlement Agreement, or the enforcement or interpretation thereof shall be exclusively brought in the State court of the Seventeenth Judicial Circuit in and for Broward County, Florida, and both Parties irrevocably waive any challenge to the exclusive jurisdiction and venue of such court. **To encourage prompt and equitable resolution of any litigation arising out of, or related to, this Settlement Agreement or the Project, each Party hereby waives any rights it may have to a trial by jury of any such litigation.**
9. **Severability:** The Parties acknowledge and agree that, if any part, term or provision of this Settlement Agreement is determined by a court of competent jurisdiction to be invalid, illegal, or in conflict with any law of Florida, such provision shall be severed from the Settlement Agreement and the validity of the remaining portions or provisions shall not be affected thereby and shall remain in full force and effect.
10. **Merger:** This Settlement Agreement incorporates, includes, and supersedes all prior negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained herein; and the Parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Settlement Agreement that are not contained in this written document. Accordingly,

the Parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

11. **Joint Preparation:** The Parties acknowledge that they have sought and received the necessary competent advice and counsel to form a full and complete understanding of all rights and obligations imposed on the Parties herein and fully acknowledge the joint preparation of this Settlement Agreement. The language contained herein expresses the Parties' mutual intent and understanding and, as a result, the terms of this Settlement Agreement shall not be construed more severely against either Party as drafter
12. **Counterparts:** This Settlement Agreement may be executed in any number of counterparts, each of which, when executed and delivered, shall be deemed an original, but such counterparts shall together constitute one and the same instrument.
13. **Captions:** The captions of the sections of this Settlement Agreement are for convenient reference only and shall not affect the construction or interpretation of any of the terms and provisions set forth herein.
14. **Further Assurance:** The Parties shall execute all such further instruments, and agree to take all such further actions, that may be reasonably required by the other party to fully effectuate the terms and provisions of this Settlement Agreement and the transactions contemplated herein.
15. **Modification:** No change or modification to this Settlement Agreement shall be valid unless in writing and signed by all Parties hereto. No waiver of any of the provisions of this Settlement Agreement shall be valid unless in writing and signed by the party against whom it is sought to be enforced.
16. **Notice:** In order for a notice to a party to be effective under this Settlement Agreement, notice must be sent via U.S. first-class mail, hand delivery, or commercial overnight delivery, each with a contemporaneous copy via e-mail, to the addresses listed below and shall be effective upon mailing or hand delivery (provided the contemporaneous e-mail is also sent). The addresses for notice shall remain as set forth in this section unless and until a new address is provided to the notice address of the other Party contained herein.

For County:

Broward County Attorney's Office

Attn: Michael J. Kerr, Deputy County Attorney

115 South Andrews Avenue, Room 423

Fort Lauderdale, FL 33301

Email address: mkerr@broward.org

For REI:
Brian J. Gibbs, Vice President
Russell Engineering, Inc.
2530 SW 36 Street
Fort Lauderdale, FL 33312
Email: brian.g@russellengineering.com

(The remainder of this page is intentionally left blank.)

IN WITNESS WHEREOF, the Parties have made and executed this Settlement Agreement on the respective dates under each signature: Broward County, through its Board of County Commissioners, signing by and through its Mayor or Vice-Mayor, authorized to execute same by Board action on the _____ day of _____, 2021, and Russell Engineering, Inc., signing by and through its Vice President, duly authorized to execute same.

COUNTY

ATTEST:

BROWARD COUNTY, by and through
its Board of County Commissioners

Broward County Administrator, as
ex officio Clerk of the Broward County
Board of County Commissioners

By: _____
Mayor

____ day of _____, 2021

Approved as to form by
Andrew J. Meyers
Broward County Attorney
Governmental Center, Suite 423
115 South Andrews Avenue
Fort Lauderdale, Florida 33301
Telephone: (954) 357-7600
Telecopier: (954) 357-7641

By: Michael J. Kerr 10/14/2021
Michael J. Kerr (Date)
Deputy County Attorney

MJK/tb
10/13/2021
Russell Engineering Agreement

**SETTLEMENT AGREEMENT BETWEEN BROWARD COUNTY AND
RUSSELL ENGINEERING, INC.**

REI

WITNESSES:

RUSSELL ENGINEERING, INC.

Tom Bowles
Signature

By: [Signature]

TOM BOWLES
Print Name of Witness above

Brian J Gibbs Vice President
Print Name and Title

Tomasa D. Russ
Signature

14th day of October, 2021

Tomasa D. Russ
Print Name of Witness above

ATTEST: [Signature]
Corporate Secretary or other person
authorized to attest

(Corporate Seal or Notary)

