

SETTLEMENT AGREEMENT

This Settlement Agreement (the "Settlement Agreement") by and between Broward County, a political subdivision of the State of Florida ("County"), Tadeos Engineering LLC ("Tadeos"), and Ohio Casualty Insurance Company ("Ohio") (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. County and Tadeos entered into an agreement on March 26, 2020, under Bid/Contract No. PNC2118866C1 (the "Contract") for permitting and construction of the new Secret Woods Nature Center – Manatee Overlook Structure (the "Project").
- B. Ohio, as Surety, issued Performance and Payment Bonds (the "Bonds") in favor of Tadeos as principal and County as obligee on the Project.
- C. County issued a notice to cure to Tadeos and Ohio, dated October 21, 2022, notifying Tadeos and Ohio of defective work and construction deficiencies.
- D. County, through its Director of Purchasing Division, issued a notice of termination to Tadeos and Ohio, dated February 22, 2023, terminating the Contract and demanding Ohio perform pursuant to the Bonds.
- E. Tadeos disputes County's termination and claim of defective work and construction deficiencies and asserts as the basis that there is a discrepancy in the specifications regarding the length of precast concrete piles and the structural capacity of the installed pilings.
- F. The Parties have engaged in negotiations and discussions in an effort to amicably resolve all claims and matters arising out of or relating to work associated with the Contract and Project.
- G. The Parties desire to reduce their negotiations to writing so that it is binding upon them.

Now, therefore, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

Agreement

1. **Recitals.** The above recitals are true and correct and are incorporated in this Settlement Agreement.

10/14

2. **Terms of Settlement.**

- A. Tadeos shall pay \$400,000 ("Settlement Payment") to County within 15 days after the date the Broward County Board of County Commissioners (the "Board") approves this Settlement Agreement. Tadeos and Ohio hereby authorize the County to keep the full amount of retainage currently withheld by County under the Contract ("Release of Retainage"), which retainage amount totals \$39,573.20 and is in addition to and not included in the Settlement Payment, immediately upon the Board's approval of this Settlement Agreement. The Settlement Payment shall be made payable to Broward County and remitted to County by way of ACH payment using the following ACH payment instructions:

Account Title: BROWARD COUNTY
Additional Title(s): CONCENTRATION
Account Number: 2090002760990
ABA/RTN Number: 121000248
Bank Name: Wells Fargo Bank N.A.
Bank Address: 420 Montgomery St., San Francisco, CA 94104

- B. The Settlement Payment, together with the Release of Retainage and mutual releases that are set forth below (collectively, the "Settlement"), constitute full and final settlement of all of County's claims for damages, attorneys' fees, costs, and interest with respect to any and all claims against Tadeos arising from or relating to the Contract or Project, and full and final release, waiver, and discharge of County's claims under the Bonds. The Settlement also constitutes full and final settlement of all of Tadeos's and Ohio's claims for damages, attorneys' fees, costs, and interest with respect to any and all claims against County arising from or relating to the Contract, Project, or Bonds.
- C. The Parties shall each bear their own respective attorneys' fees and costs in connection with the negotiation, preparation, consummation, and performance of this Settlement Agreement and any lawsuits, matters, or claims relating to the Contract and Project. This provision shall not apply to attorneys' fees and costs incurred in any action or proceeding brought to enforce the terms of this Settlement Agreement, or any lawsuits, matters, or claims, at law or in equity, available to Ohio against Tadeos and/or its indemnitors under contract, by statute or at common law, as noted in Section 7.
- D. The termination for cause dated February 22, 2023, is hereby converted into a mutual termination of the Contract effective upon full execution of this Settlement Agreement by the Parties and receipt by County of the Settlement Payment.

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- E. The only condition to the binding effect of this Settlement Agreement is Board approval. County will use best efforts to seek approval of this Agreement on or before the October 22, 2024, Board meeting. Should the Board not approve this Settlement Agreement, the terms and conditions hereof shall automatically become null and void and shall have no binding effect upon the Parties, and this Agreement or drafts thereof shall not be admissible nor used in future litigation.
 - F. As part of the settlement, Tadeos and County waive any and all disputes arising from or relating to the Project.
 - G. As part of the settlement, County and Ohio waive any and all disputes arising from or relating to the Project.
3. **No Admission of fault.** By entering into this Settlement Agreement, no Party admits fault, but rather the Parties have entered into this Settlement Agreement as a compromise of disputed claims in the interest of avoiding the costs and uncertainty of protracted negotiations and litigation.
 4. **Mutual Final Releases as to County and Tadeos.** County and Tadeos respectively 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, arising from or relating to the Contract or Project. County and Tadeos 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 Contract and Project. Moreover, this paragraph shall not bar enforcement of Section 8 by County.
 5. **Mutual Final Releases as to County and Ohio.** County and Ohio respectively 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, arising from or relating to the Contract, Bonds, or Project. County and Ohio 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 Contract, Bonds, and Project against one another. This Release shall constitute the full and final discharge of the Bonds by County, rendering same null and void and of no further force and effect. This Release is intended to be construed as broadly as possible as it relates to the Bonds, and nothing in this Agreement is intended to limit the generality of this Release. Notwithstanding the above, this Release (and any other applicable provisions between County and Ohio relating to the Contract, Bonds, or Project) shall be deemed null and void and of no force and effect if Tadeos does not make

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the payment required in Section 2.A. Ohio specifically reserves all rights against Tadeos and its personal indemnitors as set forth below in Section 7.

6. **Release as to County's Engineer/Architect of Record.** Tadeos and Ohio respectively release, waive, and discharge County's Engineer/Architect of Record (Thompson & Associates, Inc., Civil Engineering, MUEngineers Inc., and ACAI Associates, Inc.) 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, arising from or relating to the Contract or Project. Tadeos and Ohio 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 Contract and Project.
7. **Ohio's Reservation of Rights as to Tadeos and its Indemnitors.** Nothing in this Settlement Agreement shall constitute a waiver, release, estoppel, or modification of any rights, claims, and/or defenses, at law or in equity, available to Ohio against Tadeos and/or its indemnitors under contract, by statute or at common law. All such rights, claims, and/or defenses are expressly reserved; however, Tadeos and Ohio do not reserve any rights or claims against County.
8. **Representations and Indemnification.** Tadeos and Ohio certify to County that any individuals and entities that furnished labor, materials, or supplies for the Project, whether directly or indirectly, have been paid in full. Tadeos and Ohio acknowledge that County is relying on this certification in entering into this Settlement Agreement. Tadeos and Ohio respectively agree to hold the County harmless with respect to all such bills, invoices, expenses, and claims, whether known or unknown at this time, and to indemnify and defend County from any claims related to such bills, invoices, expenses, or claims.
9. **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 a non-defaulting Party, the non-defaulting Party shall have the right to seek Court enforcement of this Settlement Agreement.
10. **Binding Effect.** This Settlement Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, executors, administrators, successors, and assigns.
11. **Full Disclosure.** The Parties are releasing certain rights and assuming certain duties and obligations that, 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 attorneys of their choice as they may have desired.

104

12. **Law, Venue, and Waiver of Jury Trial.** This Settlement Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. The exclusive venue for any lawsuits arising from, related to, or in connection with this Settlement Agreement shall be in the state courts of the Seventeenth Judicial Circuit in and for Broward County, Florida. If any claim arising from, related to, or in connection with this Settlement Agreement must be litigated in federal court, the exclusive venue for any such lawsuit shall be in the United States District Court or United States Bankruptcy Court for the Southern District of Florida. **EACH PARTY HEREBY EXPRESSLY WAIVES ANY RIGHTS IT MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS SETTLEMENT AGREEMENT.**
13. **Severability.** If any part of this Settlement Agreement is found to be unenforceable by any court of competent jurisdiction, that part shall be deemed severed from this Settlement Agreement and the balance of this Settlement Agreement shall remain in full force and effect.
14. **Prior Agreements.** This Settlement Agreement represents the final and complete understanding of the Parties regarding the subject matter of this Settlement Agreement and supersedes all prior and contemporaneous negotiations and discussions regarding same. All commitments, agreements, and understandings of the Parties concerning the subject matter of this Settlement Agreement are contained herein.
15. **Joint Preparation.** This Settlement Agreement has been jointly prepared by the Parties and shall not be construed more strictly against any of the Parties.
16. **Multiple Originals and Counterparts.** This Settlement Agreement may be executed in multiple originals or in counterparts, whether signed physically or electronically; each of which shall be deemed to be an original, and all of which, taken together, shall constitute one and the same agreement.
17. **Interpretation.** The titles and headings contained in this Settlement Agreement are for reference only and shall not in any way affect the meaning or interpretation of this Settlement Agreement. All personal pronouns used in this Agreement shall include any other gender, and the singular shall include the plural, and vice versa, unless the context otherwise requires. Terms such as "herein" refer to this Agreement as a whole and not to any particular sentence, paragraph, or section where they appear, unless the context otherwise requires. Whenever reference is made to a section of this Agreement, such reference is to the section as a whole, including all subsections thereof, unless the reference is made to a particular subsection or subparagraph of such section. Any reference to "days" means calendar days, unless otherwise expressly stated. Any reference to approval by County shall require approval in writing, unless otherwise expressly stated.

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18. **Further Assurance.** The Parties shall execute all such further instruments, and agree to take all such further actions, that may be reasonably required by any Party to fully effectuate the terms and provisions of this Settlement Agreement and the transactions contemplated herein.
19. **Amendments.** Unless expressly authorized herein, no modification, amendment, or alteration of any portion of this Settlement Agreement is effective unless contained in a written document executed with the same or similar formality as this Settlement Agreement and by duly authorized representatives of the Parties.
20. **Survival of Provisions.** All covenants, warranties, and representations contained in this Settlement Agreement shall survive the termination of this Settlement Agreement.
21. **Third-Party Beneficiaries.** The Parties do not intend to primarily or directly benefit a third-party by entering into this Settlement Agreement. Therefore, the Parties acknowledge that there are no third-party beneficiaries to this Settlement Agreement and that no third party shall be entitled to assert a right or claim against any of the Parties upon this Settlement Agreement.
22. **Notice.** Unless otherwise stated herein, for 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 email, to the addresses listed below and shall be effective upon mailing or hand delivery (provided the contemporaneous e-mail is also sent). Addresses may be changed by the applicable Party giving notice of such change in accordance with this section.

For County:

Broward County Attorney's Office
 Attn: Andrew J. Meyers or Current Broward County Attorney
 115 South Andrews Avenue, Room 423, Fort Lauderdale, FL 33301
 Email address: ameyers@broward.org
 Copy to: adicalvo@broward.org

For Tadeos:

Luis Oscar de la Hoz Olivera
 14030 N.W. 82nd Avenue, Miami Lakes, FL 33016
 Email address: luis@tadeosengineering.com
 Copy to: peter@rowellpa.com

For Ohio:

Jennifer Schildbach (Ref# 41K007970), Surety Claims Counsel
 Liberty Mutual Insurance
 1001 4th Avenue, Suite 3800, Seattle, WA 98154
 Email address: Jennifer.Schildbach@LibertyMutual.com

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Copy to: Bruce C. King, Esq.
Carlton Fields, P.A.
700 N.W. 1st Avenue, Suite 1200, Miami, FL 33136
Email address: bking@carltonfields.com

23. **Representation of Authority.** Each individual executing this Settlement Agreement on behalf of a Party hereto represents and warrants that he or she is, on the date he or she signs this Settlement Agreement, duly authorized by all necessary and appropriate action to execute this Settlement Agreement on behalf of such Party and does so with full legal authority.

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

IN WITNESS WHEREOF, the Parties hereto 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 _____, 2024, Tadeos Engineering LLC, signing by and through its _____ President _____, duly authorized to execute same, and Ohio Casualty Insurance Company, signing by and through its Senior Surety Claims Counsel _____, 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 _____, 20__

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

By Al A DiCalvo Digitally signed by Al A DiCalvo
Date: 2024.09.11 09:57:55
-04'00'
Al A DiCalvo (Date)
Senior Assistant County Attorney

By MICHAEL KERR Digitally signed by MICHAEL KERR
Date: 2024.09.11 11:17:32
-04'00'
Michael J. Kerr (Date)
Chief Counsel

AAD

Settlement Agreement_Tadeos-Ohio Casualty (PNC2118866C1)_v5Final-2024-0903
9/3/24

**SETTLEMENT AGREEMENT BETWEEN BROWARD COUNTY, TADEOS ENGINEERING LLC, AND
OHIO CASUALTY INSURANCE COMPANY**

Tadeos

WITNESS:



Signature



(Print Name)

Tadeos Engineering LLC

By 

Authorized Signer



(Print Name and Title)

5 day of Sept., 2024.

SETTLEMENT AGREEMENT BETWEEN BROWARD COUNTY, TADEOS ENGINEERING LLC, AND
OHIO CASUALTY INSURANCE COMPANY

Ohio

ATTEST:

Ohio Casualty Insurance Company

Secretary

By *Jennifer Schildbach* _____
Authorized Signer

(Print Name)

Senior Surety Claims Counsel/ Authorized Representative
(Print Name and Title)

(Seal)

9th day of September, 2024.