

SETTLEMENT AGREEMENT AND MUTUAL RELEASE OF LIABILITY

This SETTLEMENT AGREEMENT AND MUTUAL RELEASE OF LIABILITY (the “Agreement”) is made and entered into this _____ day of March, 2022 (the “Effective Date”) by and between **BCC Engineering, LLC**, a Florida Limited Liability Company, f/k/a **BCC Engineering, Inc.** (hereinafter collectively the “Consultant”), and the **City of Fort Lauderdale**, a Florida municipal corporation (the “City”):

RECITALS

WHEREAS, the City entered into an Agreement for structural engineering consulting services with the Consultant on July 12, 2016 (CAM #16-0740); and

WHEREAS, on November 19, 2019, the City approved an increase in funds for the scope of work delineated in the Agreement (CAM #19-1083); and

WHEREAS, a Notice to Proceed was issued to the Consultant by the City on December 9, 2019 for design work related to rehabilitation of the West Lake Drive Bridge, pursuant to the scope of work delineated in Task Order #2; and

WHEREAS, although Task Order #2 was not executed for reasons unknown, and relying upon the issued Notice to Proceed, the Consultant commenced and performed the work from December 28, 2019 through October 30, 2020 pursuant to Task Order #2 and the City has subsequently accepted the work performed by the Consultant; and

WHEREAS, although the Agreement expired on July 11, 2020, and the Task Order #2 was not properly executed, the Consultant is owed \$224,690.00 for its work on the West Lake Drive Bridge Project; and

WHEREAS, the Consultant has subsequently converted its corporate structure and is now BCC Engineering, LLC; and

WHEREAS, without any admission of liability and solely for the purpose of saving future litigation expenses and compromising and settling disputed claims, City and Consultant desire to buy peace and compromise and settle their disputed claims; and,

NOW THEREFORE, in consideration of the mutual covenants and promises by and between City and Consultant (collectively the “Settling Parties”), and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Settling Parties hereby represent, warrant, and agree as follows:

AGREEMENT

The Settling Parties hereby acknowledge that the Recitals set forth above are true and correct and are hereby incorporated into this Agreement.

1. Within thirty (30) days of the Consultant fulfilling its obligations identified in Section 4, City shall pay Consultant the total sum of TWO HUNDRED TWENTY-FOUR THOUSAND SIX HUNDRED AND NINETY DOLLARS 00/100 (\$224,690.00) (the "Settlement Amount") and Consultant agrees to accept the Settlement Amount in full and final settlement of all claims asserted or which could have been asserted regarding any act or omissions related to the form, method, procedure, or processing of task orders or payment for the scope of any design work completed for the rehabilitation of the West Lake Drive Bridge. The City shall send the Settlement Amount to Consultant by wire transfer.
2. Time is of the essence for payment. Failure to meet submission deadlines or make timely payment as set forth in this Agreement shall constitute a material breach of this Agreement. In the event City or Consultant must take any action to enforce any term or provision of this Agreement, the prevailing party shall be entitled to an award of its reasonable attorney's fees incurred in enforcing any term or provision of this Agreement against the breaching party.
3. **MUTUAL GENERAL RELEASE** Except for the obligations of this Agreement, which are not hereby released and which shall survive the executions hereof, Consultant and City for themselves and for their attorneys, agents, personal representatives, successors, heirs, assigns, or anyone else acting on their behalf hereby remise, release, acquit, waive, satisfy, and forever discharge one another and one another's respective officers, directors, shareholders, members, employees, agents, attorneys, servants, representatives, and insurers, and their respective personal representatives, attorneys, agents, successors, heirs, assigns of all of them, of and from all, and all manner of action and actions, cause and causes of action, suits, debts, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, guaranties, warranties (whether express or implied and whether based on statute, common law or otherwise), third-party claims, bad faith claims, variances, trespasses, damages, judgments, executions, claims, and demands whatsoever, which either has or may have against the other, whether arising in tort, by contract, by virtue of statute, or otherwise, and whether in law or in equity, regardless of whether the same are known or unknown, suspected or unsuspected, patent or latent, or have yet accrued or not accrued, provided the same are based upon any act or omissions related solely to the form, method, procedure, or processing of task orders or payment for the scope of any design work completed for the rehabilitation of the West Lake Drive Bridge.
4. The Consultant shall submit all requirements identified in this section on or before March 8, 2022. Consultant shall submit to the City all required records identified in the project agreement, including but not limited to:

- a. 100% signed and sealed plans and associated specifications.
5. City and Consultant shall each bear its own fees and costs.
6. Each party warrants and represents to each of the other Settling Parties that it has full power and authority to enter into this Agreement and to perform in accordance with its provisions, and further warrants and represents that the claims subject to this Agreement have not been assigned or sold to any person, firm, corporation or entity, not a party hereto.
7. This Settlement Agreement may be executed in counterparts.
8. In making this Agreement, the Settling Parties rely wholly upon their independent review, judgment, belief, and knowledge. This Agreement is contractual in nature, is deemed to have been drafted by all Settling Parties and is made without reliance on any statements or representations of an opposing party. The Settling Parties acknowledge that they have had a full and fair opportunity to consult with counsel regarding this Agreement. All Settling Parties hereto have participated in drafting this Agreement, and accordingly, any ambiguity herein shall not be construed for or against any party. There shall be no oral amendment of this Agreement. This Agreement may not be altered, amended, modified or otherwise changed in any respect except in writing duly executed by all Settling Parties.
9. This Agreement shall be deemed to have been executed and delivered within Florida and shall be construed and enforced pursuant to the laws of the State of Florida.
10. By entering into this Agreement, no party is admitting any liability, and this Agreement should not be construed as an admission of liability by any party. The Settling Parties understand, acknowledge and agree that the settlement reached, the making of this Agreement, and anything contained in this Agreement constitute a compromise of disputed claims involving legal and factual questions and issues and is not to be construed as an admission by any Settling Party of liability under or noncompliance with any federal, state, or local statute, ordinance, regulation, public policy, tort law, contract law, common law, or any other wrongdoing whatsoever. The Settling Parties acknowledge that no representation of fact or opinion has been made by any party or anyone on their behalf to induce this compromise.
11. In the event that any word, phrase, clause, or provision of this Agreement shall be determined by final judgment, after all appeals, to be invalid, only such provision of this Agreement shall be ineffective and deemed void, without invalidating any other provision of this Agreement.
12. This Agreement constitutes the complete and entire agreement between the Settling Parties and supersedes all previous negotiations, proposals, and understandings between the Settling Parties and their counsel. The foregoing terms represent the only consideration for entering into this Agreement; no other promises or agreements of any kind have been made to cause the Settling Parties to execute this Agreement. If the facts upon which the Settling Parties have executed this Agreement are later found to be different from those

facts now believed to be true, the Settling Parties expressly accept and assume the risk of such possibility and acknowledge that this Agreement shall be and remain effective notwithstanding any such factual differences.

(EXECUTION PAGES TO FOLLOW)

I HAVE READ AND UNDERSTAND THE TERMS OF THIS AGREEMENT

CITY OF FORT LAUDERDALE

By: _____
Christopher J. Lagerbloom
City Manager

STATE OF FLORIDA)
)
COUNTY OF BROWARD)

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization this ____ day of March, 2022 by Christopher J. Lagerbloom, as City Manager of the City of Fort Lauderdale, a Florida Municipal Corporation, on behalf of the City of Fort Lauderdale, ☐ who is personally known to me or ☐ who has produced _____ as identification.

Notary Public, STATE OF FLORIDA
Print name: _____

My Commission Expires:

I HAVE READ AND UNDERSTAND THE TERMS OF THIS AGREEMENT

BCC Engineering, LLC

By: _____
Victor H. Herrera, Senior Vice President

STATE OF FLORIDA)
)
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization this ____ day of March, 2022 by Victor H. Herrera as Senior Vice President, on behalf of the BCC Engineering LLC, ☐ who is personally known to me or ☐ who has produced _____ as identification.

Notary Public, STATE OF FLORIDA

Print name: _____

My Commission Expires: