

## **SETTLEMENT AGREEMENT**

This is a SETTLEMENT AGREEMENT (the "Agreement") by and between BROWARD COUNTY, a political subdivision of the State of Florida ("County"), Williams Hatfield & Stoner, Inc. n/k/a Tetra Tech, Inc. ("Consultant"), and Developers Surety and Indemnity Company ("Surety") (collectively the "Parties").

### **RECITALS**

**WHEREAS**, Consultant was under contract with County to perform general engineering consultant services at the Fort Lauderdale-Hollywood International Airport (the "Airport"); and

**WHEREAS**, pursuant to the consultant services agreement between County and Consultant, County issued a notice to proceed effective July 16, 2007, to Consultant to develop a design-criteria package for replacement of specific inter-terminal canopies at the Airport (the "Project"); and

**WHEREAS**, pursuant to the July 16, 2007, notice to proceed, Consultant issued a design-criteria package, used by the County to bid the Project; and

**WHEREAS**, on or about March 12, 2009, BMA Construction, Inc. ("Contractor") and County entered into a lump sum contract for Contractor to complete the Project; and was awarded the bid as the general contractor for the Project (the "Construction Contract"); and

**WHEREAS**, On March 5, 2009, Surety and Contractor entered into a Performance Bond, agreeing that if Contractor did not complete the Project, Surety would either perform on Contractor's behalf or pay County for all its losses sustained as a result of Contractor's breach (the "Performance Bond"); and

**WHEREAS**, during installation of the structure, the newly installed canopy panels ripped during tensioning on multiple occasions, leading to Contractor sending County a letter in June 2011, stating it was unable to perform the Project and declaring itself in default; and

**WHEREAS**, on February 7, 2012, the Broward County Board of County Commissioners ("Board") voted to terminate the Construction Contract for cause; and

**WHEREAS**, on June 10, 2013, County filed a lawsuit in the Seventeenth Judicial Circuit in and for Broward County, Florida, against Contractor, Consultant, and Surety, seeking recovery of County's damages resulting from work associated with the Project never being completed (the "Lawsuit"); and

**WHEREAS**, Parties participated in a mediation for the Lawsuit on August 16, 2017, and have engaged in considerable negotiations and discussions in an effort to

amicably resolve all claims and matters that the County has raised arising out of, or relating to, work associated with the Project; and

**WHEREAS**, the Parties desire to reduce their negotiations and discussions to writing so that it is binding upon them;

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

1. **Representations**: The foregoing representations are true and correct and by this reference thereto, the Construction Contract between Contractor and County is incorporated herein and made a part hereof. The Parties agree that, to the extent that this Agreement is not fully-executed and consummated, none of the representations made herein shall be admissible against any of the Parties in any further litigation or other proceedings.
2. **Terms of Settlement**: The Parties to this Agreement do hereby covenant and agree as follows:
  - A. Consultant shall pay County the sum of \$265,000, on or before September 16, 2017, or ten days from the date the Board approves this Agreement, whichever is later, in full and final settlement of all matters addressed by this Agreement.
  - B. Surety shall pay County the sum of \$275,000, on or before September 16, 2017, or ten days from the date the Board approves this Agreement, whichever is later, in full and final settlement of all matters addressed by this Agreement.
  - C. The Parties shall bear their own respective attorneys' fees and costs expended in resolving this matter. Should the Board not approve this Agreement, the terms and conditions hereof shall automatically become null and void and shall have no binding effect upon either party, and this Agreement or drafts thereof shall not be admissible nor used in future litigation.
  - D. Upon clearance of the settlement amounts identified in paragraphs A and B above, the Parties shall jointly file a voluntary dismissal with prejudice in the Lawsuit.
  - E. Upon clearance of Surety's settlement amounts identified in paragraph B above, County shall discharge the Performance Bond in accordance with paragraph 3 below as relates between County and Surety.

3. **Mutual Final Releases:** The Parties do respectively release each other, and their respective heirs, executors, administrators, successors and assigns, from all claims, demands, damages, causes of action, actions, and losses of every kind and nature, whether known or unknown and which any Party has or may ever claim to have, now or in the future against another Party, arising out of or related to the Project, Construction Contract and/or Performance Bond. Further, the Parties mutually release and forever discharge each other and acknowledge, agree, and covenant for each of themselves and their respective successors and assigns, and irrevocably bind themselves from making any claim or demand or to commence, cause, or permit to be prosecuted any claim or action in law or in equity against the other or any of them on account of or in any way relating to the Project, Construction Contract and/or Performance Bond. **This Agreement shall constitute the full and final discharge of the Performance Bond by County, rendering same null, void and of no further force and effect.** Upon the execution of this Agreement and clearance of the Surety's and the Consultant's settlement amounts identified in paragraph 2(B) above, County shall deliver the original Performance Bond to Surety, bearing the marking "Released / Discharged".
4. **Effect of Non-Payment by Either DSIC or Tetra Tech:** County shall either, hold and keep segregated (in a non-interest-bearing account), or physically retain without depositing, any funds received from either Tetra Tech (pursuant to paragraph 2(A)) or DSIC (pursuant to paragraph 2(B)) pending the County's receipt of both such payments. If County does not timely receive payments from BOTH Tetra Tech and DSIC, County shall elect either to: (i) release (pursuant to paragraph 3) and dismiss (pursuant to paragraph 2(d)) the compliant/paying party and retain its claims against the defaulting party; or (ii) return all funds received from the compliant/paying party and declare the Agreement null and void.
5. **Default:** In the event of a default of any of the covenants and conditions set forth herein, any provision as to release of the defaulting party is null and void.
6. **Binding Effect:** The undersigned represent that they have been empowered by the respective parties to enter into, on behalf of the Parties, and to bind the Parties to the commitments and undertakings contained herein. The provisions, conditions, terms, and covenants contained herein shall be of a binding effect. The benefits, advantages hereof shall inure to the respective parties, and the respective successors, assigns, trustees, receivers, and personal representatives of the parties hereto.

7. **Reservation of Rights as Between Surety and Contractor.** This Agreement shall in no way alter, affect, impair or prejudice any rights, claims, causes of action or defenses, between Surety and Contractor (or its indemnitors) relating to the Contract, Performance Bond, Indemnity Agreement, and/or or other agreements between such parties, regardless of whether such claims arise under contract, by statute or at common law.
8. **Full Disclosure:** The Parties are releasing certain rights and assuming certain duties and obligations which, but for this Agreement, would not have been released or assumed. Accordingly, this Agreement is fully and adequately supported by consideration and is fair and reasonable, that the Parties have had the opportunity to consult with and have in fact consulted with such experts of their choice as they may have desired, and that they have had the opportunity to discuss this matter with counsel of their choice.
9. **Venue:** This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any controversies or legal problems arising out of this Agreement and any action involving the enforcement or interpretation of any rights hereunder shall be submitted to the jurisdiction of the State courts of the Seventeenth Judicial Circuit of Broward County, Florida, the venue situs. To encourage prompt and equitable resolution of any litigation that may arise hereunder, each party hereby waives any rights it may have to a trial by jury of any such litigation.
10. **Severability:** If any part, term or provision of this Agreement is determined by the courts to be invalid, illegal or in conflict with any law of the State, the validity of the remaining portions or provisions shall not be affected thereby.
11. **Merger:** This document 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 Agreement that are not contained in this 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.
12. **Joint Preparation:** The Parties have sought (or have had the opportunity to seek) and received whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this Agreement has been their joint effort. The language agreed to expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.

13. **Counterparts:** This Agreement may be executed in any number of counterparts, each of which, when executed and delivered, shall be an original, but such counterparts shall together constitute one and the same instrument.
14. **Captions:** The captions of the sections of this Agreement are for convenient reference only, and shall not affect the construction or interpretation of any of the terms and provisions set forth herein.
15. **Further Assurance:** The Parties shall execute all such further instruments, and take all such further actions that may be reasonably required by any party to fully effectuate the terms and provisions of this Agreement and the transactions contemplated herein.
16. **Modification:** No change or modification of this Agreement shall be valid unless in writing and signed by all parties hereto. No waiver of any of the provisions of this Agreement shall be valid unless in writing and signed by the party against whom it is sought to be enforced.
17. **Survival of Provisions:** All covenants, warranties, and representations contained in this Agreement, and all documents to be delivered by the Parties in connection with the consummation of the transaction contained herein, shall survive the consummation of said transaction.
18. **Subject to Approval:** This Agreement is entered subject to approval of the Broward County Board of County Commissioners (the "Board"). Staff has recommended approval of this Agreement to the Board.

[SPACE LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the parties hereto have made and executed this 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 \_\_\_\_\_, 20\_\_\_\_, and Tetra Tech and OSIC, signing by and through its Vice President, <sup>their</sup> 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  
Governmental Center, Suite 423  
115 South Andrews Avenue  
Fort Lauderdale, Florida 33301  
Telephone: (954) 357-7600  
Telecopier: (954) 357-7641

By Angela Benjamin 10/5/17  
Angela F. Benjamin Date  
Assistant County Attorney  
Michael J. Kerr 10/6/17  
Michael J. Kerr Date  
Deputy County Attorney

SETTLEMENT AGREEMENT BETWEEN BROWARD COUNTY, WILLIAMS HATFIELD & STONER, INC. N/K/A TETRA TECH, INC. AND DEVELOPERS SURETY AND INDEMNITY COMPANY

**CONSULTANT**

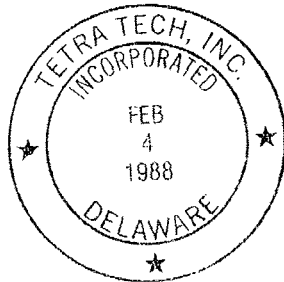
ATTEST:

(WILLIAMS HATFIELD & STONER, INC., N/K/A TETRA TECH, INC.)

Steph Anulis For Janice Salin  
(Secretary)

By William H. Brownlie  
(Signature)

(Corporate Seal)



William H. Brownlie, Sr. VP  
(Type Name & Title Signed Above)

27 day of September, 2017.

**SURETY**

ATTEST:

(DEVELOPERS SURETY AND INDEMNITY COMPANY)

\_\_\_\_\_  
(Secretary)

By \_\_\_\_\_  
(Signature)

(Corporate Seal)

\_\_\_\_\_  
(Type Name & Title Signed Above)

\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

SETTLEMENT AGREEMENT BETWEEN BROWARD COUNTY, WILLIAMS HATFIELD & STONER, INC. N/K/A TETRA TECH, INC. AND DEVELOPERS SURETY AND INDEMNITY COMPANY

CONSULTANT

ATTEST:

(WILLIAMS HATFIELD & STONER, INC., N/K/A TETRA TECH, INC.)

\_\_\_\_\_  
(Secretary)

By \_\_\_\_\_  
(Signature)

(Corporate Seal)

\_\_\_\_\_  
(Type Name & Title Signed Above)

\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

SURETY

ATTEST:

(DEVELOPERS SURETY AND INDEMNITY COMPANY)

*Kathy Reed*  
\_\_\_\_\_  
(Secretary)

By *Laurie Svitenko*  
\_\_\_\_\_  
(Signature)

Laurie Svitenko  
Vice President, Surety Claims

(Corporate Seal)

\_\_\_\_\_  
(Type Name & Title Signed Above)

3<sup>rd</sup> day of October, 20 17.