

**SETTLEMENT AGREEMENT**

This Settlement Agreement (the "Agreement") by and between Broward County, a political subdivision of the State of Florida (the "County"), and Bond Safeguard Insurance Company, a foreign corporation ("Bond Safeguard") (collectively, the "Parties") is entered into and effective as of the date the Agreement is fully executed by the Parties (the "Effective Date").

**Recitals**

A. The County and Southeast Underground Utilities Corporation ("SUU") entered into a contract, approved by the Broward County Board of County Commissioners (the "Board") on December 12, 2006, Bid/Contract No. N406140B2 (the "Construction Contract"), pursuant to which SUU installed signalization and street lights and performed various traffic signal repairs throughout Broward County, and which, according to the County, was subsequently expanded to provide for SUU's installation of fiber optic cable, conduits, and mast arms throughout the County (collectively, the "Project").

B. In accordance with the Construction Contract, SUU obtained and provided the County with a performance bond issued by Bond Safeguard (Bond No. 5020937) that bound SUU and Bond Safeguard to the County for the performance of the Construction Contract (the "Performance Bond").

C. After the term of the Construction Contract expired, the County claimed that SUU had overbilled the County for its work on the Project and that some of said work was defective. The County subsequently filed a lawsuit against SUU in the 17th Judicial Circuit of Florida (Case No. 11-17986), alleging that SUU's overbilling and defective work on the Project constituted a breach of the Construction Contract. The County obtained a default judgment against SUU for those claims on June 3, 2013.

D. Thereafter, based on damages resulting from SUU's overbilling and defective work on the Project, the County filed a lawsuit against Bond Safeguard in the 17th Judicial Circuit of Florida (Case No. 14-000663 (14)) for the full amount of the Performance Bond, which equals Two Million Two Hundred Eighteen Thousand Four Hundred Ninety-four Dollars (\$2,218,494), alleging that Bond Safeguard defaulted on its obligations thereunder (the "Bond Safeguard Lawsuit").

E. The Parties have engaged in considerable negotiations and discussions in an effort to amicably resolve all claims and matters that the County has raised against Bond Safeguard arising out of, and/or relating to, the Performance Bond and the Project.

F. The Parties desire to cooperate fully in arriving at an equitable settlement and to reduce their negotiations and discussions 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:

1. **Representations:** The foregoing recitals are true and correct.
2. **Terms of Settlement:** The Parties covenant and agree as follows:
  - A. Bond Safeguard shall pay Three Hundred Seventy-five Thousand Dollars (\$375,000) to the County, in full and final satisfaction of all matters addressed by this Agreement and the Bond Safeguard Lawsuit, within thirty (30) days after the date the Board approves this Agreement.
  - B. 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 be used in future litigation.
  - C. As part of the settlement, the Parties agree to waive any and all disputes arising from and/or relating to the Performance Bond, the Project, and the Bond Safeguard Lawsuit.
  - D. Upon payment of the settlement amount in full, the Parties shall file in the Bond Safeguard Lawsuit a stipulation of dismissal of all the County's claims with prejudice, which will provide that each party shall bear its own attorney's fees and costs.
  - E. The Parties shall each bear their own respective attorney's fees and costs relating to the Bond Safeguard Lawsuit.
3. **No Admission of Fault:** By entering into this Agreement, neither party admits fault, but rather the Parties have agreed to the terms of this Agreement as a compromise of disputed claims in the interest of avoiding the costs and uncertainty of ongoing negotiations and litigation.
4. **Mutual Final Releases:** The Parties do respectively withdraw all claims and further release each other, and all of their officers, employees, or agents, from all claims, demands, damages, causes of action, actions, insurance coverage, indemnification, bad faith, defense and litigation costs, including attorney's fees, and losses of every kind and nature, whether known or unknown, arising out of and/or related to the Performance Bond and the Project, whether or not raised in the Bond Safeguard Lawsuit. Further, the Parties mutually release and forever discharge each other, and all of their officers, employees, or agents, 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 commencing, causing, or permitting to be prosecuted any claim or action in law or in equity against the other or any of them arising out of and/or related to the Performance Bond and the Project.

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, and attorney's fees and costs to enforce this 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, 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 and advantages hereof shall inure to the respective Parties, and the respective successors, assigns, trustees, receivers, and personal representatives of the Parties hereto.
7. **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, the Parties agree that 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.
8. **Governing Law and 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.**
9. **Severability:** The Parties acknowledge and agree that if any part, term, or provision of this Agreement is determined by a court of competent jurisdiction to be invalid, illegal, or in conflict with the law of the State of Florida, such provision shall be severed from the Agreement and the validity of the remaining portions or provisions shall not be affected thereby.



10. **Merger:** This 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 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.
11. **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 acknowledge that the preparation of this Agreement has been their joint effort. The Parties further acknowledge that the language agreed to expresses their mutual intent and that the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.
12. **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.
13. **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.
14. **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.
15. **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.
16. **Survival of Provisions:** All covenants, warranties, and representations contained in this Agreement shall survive the termination of this Agreement.

[This space is intentionally left blank.]

IN WITNESS WHEREOF, the Parties 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 \_\_\_\_\_, 2019, and Bond Safeguard Insurance Company, signing by and through its senior vice president, duly authorized to execute same.

**COUNTY**


ATTEST:

BROWARD COUNTY, by and through its Board of County Commissioners

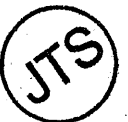
\_\_\_\_\_  
Broward County Administrator, as  
Clerk of the Broward County  
Board of County Commissioners

By \_\_\_\_\_  
Mayor  
\_\_\_\_ day of \_\_\_\_\_, 2019.

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  05/17/19  
Keoki M. Baron Date  
Assistant County Attorney

By  5/17/19  
Michael J. Kerr Date  
Deputy County Attorney



SETTLEMENT AGREEMENT BETWEEN BROWARD COUNTY AND BOND SAFEGUARD INSURANCE COMPANY

BOND SAFEGUARD

ATTEST:

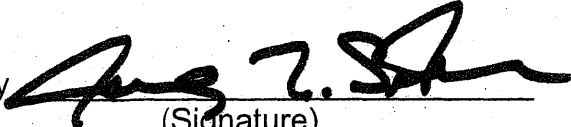
Bond Safeguard Insurance Company

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

Executive Assistant

Maureen K. Aye



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

Jeremy T. Sentman, Senior Vice President

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

7th day of May, 2019.

KMB/tb  
04/03/19  
Bond Safeguard Settlement  
426608

