

**VILLAGE OF ROYAL PALM BEACH**  
Agenda Item Summary

**AGENDA ITEM:**

Approval and authorization for the Village Manager to execute Final Payment Application No. 17 with Anatom Construction Company for the Cultural Center Expansion and Improvements Project (PR1617 and PR1725) in the amount One Hundred Thirty-Seven Thousand and Five Hundred Dollars (\$137,500.00).

**ISSUE:**

Subject to the Village Council's approval, the Village of Royal Palm Beach and Anatom Construction Company have agreed to resolve all claims arising from the Cultural Center expansion and renovation project based on the following terms:

- Both parties agree to a full and final payment of \$137,500.00, which will be made to Anatom within 30 days after Village Council approval.
- Anatom agrees to use its best efforts to settle all claims by lienors under direct contract with Anatom within 60 days after it receives final payment from the Village, or Anatom agrees to indemnify and defend the Village against any and all such claims. Anatom also agrees to not sue any of the design professionals who performed services on the project given that the Village does not want to be joined in any later litigation arising from the project.
- Anatom agrees to deliver 6 LED lights to the Village within 14 days after Village Council approval. These LED lights are needed for warranty work at the Cultural Center.
- Anatom agrees to deliver copies of all documentation in its possession regarding Royal Contract Lighting ("RCL") and the decorative light fixtures within 14 days after Village Council approval.
- Anatom agrees to assign its contract with RCL for the decorative light fixtures to the Village within 14 days after Village Council approval. Anatom has represented and warranted to the Village that it has not received any refunds of its \$30,000.00 deposit from RCL to date, that its contract with RCL is in full force and effect, and that it will not do anything to interfere with the Village's right to take over the contract with RCL. These representations have been made material to the Settlement Agreement meaning any breach will be treated as a breach of the settlement.
- Both parties agree to exchange mutual general releases within 10 days after Anatom notifies the Village in writing that all lienors under direct contract with Anatom have been paid in full, if any, but not later than 60 days after the Village makes final payment. The release will not excuse Anatom from its representations and warranties regarding RCL, or its agreement to indemnify the Village with respect to any unpaid subcontractors. Additionally, the Surety will be added as a releasee to the mutual general release if Anatom swears in writing that all lienors under direct contract with it have been paid in full.

**RECOMMENDED ACTION:**

Staff recommends a motion to approve.

---

Initiator:	Village Manager	Agenda	Village Council
	Approval:	Date:	Action:
Village Engineer	Yes	11/21/19	Approve

---

## SETTLEMENT AGREEMENT

Subject to the necessary and proper approval by the Village Council (“The Council”) for The Village of Royal Palm Beach, Florida (“The Village”), the undersigned party representatives, having attended confidential mediation on November 13, 2019 to discuss settlement of the claims relating to the Cultural Center Expansion and Improvements Project (PR1617 and PR1725), and having agreed to resolve all claims by or between The Village, and Anatom Construction Company (“Anatom”) (collectively, the “Parties”), the Parties agree as follows:

1. The Village agrees to make a final payment to Anatom equal to the sum of One Hundred Thirty-Seven Thousand and Five Hundred Dollars (\$137,500.00), which will be the final payment to Anatom under the construction contract between Anatom and The Village (the “Final Payment”). This Final Payment will be delivered within thirty (30) days after the Village Council approves this Settlement Agreement. The Final Payment will represent full and final settlement of all claims raised or that could have been raised by any of the Parties against each other.

2. Within sixty (60) days after the delivery of the Final Payment to Anatom, Anatom agrees to use its best efforts to settle all claims by lienors under a direct contract with Anatom and to deliver to The Village an amended Contractor’s Final Payment Affidavit swearing that all lienors under a direct contract with Anatom have been paid in full. If Anatom is unable to deliver such amended Final Payment Affidavit, then Anatom agrees to indemnify and defend The Village against any and all claims that may arise from Anatom’s failure to comply with this provision, including but not limited to any claim brought by any of Anatom’s subcontractors, suppliers, or laborers against The Village regarding the subject project. Anatom also agrees to forbear and covenants not to sue any of the design professionals who performed any professional design services for the project; the purpose being that The Village does not want to be joined in any later

litigation arising from the project. Nothing herein modifies or releases Great Midwest Insurance Company (the "Surety") from its obligations under the Public Construction Bond No. GMIC-SB-2381061; except that, should Anatom furnish the Village an amended Contractor's Final Payment Affidavit swearing that all lienors under a direct contract with Anatom have been paid in full, the Surety shall be released from all obligations under the bond, and the Surety shall be added as a releasee under the release provided for below.

3. Anatom further agrees to deliver the six (6) LED lights currently in its possession to The Village within fourteen (14) days after the Village Council approves this Settlement Agreement.

4. Anatom further agrees to deliver copies of all correspondence, checks and other documentation in its possession regarding Royal Contract Lighting and the decorative light fixtures to The Village within fourteen (14) days after the Village Council approves this Settlement Agreement.

5. Anatom further agrees to assign all of its rights, title and interest in its contract with Royal Contract Lighting for the decorative light fixtures to the Village within fourteen (14) days after the Village Council approves this Settlement Agreement. The form of the assignment shall be agreed to by both Parties.

6. Anatom represents and warrants to The Village that it has not received any refunds of its deposit amount from Royal Contract Lighting to date, and represents and warrants that its contract with Royal Contract Lighting is in full force and effect. Anatom shall not take any actions to terminate, cancel or otherwise interfere with its contract with Royal Contract Lighting, or seek a return or refund of its deposit amount, prior to or after the assignment of its contract to The

Village. These are material representations made by Anatom to The Village and have been relied on by The Village in entering into this Settlement Agreement.

7. The Parties further agree to exchange mutual general releases to be prepared and approved by the Parties within ten (10) days of Anatom furnishing the Village an amended Contractor's Final Payment Affidavit swearing that all lienors under a direct contract with Anatom have been paid in full, if any, but no later than sixty (60) days after the delivery of the Final Payment to Anatom.

8. The Parties further agree to execute any and all necessary and further documents to effectuate the Parties' intentions as expressed herein.

9. In addition to the above, the Parties have agreed to waive their respective claims against each other in order to settle this case for the mutual benefit of the Parties. Neither party to this Settlement acknowledges or admits fault and this Settlement should not be construed as such. This Settlement is made in good faith between the Parties to settle their differences amicably and without the prosecution of their claims through the courts or arbitration.

**IT IS EXPRESSLY UNDERSTOOD BY THE SIGNATORIES HERETO THAT THE TERMS OF THIS AGREEMENT ARE SUBJECT TO THE NECESSARY AND PROPER APPROVAL OF THE VILLAGE COUNCIL FOR THE VILLAGE OF ROYAL PALM BEACH, FLORIDA.**

Dated: November 18, 2019

ANATOM CONSTRUCTION COMPANY

By: 

Print Name: LUIS VALDERRAMA

Title: PRESIDENT

VILLAGE OF ROYAL PALM BEACH, FLORIDA

By: \_\_\_\_\_  
Raymond C. Liggins  
Village Manager

## **MUTUAL GENERAL RELEASE**

This Mutual General Release is entered into this \_\_\_ day of \_\_\_\_\_, 2019, by and among The Village of Royal Palm Beach, Florida (“The Village”), and Anatom Construction Company (“Anatom”) (collectively referred to herein as the “Parties”), pertaining to the Cultural Center Expansion and Improvements Project (PR1617 and PR1725) (hereinafter the “Project”).

### **RECITALS**

WHEREAS, The Village is a municipal corporation located in Palm Beach County, duly organized and existing under the laws of the State of Florida;

WHEREAS, in September 2017, Anatom, as general contractor, entered into a lump sum contract with The Village (the “Contract”) wherein Anatom agreed to construct the Project for The Village;

WHEREAS, Anatom asserted claims against The Village and The Village asserted claims against Anatom, all of which related to and arose out of the Project;

WHEREAS, in consideration of the foregoing, the Parties agreed to make the final contract payment to Anatom equal to the sum of One Hundred Thirty-Seven Thousand and Five Hundred Dollars (\$137,500.00), which will be the final payment by The Village to Anatom under the construction contract between Anatom and The Village (the “Final Payment”);

WHEREAS, the Final Payment will represent full and final settlement of all claims raised or that could have been raised by any of the Parties against each other, excepting any and all obligations owed by Anatom relating to warranties and indemnity pursuant to the Parties’ settlement.

NOW, THEREFORE, in consideration of the foregoing, the mutual obligations and releases contained herein and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. The foregoing recitals are true and correct and incorporated herein.
2. Mutual General Release. The Parties hereby forever remise, release, and discharge each other, and each other's officers, directors, shareholders, employees, representatives, managers, agents, and attorneys of and from any and all claims, actions, causes of action, suits, debts, obligations, breaches, damages, violations, sums of money, accounts, reckonings, undertakings, bonds, bills, specialties, covenants, contracts, controversies, agreements, guarantees, indemnifications, promises, liens, variances, trespasses, damages, judgments, taxes, interest, penalties, assessments, extents, executions, expenses, claims, demands and liabilities whatsoever, of every kind and nature, whether known or unknown, direct or consequential, foreseen or unforeseen, which the Parties ever had, now have, or hold from the beginning of the world up through the date of this Release, which arise out of or relate to the Project, excepting all obligations of Anatom under the Settlement Agreement dated \_\_\_\_\_, 2019.
3. No Admission. The signing and delivery of this Mutual General Release are not to be considered as an admission of fault or liability on the part of any Party hereto.
4. Authority. The Parties represent and warrant that they are authorized to execute this Mutual General Release pursuant to actual authority. We further represent that we have read and understand this writing and have consulted with our individual counsel prior to executing this document.

ANATOM CONSTRUCTION COMPANY

VILLAGE OF ROYAL PALM BEACH,  
FLORIDA

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_

Raymond C. Liggins  
Village Manager