

**CITY OF MARATHON, FLORIDA  
RESOLUTION 2014-148**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING THE SETTLEMENT OF THE LITIGATION STYLED GLOBETEC CONSTRUCTION, LLC VS. CITY OF MARATHON, THE WEILER ENGINEERING CORPORATION, AND EDWARD CASTLE., CASE NO. 2012-CA-9-M PENDING IN THE SIXTEENTH JUDICIAL CIRCUIT; AUTHORIZING THE APPROPRIATE CITY OFFICIALS TO EXECUTE THE STIPULATED SETTLEMENT AGREEMENT AND ANY ADDITIONAL DOCUMENTS RELATED TO THE SETTLEMENT; AUTHORIZING THE APPROPRIATE CITY OFFICIALS TO TAKE ALL ACTIONS NECESSARY TO IMPLEMENT THE TERMS AND CONDITIONS OF THE SETTLEMENT AGREEMENT; TO EXECUTE AND FILE ALL REQUIRED DOCUMENTS WITH THE COURT TO CONCLUDE THE LITIGATION; AND PROVIDING FOR AN EFFECTIVE DATE**

**WHEREAS**, Globetec Construction LLC ( the “Plaintiff”) filed litigation against the City of Marathon, Florida (the “City”), Weiler Engineering Corporation and Ed Castle (collectively the “Defendants”) in Case No. 2012-CA-9-M, pending in the 16<sup>th</sup> Judicial Circuit (the “Litigation”); and;

**WHEREAS**, the Council approved the attached stipulated settlement agreement by motion on October 21, 2014 when the their executive shade session concluded; and

**WHEREAS**, the City and the Defendants desire to avoid the expense and delay of continued litigation and desire to resolve the Litigation on an amicable basis, subject to certain terms and conditions set forth within the Stipulated Settlement Agreement attached hereto; and

**WHEREAS**, the Circuit Court of the 16<sup>th</sup> Circuit in and for Monroe County has issued an order of dismissal with prejudice, and each party is to bear its own costs and attorney’s fees.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THAT:**

**Section 1.** The above recitals are true and correct and incorporated herein.

**Section 2.** The Stipulated Settlement Agreement between the City and the Defendants, a copy of which is attached as Exhibit “A,” is hereby approved. The appropriate City officials, including the Mayor, City Manager or designee, and City Attorney are authorized to execute and deliver all documents and take all actions necessary to implement the terms and conditions of the Stipulated Settlement Agreement.

**Section 3.** This resolution shall take effect immediately upon its adoption.

**PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 16<sup>TH</sup> DAY OF DECEMBER, 2014.**

**THE CITY OF MARATHON, FLORIDA**

  
\_\_\_\_\_  
**Mayor Chris Bull**

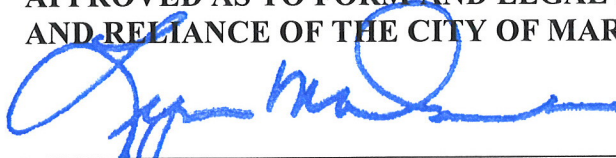
AYES: Keating, Kelly, Senmartin, Zieg, Bull  
NOES: None  
ABSENT: None  
ABSTAIN: None

**ATTEST:**

  
\_\_\_\_\_  
Diane Clavier, City Clerk

(City Seal)

**APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE AND RELIANCE OF THE CITY OF MARATHON, FLORIDA ONLY:**

  
\_\_\_\_\_  
Lynn M. Dannheisser, City Attorney



IN THE CIRCUIT COURT OF THE 6<sup>TH</sup> JUDICIAL CIRCUIT  
IN AND FOR MONROE COUNTY, FLORIDA

GLOBTEC CONSTRUCTION, LLC,

CASE NO. 2012-CA-9-M

Plaintiff,

v.

CITY OF MARATHON, a political subdivision  
of the State of Florida, THE WEILER  
ENGINEERING CORPORATION, and  
EDWARD CASTLE, an individual,

Defendants.

MEDIATED SETTLEMENT AGREEMENT

THIS MEDIATION SETTLEMENT AGREEMENT, dated October 8, 2014, was made and entered into by and between GLOBTEC CONSTRUCTION, LLC., ("Plaintiff"), and CITY OF MARATHON ("MARATHON"); THE WEILER ENGINEERING CORPORATION and EDWARD CASTLE (collectively referred to as "WEILER") (MARATHON AND WEILER collectively referred to as "Defendants").

PURPOSE

The parties to this Settlement Agreement (the "Agreement") acknowledge that the purpose of this Agreement is to memorialize the resolution of all disputes of whatever nature asserted by and between the parties arising out of or relating to litigation styled above.

AGREEMENT

Plaintiff and Defendants agree as follows:

1. **SETTLEMENT SUM.** Defendants agrees to pay to Plaintiff within thirty (30) days from the date of the City Council for the City of Marathon's formal approval of this Agreement, and no later than November 30, 2014, the sum of Three Million Dollars (\$3,000,000.00) (the "Settlement Sum") as follows:

MARATHON to pay Plaintiff the sum of	\$ 2,350,000.00
WEILER to pay Plaintiff the sum of	\$ 650,000.00

as full and final settlement of all claims raised or that could have been raised by Plaintiff in the lawsuit that is the subject of this Agreement, pending Council approval by the City of Marathon.. The Settlement Sum shall be made payable to "Perencik Libanoff Brandt, et al., Trust Account", counsel for Plaintiff, by check or wire transfer.

2. **PAYMENT DEFAULT.** In the event of a default of payment of the above Settlement Sum by either Defendant, upon the expiration of a further five (5) day grace period along with written

notice of default provided to counsel for the defaulting Defendant, Plaintiff shall thereafter file a Motion for Entry of Default Judgment with the Court, together with a Notice of Hearing to Counsel for the defaulting Defendant, and thereafter with an Affidavit of Non-payment filed with such Motion, signed and notarized by Plaintiff, obtain a Final Judgment only against the defaulting Defendant, with credits given for any partial payments made, along with fees and costs incurred only related directly to such default proceedings.

3. ATTORNEY'S FEES and MEDIATOR COSTS. Other than in the event of a default under Paragraph (2), all parties are to bear their own attorneys' fees and costs incurred in this Action and equally share the cost of the mediator (1/3 share each party).

4. RELEASE. Other than with respect to the payment obligations contained herein, the parties do, as to one another (including any and all insurers of any party), release each other from any and all claims, demands, and damages, whether arising out of law or equity, and whether previously asserted or unasserted, known or unknown, arising out of or relating to Plaintiff's claims against the Defendants in the lawsuit that is the subject of this Agreement. In consideration of the Settlement Payment described in paragraph 1 above, and the other covenants and conditions set forth herein, Plaintiff hereby releases and forever discharges all Defendants and all of their individual officers, directors, principals, employees, affiliates, and independent contractors, and elected and appointed officials, and all of their sureties and insurers and attorneys, and anyone claiming by, through or for any or all of them, of and from any and all claims or causes of action which were included in the Litigation or which could have been included in the Litigation, whether asserted or not asserted, whether intent or patent, or arising out of (i) the design and/or construction administration services provided by WEILER and (ii) the contract between Plaintiff and MARATHON. In consideration of the other covenants and conditions set forth herein, Defendants hereby release and forever discharge Plaintiff and all of its individual officers, directors, principals, employees, affiliates, and independent contractors, and all of its sureties and insurers and attorneys, and anyone claiming by, through or for any or all of them, of and from any and all claims or causes of action, and defenses which were included in the Litigation or which could have been included in the Litigation, whether asserted or not asserted, or arising out of the contract between Plaintiff and MARATHON.

5. MARATHON waives and releases WEILER for any claim for contribution or indemnity, contractual or common law, arising out of Plaintiff's claims in this lawsuit or this Agreement. WEILER releases MARATHON for any and all claims for additional compensation pursuant to its professional services agreement(s) with MARATHON relating to the MARATHON Wastewater and Stormwater Project. WEILER does not release MARATHON from compensation due under still open work authorizations issued by the City to Weiler pursuant to the Wastewater and Stormwater Project Professional Services Agreement entered into by the City and Weiler.

6. AGREEMENT COMPROMISES DISPUTED CLAIMS. This Agreement is made and entered by the parties as a compromise of disputed claims between them. None of this Agreement, the payment provided by it, nor any document, pleading or paper prepared and signed pursuant to the provisions of this Agreement shall constitute or be construed or asserted as an admission of liability on the part of any party. The parties expressly acknowledge and agree that all claims asserted or unasserted between them have been fully and amicably resolved. However, to the extent that Weiler Engineering Corporation and/or Edward Castle default in their obligation to make payment in the amount of \$650,000.00 as set forth above thereby necessitating the enforcement of this Agreement pursuant to paragraph 1 above, Weiler Engineering Corporation and Edward Castle hereby admit to liability for all claims of professional negligence as asserted by Plaintiff to the extent of the settlement amount and for purposes of any Final Judgment entered against Weiler Engineering and Edward Castle herein.

7. GOVERNING LAW. This Agreement shall be governed and construed in accordance with the laws of the State of Florida.

8. JURISDICTION AND VENUE. Any and all legal actions arising from or relating to this Agreement shall be commenced in the Court of this action. The Court shall reserve jurisdiction solely to enforce the terms of this Agreement.

9. DRAFTING OF THE AGREEMENT. The parties participated in the drafting of this Agreement and/or had it reviewed by competent counsel. Accordingly, no presumption shall be given in favor of, or against, any party in interpreting this Agreement and the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

10. SEVERABILITY. If any provision of this Agreement is found to be unenforceable, the remaining provisions hereof shall nevertheless be carried into effect.

11. ENTIRE AGREEMENT. This Agreement constitutes the entire agreement and understanding of the parties hereto, supersedes any prior agreement between the parties, whether written or oral, and may not be changed, altered or modified except in writing and executed by the parties hereto. Each party acknowledges that no representation, inducement, promises or agreements, orally or otherwise, was made by any party, or anyone acting on behalf of any party, unless such representation, inducement, promises or agreements are embodied in this Agreement.

12. REPRESENTATION BY COUNSEL. Each party was represented by independent counsel in this matter or had the opportunity to consult with independent counsel. Furthermore, the parties obtained advice from said counsel concerning the meaning, scope and effect of this Agreement, or voluntarily waived such an opportunity.



13. AUTHORIZATION AND AUTHORITY. Each party represents and warrants to the other that: (a) it is duly authorized and competent to execute this Agreement, (b) it has all necessary corporate power and authority to enter into this Agreement and to perform the agreements contained in this Agreement, and (c) the person signing this Agreement on behalf of such party is authorized to execute and deliver this Agreement on behalf of such party. Notwithstanding any provision of this Paragraph, this Agreement is subject to the approval of the City Council of the City of Marathon. The Agreement will be presented to the Council for approval on or before October 28, 2014.

14. SECTION HEADINGS. The section headings contained in this Agreement are descriptive only and shall not be used to interpret, expand, modify, explain or limit any of the provisions of this Agreement.

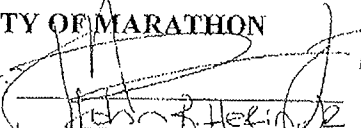
15. DISMISSAL OF ACTION. Upon the timely receipt and clearance of payments due pursuant to Paragraph 1 above, counsel for Plaintiff and non-defaulting Defendant(s) shall thereupon file their Joint Notice of Voluntary Dismissal with prejudice, with each party to bear its respective attorneys' fees and costs.

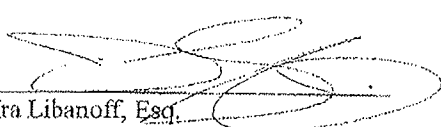
AGREED AND CONSENTED TO this 8th day of October, 2014.

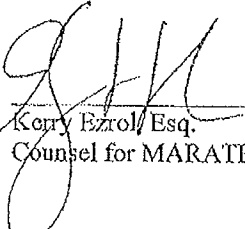
GLOBTEC CONSTRUCTION, LLC

BY:   
ALGE CARSTENS  
Its PIPELINE DIVISION MANAGER. 

CITY OF MARATHON

BY:   
John R. Helmer  
Its City Attorney

  
Ira Libanoff, Esq.  
Counsel for GLOBTEC

  
Kerry Ezrol, Esq.  
Counsel for MARATHON

THE WEILER ENGINEERING  
CORPORATION

BY: Edward Castle

Its VICE PRESIDENT

Edward Castle  
EDWARD CASTLE, Individually

Thomas Dillon, Esq.  
Brian W. Bennett, Esq.  
Counsel for WEILER

5/1/84

IN THE CIRCUIT COURT OF THE 6<sup>TH</sup> JUDICIAL CIRCUIT  
IN AND FOR MONROE COUNTY, FLORIDA

GLOBTEC CONSTRUCTION, LLC,

CASE NO. 2012-CA-9-M

Plaintiff,

v.

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EDWARD CASTLE, an individual,

Defendants.

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WEILER to pay Plaintiff the sum of	\$ 650,000.00

as full and final settlement of all claims raised or that could have been raised by Plaintiff in the lawsuit that is the subject of this Agreement, pending Council approval by the City of Marathon.. The Settlement Sum shall be made payable to "Ferencik Libanoff Brandt, et al., Trust Account", counsel for Plaintiff, by check or wire transfer.

2. PAYMENT DEFAULT. In the event of a default of payment of the above Settlement Sum by either Defendant, upon the expiration of a further five (5) day grace period along with written



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AGREED AND CONSENTED TO this 8th day of October, 2014.

**GLOBTEC CONSTRUCTION, LLC**

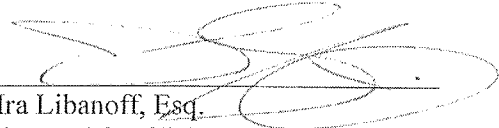
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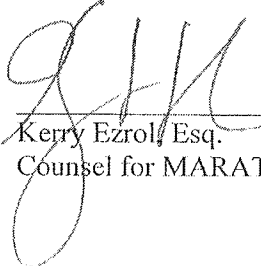
Its ALGE CARSTÉN  
PIPELINE DIVISION MANAGER. 

**CITY OF MARATHON**

BY: 

Its John R. Helmer  
Asst. City Attorney

  
Ira Libanoff, Esq.  
Counsel for GLOBTEC

  
Kerry Ezrol, Esq.  
Counsel for MARATHON

THE WEILER ENGINEERING  
CORPORATION

BY: Edward Castle

Its VICE PRESIDENT

Edward Castle

EDWARD CASTLE, Individually

Brian W. Bennett

Thomas Dillon, Esq.  
Brian W. Bennett, Esq.  
Counsel for WEILER

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BWB

IN THE CIRCUIT COURT OF THE SIXTEENTH JUDICIAL CIRCUIT  
IN AND FOR MONROE COUNTY, FLORIDA

CASE NO.: 2012-CA-129-M

GLOBETEC CONSTRUCTION, LLC,

Plaintiff,

v.

CITY OF MARATHON,  
a political subdivision of the State of Florida,  
THE WEILER ENGINEERING  
CORPORATION, and EDWARD CASTLE,  
an individual,

Defendants.

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**ORDER OF DISMISSAL WITH PREJUDICE**

THIS CAUSE, having come before the Court upon the foregoing Stipulation for Dismissal with Prejudice, and after reviewing same, and being otherwise duly advised, it is hereby

ORDERED AND ADJUDGED as follows:

1. That the foregoing Stipulation for Dismissal with Prejudice is hereby approved and adopted as an Order of this Court.
2. This case is dismissed with prejudice, each party to bear its own costs and attorney's fees.

November 20, 2014

*Ruth Becker*

*bs*  
\_\_\_\_\_  
THE HONORABLE RUTH BECKER  
CIRCUIT COURT JUDGE

Copies to:

cc: Ira Libanoff, Esquire - [ilibanoff@flblawyers.com](mailto:ilibanoff@flblawyers.com)  
Kerry Ezrol, Esquire - [kezrol@cityatty.com](mailto:kezrol@cityatty.com)  
Brian W. Bennett, Esquire - [bbennett@floridalawonline.com](mailto:bbennett@floridalawonline.com)

NOV 24 2014