

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

THIS SETTLEMENT AGREEMENT AND MUTUAL RELEASE (“Agreement and Release”) is entered into and made on the date when it has been executed by the last of the parties to sign it, by and between the **Florida Department of Transportation**, an agency of the State of Florida (“FDOT”) and the **City of Lake Worth Beach**, a Florida municipal corporation (“City”).

RECITALS:

WHEREAS, on September 1, 2020, a City driven garbage truck with its back raised hit the I-95 bridge overpass while driving along 12th Avenue South within the City of Lake Worth Beach; and

WHEREAS, the I-95 bridge overpass sustained substantial damage; and

WHEREAS, FDOT had the damage repaired which cost FDOT Six Hundred Seventy-Eight Thousand, Four Hundred Eighty-Eight and .86/100 Dollars (\$678,488.86); and

WHEREAS, FDOT submitted a claim to the City for FDOT’s repair costs to fix the damaged bridge overpass (“Claim”); and

WHEREAS, the City and FDOT, without admitting any liability or fault, desire to settle the Claim including any and all disputes or causes of action that arise from, relate or refer in any way, whether directly or indirectly, to the Claim; and

WHEREAS, the City and FDOT acknowledge the limited waiver of sovereign immunity in section 768.28, Florida Statutes, which limits the City’s damages for a negligent act to Two Hundred Thousand Dollars (\$200,000); and

WHEREAS, the City and FDOT desire to reduce their settlement to a writing so that it shall be binding upon them as well as their respective officials, officers, employees, agents, attorneys, representatives, insurers, successors, assigns, heirs, grantees, and affiliates; and,

WHEREAS, the City and FDOT have determined that entering this Agreement and Release is in the best interests of each agency and serves a valid public purpose.

NOW, THEREFORE, in consideration of the mutual covenants, promises and consideration set forth in this Agreement and Release, and with the intent to be legally bound, the City and FDOT agree as follows:

1. The foregoing recitals are incorporated into this Agreement and Release as true and correct statements as if set forth herein in their entirety.
2. The City will present this Agreement and Release to the City of Lake Worth Beach City Commission in a public meeting. If approved, the City will provide an executed copy to FDOT.
3. If FDOT approves this Agreement and Release, FDOT will provide a fully executed copy of this Settlement and Release to the City.

4. The City will within 30 days of its receipt of the fully executed Agreement and Release from FDOT, pay FDOT Two Hundred Thousand Dollars (\$200,000), which is the statutory cap under the limited waiver of sovereign immunity set forth in section 768.28, Florida Statutes.

5. Each party agrees to bear its own fees and costs arising from and in connection with the Claim and this Agreement and Release.

6. In consideration of the City's and FDOT's resolution of the Claim, and for other good and valuable consideration as enumerated in this Agreement and Release, the receipt and adequacy of which is hereby acknowledged, the City and FDOT, on behalf of themselves, as well as on behalf of their officials, officers, employees, agents, attorneys, representatives, insurers, successors, assigns, heirs, grantees, and affiliates hereby expressly release and forever discharge among themselves and each other, as well as their officials, officers, employees, agents, attorneys, representatives, insurers, successors, assigns, heirs, grantees, and affiliates from any and all claims, demands, causes of actions, damages, costs, attorney's fees, expenses and obligations of any kind or nature whatsoever that they have asserted or could have asserted against any other of them that arise from or relate to or refer to in any way to the damage to the I-95 bridge overpass and the Claim, whether directly or indirectly.

7. The City and FDOT acknowledge that they have read and fully understand all of the provisions contained in this Agreement and Release. Both parties each further acknowledge and affirm that they are able to understand this Agreement and Release in its entirety, and that this Agreement and Release is being entered and executed by both of them hereto knowingly and voluntarily of their own free act and deed.

8. This Agreement and Release constitutes the entire agreement and understanding between the parties. No statement, remark, agreement, or understanding, oral or written, which is not contained in this Agreement and Release shall be recognized or enforced.

9. The City and FDOT acknowledge and agree that this Agreement and Release is intended to and shall be binding upon their respective officials, officers, employees, agents, attorneys, representatives, insurers, successors, assigns, heirs, grantees, and affiliates.

10. The City and FDOT recognize and acknowledge that this Agreement and Release memorializes and states a settlement of the Claim and nothing in this Agreement and Release shall be construed to be an admission of any kind, whether of fault, liability, or of a particular policy or procedure, on the part of the City or FDOT.

11. The City and FDOT acknowledge and agree that this Agreement and Release is the product of mutual negotiation and no doubtful or ambiguous language or provision in this Agreement and Release is to be construed against any party based upon a claim that the party drafted the ambiguous provision or language or that the party was intended to be benefited by the ambiguous provision or language.

12. This Agreement and Release may be amended only by a written instrument specifically referring to this Agreement and Release and executed with the same formalities as this Agreement and Release.

13. In the event of an alleged breach of this Agreement and Release, the City and FDOT agree that all underlying causes of action or claims of the City and FDOT have been mutually extinguished, among and between each of them, by this Agreement and Release and that the sole remedy for breach of this Agreement and Release shall be for specific performance of its terms and conditions; or for any damages arising from the breach. In this regard, the City and FDOT further agree that the sole venue for any such action shall be in Palm Beach County, Florida.

14. The laws of the State of Florida shall govern this Agreement and Release.

15. The parties further agree that time is of the essence in all respects regarding this Agreement and Release.

16. The parties agree that this Agreement and Release and any and all other documents in connection with the settlement of this matter may be executed in counterparts, each of which shall be deemed an original but all of which taken together shall constitute but one and the same instrument. Furthermore, the parties agree that an electronic or digital copy of a party's signature shall be deemed the equivalent of an original.

17. Each person signing this Agreement and Release represents and warrants that he or she has fully authority to executed it on behalf of himself or herself, or on behalf of the entity on whose behalf he or she signs.

18. There are no third party beneficiaries to this Agreement and Release.

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Signature Page Follows

IN WITNESS WHEREOF, the City and FDOT have signed and sealed this Settlement Agreement and Mutual Release (I-95 bridge overpass at 12th Avenue South) as set forth below:

ATTEST:

**CITY OF LAKE WORTH BEACH,
a Florida municipal corporation**

By: _____
MELISSA COYNE
City Clerk

By: _____
BETTY RESCH
Mayor

Date: _____

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

APPROVED FOR FINANCIAL
SUFFICIENCY

By: _____
Glen J. Torcivia, City Attorney

By: _____
Bruce T. Miller, Financial Services Director

ATTEST:

**STATE OF FLORIDA DEPARTMENT
OF TRANSPORTATION**

BY: _____
Name:

BY: _____
Name: Paul Lampley
Director of Transportation Operations

Date: _____

Attorney approved as to form:

BY: _____
Name: Dawn Raduano, Esq.