

RESOLUTION NO. 2024-3296

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, APPROVING A SETTLEMENT AGREEMENT IN THE MATTER OF SCHNABEL ENGINEERING, LLC vs. KCE STRUCTURAL ENGINEERS, P.C. AND TOWN OF SURFSIDE, FL, CASE, CL 23-7597 IN THE CIRCUIT COURT FOR THE COUNTY OF HENRICO, VIRGINIA; AUTHORIZING THE TOWN MANAGER TO EXECUTE THE SETTLEMENT AGREEMENT; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, on November 20, 2023, Schabel Engineering, LLC (“Plaintiff”) filed its Complaint alleging claims for breach of contract and unjust enrichment (“Action”) against KCE Structural Engineers, P.C. (“KCE”) and the Town of Surfside (“Town”); and

WHEREAS, pursuant to the executive session held on May 14, 2024, the Town Attorney participated in a mediation to settle and resolve the Action; and

WHEREAS, the Town Commission finds that it is in the best interest of the Town to resolve the Action pursuant to the terms of the Settlement Agreement attached hereto as Exhibit “A” (“Agreement”).

NOW THEREFORE, BE IT RESOLVED BY THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, AS FOLLOWS:

Section 1. Recitals. The above recitals are confirmed, adopted, and incorporated herein and made part hereof by reference.

Section 2. Authorization. The Agreement attached hereto as Exhibit “A” is hereby ratified and approved by the Town Commission and the Town Manager and Town Attorney are authorized to take whatever action is necessary to effectuate the terms of this Agreement.

Section 3. Effective Date. This Resolution shall become effective

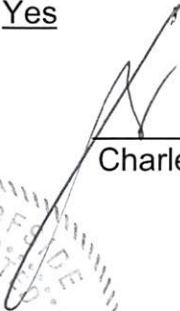
immediately upon adoption.

PASSED AND ADOPTED this 18th day of June, 2024.

Motion By: Commissioner Coto
Second By: Commissioner Vildostegui

FINAL VOTE ON ADOPTION:

Commissioner Ruben A. Coto	<u>Yes</u>
Commissioner Nelly Velasquez	<u>Yes</u>
Commissioner Gerardo Vildostegui	<u>Yes</u>
Vice Mayor Tina Paul	<u>Yes</u>
Mayor Charles W. Burkett	<u>Yes</u>

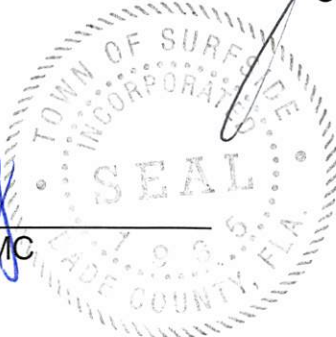


Charles W. Burkett, Mayor

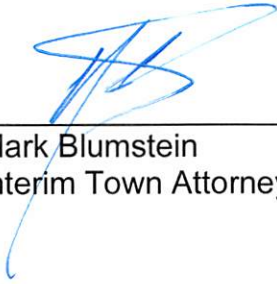
ATTEST:



Sandra N. McCready, MMC
Town Clerk



**APPROVED AS TO FORM AND LEGAL SUFFICIENCY
FOR THE USE AND RELIANCE OF THE TOWN OF SURFSIDE ONLY:**



Mark Blumstein
Interim Town Attorney

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Mutual Release (“Agreement”) is made and entered into as of the 11th day of June, 2024, by and among Schnabel Engineering, LLC (“Schnabel”), KCE Structural Engineers, P.C. (“KCE”), and the Town of Surfside, Florida, a Florida Municipal Corporation (“Surfside”).

RECITALS

A. Schnabel has filed a lawsuit styled *Schnabel Engineering, LLC v. KCE Structural Engineers, P.C. and the Town of Surfside, Florida, a Florida Municipal Corporation*, Civil Action No. CL 23-7597, in the Circuit Court for Henrico County, Virginia (the “Litigation”), against KCE and Surfside alleging breach of contract and unjust enrichment by KCE and Surfside (the “Claims”). KCE and Surfside deny the Claims.

B. The parties desire to resolve the dispute between them and to conclude the Litigation and therefore have determined to enter into this Agreement.

SETTLEMENT TERMS

The parties agree as follows:

1.0 RELEASE AND DISCHARGE

1.1 In consideration of the payment set forth in Section 2.1, the parties hereby completely release and forever discharge one another from any and all past, present, or future claims, demands, obligations, actions, causes of action, rights, damages, costs, attorneys’ fees, loss of services, expenses, and compensation of any nature whatsoever, whether based on a tort, contract, or other theory of recovery, which each now has, or which may hereafter accrue or otherwise be acquired, on account of, or may in any way grow out of, be related to, and/or which are the subject of the Claims.

1.2 This Agreement and discharge shall also apply to the parties’ past, present, and future elected officials, officers, directors, stockholders, attorneys, agents, servants, representatives, employees, employers, beneficiaries, fiduciaries, insurers, and any of their affiliates, including their successors, officers, shareholders, partners, agents, servants, and employees, subsidiaries, affiliates, predecessors, successors in interest, and assigns, and all other persons, firms, or corporations with whom any of the former have been, are now, or may hereafter be affiliated.

1.3 The parties acknowledge and agree that the Agreement and discharge set forth above is a general release. Each party expressly waives and assumes the risks of any and all claims for damages which exist as of this date, but of which each such party does not know or suspect to exist, whether through ignorance, oversight, error, negligence, or otherwise, and which, if known, would materially affect each party’s decision to enter into this Agreement. Schnabel further agrees that Schnabel accepts payment of the sums specified herein as a complete compromise of matters

involving disputed issues of law and fact. Each party assumes the risk that the facts or law may be other than each such party believes. It is understood and agreed to by the parties that this settlement is a compromise of disputed Claims, and the payment is not to be construed as an admission of liability on the part of KCE and/or Surfside, by whom liability is expressly denied.

2.0 PAYMENTS

2.1 In consideration of this Agreement, KCE and Surfside agree to pay to, or for the benefit of, Schnabel the total sum of EIGHTY ONE THOUSAND FIVE HUNDRED DOLLARS (\$81,500.00) (the "Settlement Payment"). The Settlement Payment shall be made, in part by Surfside in the amount of SIXTY EIGHT THOUSAND DOLLARS (\$68,000.00), and, in part by KCE in the amount of THIRTEEN THOUSAND FIVE HUNDRED DOLLARS (\$13,500.00), all due within thirty (30) days of June 11, 2024.

3.0 DISMISSAL OF THE LITIGATION

3.1 Within three (3) business days of Schnabel's receipt of the payment to be made under the Section 2.1 above, Schnabel will cause a fully-endorsed Agreed Final Order dismissing the Litigation with prejudice to be filed with the Court. The order shall be substantially in the form of the sketch of an order appearing in the attached Exhibit 1.

4.0 REPRESENTATION OF COMPREHENSION OF DOCUMENT

4.1 In entering into this Agreement, the parties represent that they have relied upon the advice of their attorneys concerning the legal consequences of this Agreement; that the terms of this Agreement have been completely read and understood by them; and are voluntarily accepted.

5.0 WARRANTY OF CAPACITY TO EXECUTE AGREEMENT

5.1 The parties represent and warrant that no other person or entity has, or has had, any interest in the claims, demands, obligations, or causes of action referred to in this Agreement, except as otherwise set forth herein; that the parties have the sole right and exclusive authority to execute this Agreement; that the parties are the only persons or entities having any legal interest in the Claims and the settlement of the Claims; and that the parties have not sold, assigned, transferred, conveyed, or otherwise disposed of any of the Claims, demands, obligations, or causes of action referred to in this Agreement.

6.0 GOVERNING LAW

6.1 This Agreement shall be construed and interpreted in accordance with the laws of the Commonwealth of Virginia without regard to Virginia's choice-of-law jurisprudence.

7.0 ENTIRE AGREEMENT AND SUCCESSORS IN INTEREST

7.1 This Agreement contains the entire agreement between the parties regarding the matters set forth herein and shall be binding upon and inure to the benefit of the successors and

assigns of each.

8.0 EFFECTIVENESS

8.1 Upon the execution of this Agreement by all parties, the Agreement shall be effective as of June 11, 2024.

9.0 EXECUTION; COPIES AND COUNTERPARTS EQUALLY BINDING

9.1 This Agreement may be executed electronically, including where the electronic signature is accomplished by scanning, and in multiple counterparts, all of which taken together shall constitute one original. A facsimile copy of this Agreement (including signatures) shall be deemed the same as an original for all purposes.

SCHNABEL ENGINEERING, LLC

By: _____

Print Name: _____

Title: _____

Date: _____

KCE STRUCTURAL ENGINEERS, P.C.

By: _____

Print Name: _____

Title: _____

Date: _____

TOWN OF SURFSIDE, FLORIDA, A FLORIDA MUNICIPAL CORPORATION

By: _____

Print Name: _____

Title: _____

Date: _____

ATTEST: _____

Sandra M. McCready, MMC
Town Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

Mark Blumstein
Interim Town Attorney