

## SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Mutual Release (the “*Agreement*”) is made as of the Effective Date, as that term is later defined herein, by and between, Clark County, Nevada (“*Clark County*”) and Clark County Department of Public Works (“*CCDPW*”) (collectively, the “*County*”), and, Ames Construction, Inc. (“*Ames*”) (singularly, a “*Party*,” and collectively, the “*Parties*”), and is made with regard to the following:

### RECITALS

A. A dispute has arisen between the Parties with respect to the following (the “*Dispute*”):

1. In June 2015, the County advertised for bids on a public works project for construction of a portion of the Las Vegas Wash, from Nellis Boulevard to Stewart Avenue, including a pedestrian bridge and walking trail, Bid No. 603740-15 (the “*Project*”).
2. Ames was the low bidder and was awarded the contract for the Project on September 22, 2015 (“The *Contract*”).
3. The Contract required Ames to achieve substantial completion of the Project by September 14, 2016, and contained a clause assessing \$2,000.00 in liquidated damages for each day the Project remained incomplete beyond that date.
4. On January 19, 2016, Ames was given notice to proceed with the Project from the County.
5. Disputes between the County and Ames arose as a result of multiple flood events that occurred during construction. Ames alleges that the bid documents failed to notify and misled bidders regarding flood risks, and the County contends that the bid documents placed bidders on notice of flood risks.
6. After Ames achieved substantial completion of the Project on December 15, 2017, both Parties sought recompense from one another in connection with the flood events and resulting delays. Ames claims the County is responsible for Ames’ cost overruns. The County claims it is entitled to liquidated damages for 162 days of delays that the County alleges are attributable to Ames.
7. After the parties could not resolve their respective claims, Ames filed suit against the County on February 16, 2018, in United States District Court for the District of Nevada, Case No. 2:18-cv-00299-JCM-EJY, claiming approximately \$18,456,782 in financial damages, and unpaid retention in the amount of approximately \$511,006.51 related to flood events. The County filed Counterclaims against Ames on March 16, 2018, seeking \$324,000.00 in liquidated damages under the Contract (the “*Litigation*”).

8. The Clark County Regional Flood Control District (“**CCRFCD**”) is a regional funding and planning agency, which provides funding for flood control projects throughout Clark County that have regional significance. The Project was included on CCRFCD’s Master Plan. Thus, CCRFCD provided funding for the design and construction of the Project. CCRFCD was not a party to the Litigation.

B. The Parties deny any wrongdoing and make no admission of guilt or liability with respect to the Dispute.

C. The Parties desire to avoid the risk, inconvenience and expense of continuing the Litigation and have therefore agreed to fully and fairly settle any and all legal claims between the Parties that arose prior to the Effective Date, whether known or unknown, related to the Dispute, including the claims asserted, or that could have been asserted, by the Parties in the Litigation and/or under any and all other legal theories in any jurisdiction, in accordance with the terms and conditions stated below.

D. The Parties now enter into this Agreement to resolve the Dispute between them, and any and all other disputes and claims that may exist between them related to the Dispute, all on the terms and conditions stated below.

#### **TERMS AND CONDITIONS**

**NOW, THEREFORE**, it is agreed:

1. **Effective Date.** The Effective Date of this Agreement shall be the date this Agreement is approved by the Board of County Commissioners.
2. **Consideration.** The following shall constitute the consideration for this Agreement:
  - a. **Release of Claims.** As consideration for this Agreement, each of the Parties give the mutual promises contained herein, including the Releases contained in Paragraph 3.
  - b. **Payment.** As further consideration for this Agreement, the County shall pay a total of SIX MILLION ELEVEN THOUSAND SIX AND 51/100 DOLLARS (\$6,011,006.51), consisting of FIVE MILLION FIVE HUNDRED THOUSAND AND 00/100 DOLLARS of additional monies (\$5,500,000.00) and FIVE HUNDRED ELEVEN THOUSAND SIX AND 51/100 DOLLARS (\$511,006.51) of unpaid retention to Ames (the “**Payment**”).

The County shall make the Payment no later than 30 days after the Effective Date.

Unless otherwise agreed between the Parties, the County will make the Payment by check, payable to Ames Construction, Inc.

- c. **Stipulated Dismissal.** Within two (2) business days of Ames' bank's receipt of the *Payment*, the parties to the Litigation will execute and submit a Stipulation and Order for Dismissal of the Litigation, on the form attached hereto as **Exhibit A**.
- d. **Lien Release.** Within 2 (two) business days of its bank's receipt of the Payment, Ames will execute an Unconditional Waiver and Release Upon Final Payment in the form prescribed by NRS 108.2457(5)(d) and furnish the same to the County or its counsel of record.
- e. **Release of CCRFCD.** As consideration for this Agreement, CCRFCD will receive the mutual promises and releases contained herein, including the releases contained in Section 3 of this Agreement.

3. **Releases.** The Parties give and accept the releases provided below as part of their settlement and as consideration for execution of this Agreement and performance of the executory terms of this Agreement:

- a. **Definition of Claim(s).** The word "Claim" or "Claims" as used in the releases provided below means all causes of action, defenses, contract rights, statutory rights, debts, demands, indemnities, liabilities, liens, obligations of any kind, and rights otherwise arising by operation of law, whether known or unknown, anticipated or unanticipated, contingent or matured, to the releasing party in connection with the Contract, the Dispute, the Project, and the Litigation, the claims and/or causes of action alleged in the Litigation or that could have been alleged in the Litigation, and existing as of the Effective Date. Except as may otherwise be provided herein below, the Parties understand and intend that no relief may be had as to any released Claims whether by actual damages, award, declaratory relief, nominal damages, offset, punitive damages, or recovery in any form.

However, nothing herein shall be construed as a waiver or release of any of the Parties' respective rights or Claims under any policies of insurance or any other third-party contracts or agreements that are not the subject of this Agreement, the Dispute, the Contract, the Project or the Litigation.

- b. **Mutual Releases.** As consideration for this Agreement, the Parties release one another on the terms stated in Subsections (i)-(ii) below on behalf of themselves and their respective agents, assigns, spouses, employees, representatives, successors, and transferees, if any, all past and present. This release runs to and for the benefit of the Parties and their respective

affiliates, agents, attorneys, assigns, officers, directors, shareholders, members, insurers, owners, trustees, managers, employees, representatives, successors, and transferees, if any, all past and present.

i. **Ames' Releases.** Ames knowingly, irrevocably and unconditionally releases, renounces and forever specifically discharges Clark County, CCDPW, and CCRFCD, together with their successors, parents, political subdivisions, predecessors, divisions, districts, affiliated entities and subsidiaries, as well as their heirs, agents, insurers, officers, directors, employees, commissioners, administrators, governing boards, attorneys, and assigns, if any, from any and all potential Claims and any liability related to the Contract, the Project, the Dispute, and the Litigation, including, but not limited to, any Claims that may exist or arise under NRS Chapter 338 and NRS Chapter 624 related to the Project and any Claims for attorneys' fees, interest, or costs, whether known or unknown, discovered or undiscovered. Notwithstanding the foregoing, Ames does not waive potential claims for damages, attorneys' fees and costs arising out of any future warranty claim, latent defect claim or third party action disputed by Ames and as allowed by the Contract and Nevada law.

ii. **The County's Releases.** The County knowingly, irrevocably and unconditionally releases, renounces and forever discharges Ames, together with each of its successors, parents, predecessors, divisions, affiliated companies and subsidiaries, as well as its heirs, agents, insurers, officers, directors, employees, administrators, attorneys, and assigns, from any and all Claims and any liability related to the Contract, the Project, the Dispute, and the Litigation, whether known or unknown, discovered or undiscovered. including, but not limited to, any Claims for liquidated damages and any Claims for attorneys' fees, interest, or costs, whether known or unknown, discovered or undiscovered.

Notwithstanding any of the foregoing, however, the County does not release any Claims of any kind or nature now existing or that may exist in the future against Ames only to the extent such Claims arise from latent defects in Ames' work on the Project or any warranty obligation that may exist under Nevada law or the Contract, Claims by Ames' employees or workers (including, but not limited to, any Claims brought under NRS Chapter 338 and NRS Chapter 608, and/or Claims by subcontractors and/or suppliers. Ames agrees to fully indemnify, defend, and hold harmless the County, including any reasonable attorneys' fees and costs incurred, from any future Claims any subcontractors, suppliers, employees or workers may bring against the County in relation to the Project. Nothing in this agreement shall expand Ames' warranty or indemnity obligations under any contract or Nevada law. The County represents and acknowledges that as of the Effective Date, it has no knowledge of any facts that may give rise to any

such Claims against Ames and is not aware of any potential claims against Ames for warranty work or latent defects.

4. **No Admission of Fault or Liability.** It is understood and agreed that this Agreement and the performance of other obligations herein, including the Payment, are for the sole purpose of compromising disputed Claims, and that this Agreement shall not be construed as an admission of liability by the County, CCRFCD, or Ames, with liability being expressly denied by each of them. The County, CCRFCD, and Ames each specifically deny any allegations of wrongdoing, fault, or liability contained in the Recitals hereinabove and in the Complaint, Answer, and Counterclaim (and any other papers) filed in the Litigation.

5. **Representations.** Each Party represents and warrants as follows: (i) the Party has read the Agreement carefully and understands the contents and legal effect of each of its provisions; (ii) in connection with the decision to execute this Agreement, the Party and person signing either consulted with one or more attorneys of that Party's own choosing or had a reasonable opportunity to consult with an attorney and chose not to do so; (iii) the Party is the sole and lawful owner of all right, title and interest in and to every Claim and other matter that such Party purports to release or compromise by this Agreement and no rights compromised or affected by this Agreement have been sold, assigned, or otherwise transferred; and (iv) the Party has full legal right and power and all authority and approval required to enter into, execute and deliver this Agreement, and to perform its obligations under this Agreement. This Agreement has been duly executed and delivered and is valid and binding and the obligations of each Party are enforceable in accordance with their terms. Each of the Parties' representations and warranties shall survive the termination of this Agreement.

6. **Attorneys' Fees.** Each party shall be responsible for all costs and expenses (including reasonable attorneys' fees) it incurs in the event that any Party institutes any proceedings to enforce the terms and conditions of this Agreement.

7. **Counterparts and Signatures.** This Agreement may be executed in counterpart and will, if so executed, be considered one instrument. A signature on this Agreement transmitted by facsimile or electronic mail shall be deemed the equivalent of an original ink signature for all purposes.

8. **Drafting.** Each Party cooperated in drafting this Agreement. No provision shall be construed against any Party based on any claims the Party drafted the provision or caused an uncertainty as to that provision.

9. **Merger and Incorporation.** This Agreement contains the entire agreement and understanding concerning its subject matter and supersedes and replaces all prior and contemporaneous negotiations and agreements between the Parties, whether written or oral.

10. **Amendment and Modification.** No amendment to this Agreement shall be binding unless set forth in a writing duly executed by all Parties to be bound or affected by such amendment.

11. **Choice of Law and Venue.** This Agreement shall be construed in accordance with, and be governed by, the laws of the State of Nevada without regard to conflict of laws principles and venue shall be solely and exclusively in a court of competent jurisdiction located in Clark County, Nevada.

12. **Severability.** If any term, provisions, portion, or part of this Agreement is determined by a court or tribunal of competent jurisdiction to be invalid or unenforceable for any reason, it is the intention of the Parties that said portion be severed and that the remainder of this Agreement remain in full force and effect.

13. **Other Provisions.** This Agreement shall be binding upon and inure to the benefit of the Parties hereto, and their respective heirs, personal representatives, successors, assigns and transferees. Each of the Parties agrees to execute, acknowledge and deliver such further instruments and documents and to do all such further acts as may be necessary and proper to carry out and effectuate the terms of this agreement.

14. The recitals and definitions herein are material terms and shall be incorporated into this Agreement as set forth in full.

**IN WITNESS WHEREOF** the undersigned Parties do hereby execute this Agreement, made effective as of the Effective Date, as defined herein.

COUNTY:

CLARK COUNTY, a political  
subdivision of the State of Nevada

ATTEST:

By: \_\_\_\_\_  
Marilyn Kirkpatrick, Chair  
Board of County Commissioners

\_\_\_\_\_  
Lynn Marie Goya  
County Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Laura C. Rehfeldt  
Deputy District Attorney

**AMES CONSTRUCTION, INC.**

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

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ATTEST:

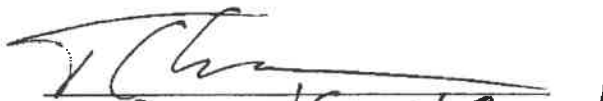
By: \_\_\_\_\_  
Marilyn Kirkpatrick, Chair  
Board of County Commissioners

\_\_\_\_\_  
Lynn Marie Goya  
County Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Laura C. Rehfeldt  
Deputy District Attorney

**AMES CONSTRUCTION, INC.**

  
Title: Regional General Counsel  
Date: 4/26/21

STATE OF Arizona )  
 )ss.  
COUNTY OF Maricopa )

On this 21<sup>st</sup> day of April, 2021, before me the undersigned, a Notary Public, in and for said County and State, personally appeared W. Todd Coleman who acknowledged to me that they executed the above instrument for the purposes herein stated.

WITNESS my hand and official seal.

Melissa Abraham  
NOTARY PUBLIC  
in and for said County and State

My Commission expires: November 5, 2024  
{SEAL}





**Exhibit A**

KIRK B. LENHARD, ESQ., Nevada Bar No. 1437  
[klenhard@bhfs.com](mailto:klenhard@bhfs.com)  
LAURA B. LANGBERG, ESQ., Nevada Bar No. 10516  
[llangberg@bhfs.com](mailto:llangberg@bhfs.com)  
EMILY A. ELLIS, ESQ., Nevada Bar No. 11956  
[cellis@bhfs.com](mailto:cellis@bhfs.com)  
TRAVIS F. CHANCE, ESQ., Nevada Bar No. 13800  
[tchance@bhfs.com](mailto:tchance@bhfs.com)  
BROWNSTEIN HYATT FARBER SCHRECK, LLP  
100 North City Parkway, Suite 1600  
Las Vegas, NV 89106-4614  
Telephone: 702.382.2101  
Facsimile: 702.382.8135

*Attorneys for Defendant/Counterclaimant  
Clark County and Defendant Clark County  
Department of Public Works*

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEVADA**

AMES CONSTRUCTION, INC., a  
Minnesota corporation,

Plaintiff,

v.

CLARK COUNTY, a political subdivision  
of the State of Nevada; and CLARK  
COUNTY DEPARTMENT OF PUBLIC  
WORKS; DOES I through X; and ROE  
CORPORATIONS I through X,

Defendants.

CASE NO.: 2:18-cv-00299-JCM-EJY

**STIPULATION AND ORDER FOR  
DISMISSAL WITH PREJUDICE**

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1           **IT IS HEREBY STIPULATED AND AGREED** pursuant to Federal Rule of Civil  
2 Procedure 41, between Defendant/Counterclaimant Clark County, Defendant Clark County  
3 Department of Public Works, and Plaintiff Ames Construction, Inc., through their undersigned  
4 counsel of record, that this action **SHALL BE DISMISSED WITH PREJUDICE**, with each party  
5 to bear its own attorneys' fees and costs.

6           **IT IS SO STIPULATED** this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

7           **BROWNSTEIN HYATT FARBER**  
8           **SCHRECK, LLP**

**PEEL BRIMLEY LLP**

9           BY: \_\_\_\_\_  
10          KIRK B. LENHARD, ESQ.  
11          LAURA B. LANGBERG, ESQ.  
12          EMILY A. ELLIS, ESQ.  
13          TRAVIS F. CHANCE, ESQ.  
14          100 North City Parkway, Suite 1600  
15          Las Vegas, NV 89106-4614  
16          Telephone: 702.382.2101

*Attorneys for Defendant/Counterclaimant  
17          Clark County and Defendant Clark County  
18          Department of Public Works*

BY: \_\_\_\_\_  
STEVEN D. MEACHAM, ESQ.  
CARY DOMINA, ESQ.  
3333 E. Serene Avenue, Suite 200  
Henderson, Nevada 89074-6571  
Telephone: (702) 990-7272

*Attorneys for Plaintiff Ames Construction,  
19          Inc.*

20                               **ORDER**

21                               **IT IS SO ORDERED:**

22                               \_\_\_\_\_  
23                               **UNITED STATES DISTRICT JUDGE**

24                               **DATED:** \_\_\_\_\_  
25  
26  
27  
28

1 **SUBMITTED BY:**

2 **BROWNSTEIN HYATT FARBER SCHRECK, LLP**

3 BY:

4 KIRK B. LENHARD, ESQ.

5 LAURA B. LANGBERG, ESQ.

6 EMILY A. ELLIS, ESQ.

7 TRAVIS F. CHANCE, ESQ.

8 100 North City Parkway, Suite 1600

Las Vegas, NV 89106-4614

Telephone: 702.382.2101

Facsimile: 702.382.8135

9 *Attorneys for Defendant/Counterclaimant*  
10 *Clark County and Defendant Clark County*  
11 *Department of Public Works*

## DISCLOSURE OF OWNERSHIP/PRINCIPALS

<b>Business Entity Type (Please select one)</b>						
<input type="checkbox"/> Sole Proprietorship	<input type="checkbox"/> Partnership	<input type="checkbox"/> Limited Liability Company	<input checked="" type="checkbox"/> Corporation	<input type="checkbox"/> Trust	<input type="checkbox"/> Non-Profit Organization	<input type="checkbox"/> Other
<b>Business Designation Group (Please select all that apply)</b>						
<input type="checkbox"/> MBE	<input type="checkbox"/> WBE	<input type="checkbox"/> SBE	<input type="checkbox"/> PBE	<input type="checkbox"/> VET	<input type="checkbox"/> DVET	<input type="checkbox"/> ESB
Minority Business Enterprise	Women-Owned Business Enterprise	Small Business Enterprise	Physically Challenged Business Enterprise	Veteran Owned Business	Disabled Veteran Owned Business	Emerging Small Business
<b>Number of Clark County Nevada Residents Employed:</b>				4		
<b>Corporate/Business Entity Name:</b> Ames Construction, Inc.						
<b>(Include d.b.a., if applicable)</b>						
<b>Street Address:</b>		2500 County Road 42 W		<b>Website:</b> www.amesconstruction.com		
<b>City, State and Zip Code:</b>		Burnsville, MN 55337		<b>POC Name:</b> Todd Coleman toddcoleman@amesco.com		
<b>Telephone No:</b>		952-435-7106		<b>Email:</b>		
<b>Nevada Local Street Address:</b>				<b>Fax No:</b> 952-435-7142		
<b>(If different from above)</b>				<b>Website:</b>		
<b>City, State and Zip Code:</b>				<b>Local Fax No:</b>		
<b>Local Telephone No:</b>				<b>Local POC Name:</b>		
				<b>Email:</b>		

All entities, with the exception of publicly-traded and non-profit organizations, must list the names of individuals holding more than five percent (5%) ownership or financial interest in the business entity appearing before the Board.

Publicly-traded entities and non-profit organizations shall list all Corporate Officers and Directors in lieu of disclosing the names of individuals with ownership or financial interest. The disclosure requirement, as applied to land-use applications, extends to the applicant and the landowner(s).

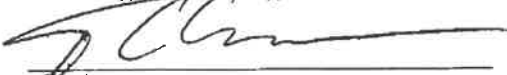
Entities include all business associations organized under or governed by Title 7 of the Nevada Revised Statutes, including but not limited to private corporations, close corporations, foreign corporations, limited liability companies, partnerships, limited partnerships, and professional corporations.

Full Name	Title	% Owned (Not required for Publicly Traded Corporations/Non-profit organizations)
Raymond G. Ames	President/CEO	67
John A. Ames	Regional President	11
Ronald L. Ames	Regional President	11
Mark R. Brennan	Regional President	11

This section is not required for publicly-traded corporations. Are you a publicly-traded corporation? ☐ Yes ☒ No

- Are any individual members, partners, owners or principals, involved in the business entity, a Clark County, Department of Aviation, Clark County Detention Center or Clark County Water Reclamation District full-time employee(s), or appointed/elected official(s)?  
☐ Yes ☒ No (If yes, please note that County employee(s), or appointed/elected official(s) may not perform any work on professional service contracts, or other contracts, which are not subject to competitive bid.)
- Do any individual members, partners, owners or principals have a spouse, registered domestic partner, child, parent, in-law or brother/sister, half-brother/half-sister, grandchild, grandparent, related to a Clark County, Department of Aviation, Clark County Detention Center or Clark County Water Reclamation District full-time employee(s), or appointed/elected official(s)?  
☐ Yes ☒ No (If yes, please complete the Disclosure of Relationship form on Page 2. If no, please print N/A on Page 2.)

I certify under penalty of perjury, that all of the information provided herein is current, complete, and accurate. I also understand that the Board will not take action on land-use approvals, contract approvals, land sales, leases or exchanges without the completed disclosure form.

 Signature	W. Todd Coleman Print Name
Regional General Counsel Title	4/26/21 Date

## DISCLOSURE OF RELATIONSHIP

List any disclosures below:  
(Mark N/A, if not applicable.)

NAME OF BUSINESS OWNER/PRINCIPAL	NAME OF COUNTY* EMPLOYEE/OFFICIAL AND JOB TITLE	RELATIONSHIP TO COUNTY* EMPLOYEE/OFFICIAL	COUNTY* EMPLOYEE'S/OFFICIAL'S DEPARTMENT

\* County employee means Clark County, Department of Aviation, Clark County Detention Center or Clark County Water Reclamation District.

"Consanguinity" is a relationship by blood. "Affinity" is a relationship by marriage.

"To the second degree of consanguinity" applies to the candidate's first and second degree of blood relatives as follows:

- Spouse – Registered Domestic Partners – Children – Parents – In-laws (first degree)
- Brothers/Sisters – Half-Brothers/Half-Sisters – Grandchildren – Grandparents – In-laws (second degree)

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**For County Use Only:**

If any Disclosure of Relationship is noted above, please complete the following:

- ☐ Yes ☐ No Is the County employee(s) noted above involved in the contracting/selection process for this particular agenda item?
- ☐ Yes ☐ No Is the County employee(s) noted above involved in any way with the business in performance of the contract?

Notes/Comments:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name  
Authorized Department Representative