
AGENDA ITEM SUMMARY

Subject: Resolution 23-21 to approve release agreement from Portzen/City/Fox Engineering in regard to the negotiated settlement between the entities and the project work stoppage from February 24, 2020 to May 24th with WRRF project.



Top Goals - 2019

Background Summary:

Resolution 23 2 approves a mutual release from the three parties, Portzen Construction, Fox Engineering and City of Charles City. This release legally binds all parties so that no further negotiation or added/reduced costs can be attributed to the work stoppage on the project that occurred from February 24, 2020 through May 24, 2020, which makes up the costs applied in Change order #3 which total \$260,323.36

Both Portzen Construction and Fox Engineering have signed the release.

CITY OF CHARLES CITY

RESOLUTION NO. 23-21

*RESOLUTION APPROVING MUTUAL RELEASE AND SETTLEMENT AGREEMENT
WITH FOX ENGINEERING AND PORTZEN CONSTRUCTION*

WHEREAS, Fox Engineering provided certain engineering services, as requested by the city, for the city's 2019 Activated Sludge Plant WRRF Project , and

WHEREAS, Portzen Construction has made certain allegations in connection with claims for extra compensation related to the construction of the project, and

WHEREAS, Portzen Construction had temporarily suspended work as directed by the city for a length of time, which incurred certain costs, and

WHEREAS, the parties have negotiated a settlement to their disputes and claims relating to the project, as shown in the attached Exhibit A,

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Charles City, Iowa, meeting in regular session on the 16th day of February, 2021, that the mutual release and settlement agreement between the City of Charles City, Fox Engineering and Portzen Construction be approved.

COUNCIL MEMBER moved the adoption of the foregoing Resolution;

COUNCIL MEMBER seconded the motion to adopt, and on roll call the voting was as follows:

AYES:

NAYS:

Passed and approved this 16th day of February, 2021.

Dean Andrews, Mayor

Attest:

Trudy O'Donnell, City Clerk

SETTLEMENT AGREEMENT AND MUTUAL RELEASE
(CITY OF CHARLES CITY (the "CITY") and FOX ENGINEERING ASSOCIATES, INC.
("FOX) AND PORTZEN CONSTRUCTION (PORTZEN)

This SETTLEMENT AGREEMENT AND MUTUAL RELEASE ("Agreement"), entered into this 16th day of February, 2021, is by and between City of Charles City (hereinafter the "City") and FOX Engineering Associates, Inc. (hereinafter "Fox") and Portzen Construction (Portzen). The City, Fox and Portzen are sometimes herein collectively referred to as the "Parties" and individually as "Party".

WHEREAS Fox provided certain engineering services, as requested by the City, for the City's use in the construction of the 2019 Activated Sludge Plant WRRF Project (the "Project").

WHEREAS Portzen has made certain allegations in connection with claims for extra compensation related to the construction of the 2019 Activated Sludge Plant WRRF Project (the "Project").

WHEREAS, Portzen had suspended work as directed by the City for the dates indicated in Change Order No. 3 (attached) and the need to incur certain costs and any and all other claims that are or could be asserted by Portzen Construction related to the temporary suspension of the Project are included in Change Order No. 3 (hereinafter the "Occurrence").

WHEREAS, the Parties have negotiated a resolution and settlement as to their disputes and claims relating to the Project, on the terms and conditions as set out herein.

NOW THEREFORE, for and in consideration of the mutual covenants and promises contained herein, and further good and valuable consideration, the receipt and sufficiency of which is expressly acknowledged by each of the Parties hereto, the Parties, intending to be legally bound by this Agreement as a global release amongst the Parties, agree as follows:

1. Payment and Mutual General Release: The City, Fox and Portzen, for and on their own behalf and for and on behalf of their predecessors, successors, parents (of any tier), subsidiaries

(of any tier), affiliates, shareholders, members, and all their respective past, present and future officers, directors, managers, partners, employees, servants, agents, insurers, consultants, administrators and assigns, do hereby acknowledge payment of Two Hundred Sixty thousand Three Hundred Twenty-three dollars and Thirty-six cents (\$260,323.36) to Portzen by the City in connection with Change Order No. 3 (attached) and the Occurrence and in consideration of which payment Portzen does irrevocably and unconditionally release, acquit and forever discharge the City and Fox together with their predecessors, successors, parents (of any tier), subsidiaries (of any tier), affiliates, shareholders, members, and all their respective past, present and future officers, directors, managers, partners, employees, servants, agents, insurers, sureties, consultants, administrators and assigns from any and all manner of actions or causes of actions, complaints, suits, debts, liabilities, obligations, promises, agreements, controversies, grievances, rights, dues, sums of money, expenses, acts, omissions, costs, claims, charges, demands, contracts and covenants, whether expressed or implied and for damage costs, indemnity, expenses, interest, loss or injury of any and every kind and nature whatsoever, known or unknown, patent or latent, which Portzen ever had, now have or which they hereafter can, shall or may have, at law or in equity or under any statute, against the City and Fox by reason of, arising out of, or whatsoever related to, or as a result of, the Occurrence.

2. Successors and Assigns: This Agreement shall be binding upon the successors and assigns of the Parties. No assignment or delegation of the obligation to perform hereunder will release the assigning Party without the prior written consent of the other Parties. The City, Fox and Portzen confirm that they have not assigned the right of action pertaining to any matter referred to herein to any person, firm, company, corporation, or other legal entity who might claim against the other.

3. Representation of Counsel. The Parties state and confirm that they have been advised of the facts bearing on any claims which they have or may have in relation to the Lawsuit and that

they have been advised of their legal rights by attorneys of their choice and selection. The Parties represent and certify that they secured independent legal advice and consultation in connection with this Settlement Agreement and any rights they may be relinquishing hereby, and that they have not relied upon any representations or statements made by any other party or by any other party's counsel or representatives in executing this Settlement Agreement, other than as expressly stated herein.

4. Counterparts: The Parties agree that this Agreement may be executed in counterparts and all such counterparts together shall constitute the entire agreement of the Parties hereto.

5. Entire Agreement: This Agreement sets forth the entire agreement between the Parties and fully supersedes any and all prior agreements or understandings between the Parties relating to the subject matters hereof. No promise for any other or further consideration has been made by the Parties.

6. This Agreement may be executed by facsimile or otherwise, which will be deemed an original.

IN WITNESS WHEREOF, the Parties have executed this Agreement effective as of the date first written above.

THE CITY OF CHARLES CITY

Dated: _____

By: _____
Its: _____

FOX ENGINEERING ASSOCIATES, INC.

Dated: 2/9/2021

By: Laura Albright
Its: Principal/Project Manager

PORTZEN CONSTRUCTION, INC.

Dated: 2/9/2021

By: BT Smith
Its: Project Manager