

SETTLEMENT AGREEMENT

This is a SETTLEMENT AGREEMENT (hereinafter referred to as "Agreement") by and between BROWARD COUNTY, a political subdivision of the State of Florida (hereinafter referred to as "County"), and Cartaya and Associates, Architects, P.A., a Florida corporation (hereinafter referred to as "Consultant").

WITNESSETH:

WHEREAS, Consultant and the County (hereinafter collectively referred to as the "Parties") entered into an agreement, approved by the Board of County Commissioners on September 9, 2003, (the "Consulting Services Contract"), RLI # 20011114-10-PA-01, for consulting services relating to the construction of basketball courts, corporate shelters, maintenance facilities and other structures at ten different Broward County parks (the "Parks Project"), and amended that agreement through two separate amendments, dated June 8, 2008 and August 13, 2008, respectively; and

WHEREAS, the general contractor on the Parks Project filed a complaint in the 17th Judicial Circuit against the County for breach of contract, Case No. 11-001351(2) in connection with the Parks Project (the "Lawsuit"); and

WHEREAS, in that Lawsuit, the County filed against the Consultant a Third Party Complaint, alleging breach of contract in connection with the drafting of the plans and specifications for the Parks Project; and

WHEREAS, the Consultant filed a counterclaim against the County alleging the County breached the Consulting Services Contract by failing to pay outstanding invoices totaling \$31,953.73; and

WHEREAS, the Parties have engaged in considerable negotiations and discussions in an effort to amicably resolve all claims and matters that both the County and the Consultant have raised arising out of, or relating to work associated with the Parks Project; and

WHEREAS, the Parties desire to reduce their negotiations and discussions to writing so that it is binding upon them;

NOW, THEREFORE, in consideration of the foregoing representations and mutual covenants, promises, and considerations hereinafter set forth, and with the intent to be legally bound, it is hereby agreed between the Parties as follows:

1. **Representations**: The foregoing representations are true and correct and by this reference thereto, the Consulting Services Contract between the Consultant and the County is incorporated herein and made a part hereof.

2. **Terms of Settlement:** The Parties to this Agreement do hereby covenant and agree as follows:
- A. Consultant shall pay the County by July 24, 2014, the sum of One Hundred and Ten Thousand Dollars (\$110,000.00), in full and final settlement of all matters addressed by this Agreement. The Parties shall bear their own respective attorneys' fees and costs expended in the Lawsuit. Should the County Board of County Commissioners not approve this Agreement, the terms and conditions hereof shall automatically become null and void and shall have no binding effect upon either party and this Agreement or drafts thereof shall not be admissible nor used in future litigation.
 - B. As part of the settlement, Consultant agrees to waive any and all disputes arising from or relating to the Parks Project, including any outstanding invoices claimed or unclaimed in Consultant's Counterclaim in the Lawsuit.
 - C. Upon payment of the settlement amount in full, the Parties shall file a stipulation of dismissal of all their claims with prejudice, including County's claims and Cartaya's counterclaim, against each other in the Lawsuit.
 - D. Warranties, expressed or implied, for materials, equipment, and work furnished by the Contractor as provided in the Construction Contract or by law are not modified by this Agreement.
3. **Mutual Final Releases:** The Parties do respectively release each other from all claims, demands, damages, causes of action, actions, and losses of every kind and nature, whether known or unknown arising out of or related to the Parks Project. Further, the Parties mutually release and forever discharge each other and acknowledge, agree, and covenant for each of themselves and their respective successors and assigns, and irrevocably bind themselves from making any claim or demand or to commence, cause, or permit to be prosecuted any claim or action in law or in equity against the other or any of them on account of or in any way relating to the Parks Project. Provided however, that this Agreement shall not affect any warranties, warranty obligations, or any other obligations that extend beyond the contract final completion date including, but not limited to, claims for latent defects, if any.
4. **Default:** In the event of a default of any of the covenants and conditions set forth herein, any provision as to release of the defaulting party is null and void. Attorney's fees and costs to enforce this agreement will be recoverable by the prevailing party.

5. **Binding Effect:** The undersigned represent that they have been empowered by the respective parties to enter into, on behalf of the Parties, and to bind the Parties to the commitments and undertakings contained herein. The provisions, conditions, terms, and covenants contained herein shall be of a binding effect. The benefits and advantages hereof shall inure to the respective parties, and the respective successors, assigns, trustees, receivers, and personal representatives of the parties hereto.
6. **Full Disclosure:** The Parties acknowledge and agree that each is releasing certain rights and assuming certain duties and obligations which, but for this Agreement, would not have been released or assumed. Accordingly, the Parties agree that this Agreement is fully and adequately supported by consideration and is fair and reasonable, that the Parties have had the opportunity to consult with and have in fact consulted with such experts of their choice as they may have desired, and that they have had the opportunity to discuss this matter with counsel of their choice.
7. **Venue:** The Parties acknowledge and agree that this Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any controversies or legal problems arising out of this Agreement and any action involving the enforcement or interpretation of any rights hereunder shall be submitted to the jurisdiction of the State courts of the Seventeenth Judicial Circuit of Broward County, Florida, the venue situs, and shall be governed by the laws of the State of Florida. To encourage prompt and equitable resolution of any litigation that may arise hereunder, each party hereby waives any rights it may have to a trial by jury of any such litigation.
8. **Severability:** The Parties acknowledge and agree that if any part, term or provision of this Agreement is determined by the courts to be invalid, illegal or in conflict with any law of the State, the validity of the remaining portions or provisions shall not be affected thereby.
9. **Merger:** This document incorporates, includes, and supersedes all prior negotiations, correspondence, conversations, agreements or understandings applicable to the matters contained herein; and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements whether oral or written.
10. **Joint Preparation:** The Parties acknowledge that they have sought and received whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and

that the preparation of this Agreement has been their joint effort. The language agreed to expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.

11. **Counterparts:** This Agreement may be executed in any number of counterparts, each of which, when executed and delivered, shall be an original, but such counterparts shall together constitute one and the same instrument.
12. **Captions:** The captions of the sections of this Agreement are for convenient reference only, and shall not affect the construction nor interpretation of any of the terms and provisions set forth herein.
13. **Further Assurance:** The Parties agree to execute all such further instruments, and to take all such further actions that may be reasonably required by any party to fully effectuate the terms and provisions of this Agreement and the transactions contemplated herein.
14. **Modification:** No change or modification of this Agreement shall be valid unless in writing and signed by all parties hereto. No waiver of any of the provisions of this Agreement shall be valid unless in writing and signed by the party against whom it is sought to be enforced.
15. **Survival of Provisions:** All covenants, warranties, and representations contained in this Agreement, and all documents to be delivered by the Parties in connection with the consummation of the transaction contained herein, shall survive the consummation of said transaction.
16. **Denial of Liability:** The Parties do not admit any wrongdoing, fault, or liability of any nature by entering into this Agreement, and specifically deny any wrongdoing, fault or liability for the allegations contained in the Lawsuit.

[This space is intentionally left blank.]

IN WITNESS WHEREOF, the parties have made and executed this Agreement on the respective dates under each signature: BROWARD COUNTY through its BOARD OF COUNTY COMMISSIONERS, signing by and through its Mayor or Vice-Mayor, authorized to execute same by Board action on the _____ day _____, 2014, and Mario Cartaya, signing by and through its CEO, duly authorized to execute same.

COUNTY

ATTEST:


BROWARD COUNTY, by and through its
Board of County Commissioners

Broward County Administrator, as
Ex-Officio Clerk of the Broward County
Board of County Commissioners

By _____

_____ day of _____, 2014.

Approved as to form by
Joni Armstrong Coffey
Broward County Attorney
Governmental Center, Suite 423
115 South Andrews Avenue
Fort Lauderdale, Florida 33301
Telephone: (954) 357-7600
Telecopier: (954) 357-7641

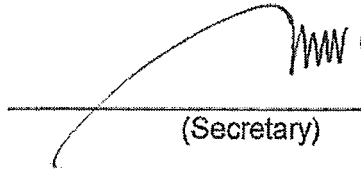
By  6/12/14
Michael S. Kerr Date
Chief Trial Counsel

SETTLEMENT AGREEMENT BETWEEN BROWARD COUNTY
AND CARTAYA AND ASSOCIATES, ARCHITECTS, P.A.

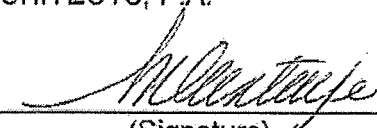
CONSULTANT

ATTEST:

CARTAYA AND ASSOCIATES,
ARCHITECTS, P.A.



(Secretary)

By 

(Signature)

(Corporate Seal)

MARIO CARTAYA CEO
(Type Name & Title Signed Above)

10 day of JUNE, 2014.