

SETTLEMENT AGREEMENT

This is a Settlement Agreement (the "Agreement") by and between Broward County, a political subdivision of the State of Florida ("County"), and Miller, Legg & Associates, Inc., a Florida corporation ("MLA").

Recitals

A. County and MLA (collectively, the "Parties") entered into an agreement, approved by the Board of County Commissioners (the "Board") on February 6, 2007, Bid/Contract No.: RLI # 20060110-2-EED-1 (the "Contract"), for professional consulting engineering services for the North County Neighborhood Improvement Project SW Quadrant (the "Project").

B. In January of 2015, the County's Office of the County Auditor completed an audit in which it determined that MLA and one of its subconsultants had overbilled the County for labor rates in excess of the actual hourly rates paid to their respective employees engaged on the Project, and MLA contests the findings of that audit.

C. The Parties have engaged in considerable negotiations and discussions in an effort to amicably resolve all claims and matters that County has raised arising out of, or relating to, work associated with the Project.

D. The Parties desire to cooperate fully in arriving at an equitable settlement and reduce their negotiations and discussions to writing so that it is binding upon them.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Representations:** The foregoing recitals are true and correct.
2. **Terms of Settlement:** The Parties hereby covenant and agree as follows:
 - A. MLA shall pay to County Forty-eight Thousand Dollars (\$48,000) in forty-eight (48) equal and consecutive monthly installments of One Thousand Dollars (\$1,000), beginning on the first day of the month following the month in which the Board approves this Agreement. Following MLA's payment of the first monthly installment due, each monthly installment due thereafter shall be paid on the first day of each and every month. If MLA fails to timely pay County any payments due under this Section 2.A, MLA agrees to pay to County a late payment fee equal to five percent (5%) of the payment amount then due. The Parties agree that this late payment represents a fair and reasonable estimate of the costs that County will incur by reason of the late payment. There is no penalty or benefit for expedited or pre-payment of the sum due under this paragraph.

- B. MLA shall provide County with a credit in the amount of Twenty-five Thousand Dollars (\$25,000) that is valid towards any current or future contract between MLA and County, as selected in writing by the County Administrator or designee. As to such selected contracts, MLA shall reduce its monthly invoices, net of subconsultant billings, by twenty percent (20%) until the Twenty-five Thousand Dollars (\$25,000) is fully satisfied.
 - C. The payment and credit to be provided by MLA to County pursuant to this Section 2, shall be made in full and final settlement of all matters addressed by this Agreement. The Parties shall each bear their own respective attorneys' fees and costs expended in resolving this matter. Should the Board 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 neither be admissible nor used in future litigation.
 - D. Warranties, expressed or implied, for services furnished by MLA as provided in the Contract or by law are not modified by this Agreement.
 - E. County shall release restrictions in all County Departments regarding the current and future procurements of County work by MLA after the Agreement is fully executed.
3. **No Admission of Fault:** By entering into this Agreement, no party admits fault, but rather the Parties have agreed to this Agreement as a compromise of disputed claims in the interest of avoiding the costs and uncertainty of ongoing negotiations and potential litigation.
4. **Mutual Final Releases:** The Parties do respectively release each other, and all of their officers, employees, or agents, from all claims, demands, damages, causes of action, actions, insurance coverage, indemnification, bad faith, defense and litigation costs, including attorneys' fees, and losses of every kind and nature, whether known or unknown, limited however to those arising out of and directly related to the Project. Further, the Parties mutually release and forever discharge each other, and all of their officers, employees, or agents, 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 commencing, causing, or permitting to be prosecuted any claim or action in law or in equity against the other or any of them arising out of and directly related to the design of the Project. Notwithstanding the foregoing, claims related to or caused by latent design defects are not released by the County. Moreover, as to any project with work performed prior to January 1, 2015, the Parties do respectfully release each other from all claims, demands, damages, causes of action, actions, insurance coverage, indemnification, bad faith, defense, and litigation

costs, including attorneys' fees, and losses of any kind and nature, whether known or unknown, limited however to those arising out of and directly related to alleged overbilling of the County labor rates in excess of the actual hourly rates paid to MLA's or its subconsultant's employees.

5. **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, and attorneys' fees and costs to enforce this Agreement will be recoverable by the prevailing party.

6. **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.

7. **Full Disclosure:** The Parties are 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.

8. **Governing Law and Venue:** 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. 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.**

9. **Severability:** The Parties acknowledge and agree that if any part, term, or provision of this Agreement is determined by a court of competent jurisdiction to be invalid, illegal, or in conflict with the law of the State of Florida, such provision shall be severed from the Agreement and the validity of the remaining portions or provisions shall not be affected thereby.

10. **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.

11. **Joint Preparation:** The Parties have sought (or have had the opportunity to seek) 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.

12. **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.

13. **Captions:** The captions of the sections of this Agreement are for convenient reference only, and shall not affect the construction or interpretation of any of the terms and provisions set forth herein.

14. **Further Assurance:** The Parties shall execute all such further instruments, and 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.

15. **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.

16. **Survival of Provisions:** All covenants, warranties, and representations contained in this Agreement shall survive the termination of this Agreement.

[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 _____, 2018, and Miller, Legg & Associates, Inc., signing by and through its President, 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 _____
Mayor
____ day of _____, 2018.

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

By Angela F. Benjamin 7/10/18
Angela F. Benjamin Date
Senior Assistant County Attorney

By Michael J. Kerr 7/10/18
Michael J. Kerr Date
Deputy County Attorney

SETTLEMENT AGREEMENT BETWEEN BROWARD COUNTY
AND MILLER, LEGG & ASSOCIATES, INC.

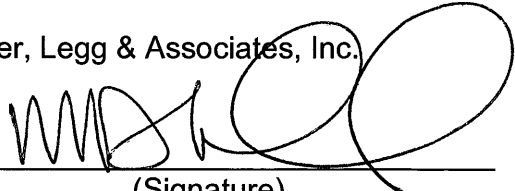
MLA

ATTEST:



(Secretary)

Miller, Legg & Associates, Inc.

By 

(Signature)

(Corporate Seal)

MICHAEL D. KROLL - PRESIDENT
(Type Name & Title Signed Above)

2 day of JULY, 2018.