

## SETTLEMENT AGREEMENT

This Settlement Agreement (the "Agreement") between Broward County ("County"), a political subdivision of the State of Florida, and ACAI Associates, Inc. ("Consultant"), a Florida for-profit corporation (collectively, the "Parties"), is entered into as of the date it is fully executed by the Parties ("Effective Date").

### Recitals

A. The Parties entered into a fixed term agreement approved by the Board of County Commissioners (the "Board"), on October 6, 2015, which includes consultant services for Broward County Main Jail Window Replacement (the "Project"), consultant agreement number Q1235706P1 (the "Consultant Agreement").

B. County desires to terminate the Consultant Agreement for convenience under § 10.2.1 of the Consultant Agreement.

C. Consultant is agreeable to County terminating the Consultant Agreement for convenience, and releasing any and all claims Consultant may have against County relating either specifically to the termination and generally to the Project.

D. The Parties have engaged in discussions in an effort to amicably resolve all claims and matters that County and Consultant have raised arising out of, or relating to, services associated with the Project.

E. The Parties desire to 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 is hereby acknowledged, the Parties agree as follows:

1. **Representations**: The foregoing recitals are true and correct, and are incorporated herein by reference.

2. **Terms of Settlement**: The Parties do hereby covenant and agree as follows:

A. County shall terminate the Consultant Agreement for convenience effective upon Board approval.

B. As part of the settlement, Consultant and County agree to waive any and all disputes arising from or relating to the Project.

C. County shall pay Consultant the retainage that is owed in the amount of Eleven Thousand Three Hundred Seventy-Six Dollars and Eighty Seven Cents (\$11,376.87), and no other payments shall be made by County to Consultant.

D. The Parties shall each bear their own attorney's fees and costs relating

to the Agreement and the Project.

- E. 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 not be admissible nor used in future litigation.
- F. County acknowledges that Consultant has fully performed its duties and satisfied the terms of the Consultant Agreement up to 50% of Phase III – 75% Construction Documents. Due to budgetary and constructability constraints, County has elected to re-advertise for professional services for the Project.
- G. Warranties, expressed or implied, for services furnished by Consultant as provided in the Consultant Agreement or by law are not modified by this Agreement.

3. **Mutual Final Releases**: The Parties do respectively release each other, and any of their officers, employees, or agents, 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 Project. Further, the Parties mutually release and forever discharge each other, and any 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 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 Project.

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 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 each represent 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. **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 exclusively 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.**

8. **Severability**: 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, conversations, agreements, and 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 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 express 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. **No Admission of Liability**: By entering into this Agreement, neither of the Parties has admitted liability for any of the allegations made against it.

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, 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.

[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, Acai Associates, Inc., signing by and through its President, duly authorized to execute same.

**COUNTY**

ATTEST:  
its

BROWARD COUNTY, by and through  
Board of County Commissioners

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

By \_\_\_\_\_

\_\_\_\_ 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 8/13/18  
Angela F. Benjamin Date  
Senior Assistant County Attorney

By: Michael J. Kerr 8/13/18  
Michael J. Kerr Date  
Deputy County Attorney

SETTLEMENT AGREEMENT BETWEEN BROWARD COUNTY AND  
ACAI ASSOCIATES, INC.

CONSULTANT

ATTEST:

  
\_\_\_\_\_  
Principal or (Secretary)

Acai Associates, Inc.

By   
\_\_\_\_\_  
(Signature)

(Corporate Seal)

Adolfo J. Cotilla, Jr., President  
(Type Name & Title Signed Above)

6 day of August, 2018.