

## SETTLEMENT AGREEMENT

This Settlement Agreement (the “Settlement Agreement”) by and among Broward County, a political subdivision of the State of Florida (“County”), James A. Cummings, Inc., a Florida corporation (“JAC”), Tutor Perini Building Corp., an Arizona corporation (“TPBC”), Tutor Perini Corporation, a Massachusetts corporation (“TPC”) (JAC, TPBC, and TPC are collectively referred to as the “Tutor Entities”), Small Brothers, LLC, a Florida corporation (“Small Brothers”), and Cleveland Construction, Inc., a Nevada corporation (“CCI”) (each a “Party” and collectively, the “Parties”), is entered into and effective as of the date it is fully executed by the Parties.

### Recitals

A. JAC and the County entered into an agreement for construction of the Broward County Judicial Complex (the “Project”). JAC and the County have pending claims against each other relating to the Project, which are identified in Case Number CACE 19-014258 (03) (“Courthouse Delay Litigation”).

B. Small Brothers, the County, and the Tutor Entities are engaged in litigation regarding certain actions of the Tutor Entities relating to the Project, which litigation is identified by Case Number CACE 17-020475 (05) (the “Qui Tam Litigation”).

C. JAC subcontracted work to CCI in furtherance of completing the Project. JAC and CCI engaged in litigation relating to the subcontracted work, which is identified by Case Number CACE 16-006245 (07) (“CCI Subcontract Litigation”). CCI is appealing the judgment in the CCI Subcontract Litigation, which appeal is identified by Appeal Number 4D2023-1917 (“CCI Subcontract Appeal”).

D. The County has pending claims against JAC relating to beams on the Project which are identified in Case Number CACE 23-015125 (07) (“County Beam Litigation”).

E. As a result of mediation, the Parties have agreed to amicably resolve all respective claims between the Parties arising out of, or relating to, the Project, the Courthouse Delay Litigation, the Qui Tam Litigation, the CCI Subcontract Litigation, and CCI Subcontract Appeal, excluding the “Reserved Claims” as defined below (collectively, “Settled Litigation”).

F. This resolution does not include (i) construction defect claims brought or that may be brought by the County in the County Beam Litigation; (ii) any claims the Tutor Entities may bring in the County Beam Litigation provided such claims are directly related to matters set forth by the County in the County Beam Litigation and for which damages were not pursued by the Tutor Entities in the Courthouse Delay Litigation; and (iii) any other claims that may be brought relating to other latent defects that may exist on the Project, all of which claims are expressly reserved by the County and by the Tutor Entities and are not a part of this Settlement Agreement (the “Reserved Claims”), but nothing in this Settlement Agreement shall expand any period of repose or statute of limitations from those set forth in contract or law.

G. The Parties desire to reduce their agreement 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 by and between the Parties as follows:

1. **Representations:** The foregoing recitals are true and correct and by this reference thereto are incorporated herein and made a part hereof.
2. **Terms of Settlement:** The Parties do hereby covenant and agree as follows:
  - A. The Settlement Agreement will be considered by the Broward County Commission on October 8, 2024. If approved by the Commission, the Parties agree to execute the Settlement Agreement and email a copy of their respective executed signature page(s) to the other Parties by October 10, 2024, and further agree that by October 17, 2024, the Parties will file a joint motion to vacate the July 9, 2024, decision in the Qui Tam Litigation and will seek court approval of the settlement if the Parties determine such approval is necessary. The Parties will request the Court rule on the motion on an expedited basis. If the vacation motion is granted (and, if required, the Court approves the settlement), then within twenty (20) calendar days after such granting (and approval, if applicable), the County shall pay the sum of One Million One Hundred Sixty-six Thousand Six Hundred Sixty-six Dollars and Sixty-six Cents (\$1,166,666.66) to JAC, in full and final settlement of the Settled Litigation. If the Court in the Qui Tam Litigation denies the motion to vacate the July 9, 2024, decision or rejects any required approval of the settlement, this Settlement Agreement is null and void and shall be of no effect.
  - B. Within twenty (20) calendar days after JAC's receipt of the funds identified in section 2.A., the Tutor Entities shall pay the sum of Five Million Three Hundred Thirty-three Thousand Three Hundred Thirty-three Dollars (\$5,333,333.00) to Small Brothers, in full and final settlement of the Settled Litigation.
  - C. Within ten (10) calendar days after JAC's receipt of payment from the County in accordance with subsection 2.A. above, JAC and the County shall file a Joint Dismissal with Prejudice (covering all parties) in the Courthouse Delay Litigation.
  - D. Within ten (10) calendar days after Small Brothers' receipt of payment from the Tutor Entities in accordance with subsection 2.B. above, the following shall occur:
    - a. JAC and CCI shall file a Joint Dismissal with Prejudice in the CCI Subcontract Litigation and in the CCI Subcontract Appeal. The dismissal shall further provide for the release of that certain Civil Supersedeas Bond filed in the CCI Subcontract Litigation.



- b. Small Brothers, the County, and the Tutor Entities shall file a Joint Dismissal with Prejudice in the Qui Tam Litigation.
- E. Small Brothers, the County, and the Tutor Entities shall jointly seek any extensions of time necessary in the Qui Tam Litigation to effectuate this Settlement Agreement (but nothing herein requires any Party to seek any extension that would go beyond November 7, 2024).
- F. JAC and the County shall jointly seek any extensions of time necessary in the Courthouse Delay Litigation to reduce unnecessary litigation expenses and effectuate this Settlement Agreement (but nothing herein requires any Party to seek any extension that would go beyond November 7, 2024).
- G. The Parties shall each bear their own attorneys' fees and costs relating to the Settled Litigation, which shall be expressly stated in all dismissals filed pursuant to this Settlement Agreement.
- H. JAC agrees that concurrently with making the settlement payment provided in subsection 2.B., JAC shall issue a letter to CCI stating: "James A. Cummings, Inc. hereby withdraws any notices of default of Cleveland Construction, Inc. on the New Broward County Courthouse project, including those dated August 10, 2013, and February 12, 2016."
- I. The cost of Jack Seiler's time facilitating this Settlement Agreement through July 25, 2024, shall be split equally between TPC and the County. The cost of Jack Seiler's time facilitating this Settlement Agreement on and after July 26, 2024, shall be split equally among TPC, Small Brothers, and the County.
3. **No Admission:** By entering into this Settlement Agreement, no Party admits fault or liability, but rather the Parties have agreed to the terms of this Settlement Agreement as a compromise of disputed claims in the interest of avoiding the costs and uncertainty of ongoing litigation and appeals.
4. **Releases:**
- A. **Courthouse Delay Litigation:** The Tutor Entities and the County, by execution of this Settlement Agreement, hereby release, waive, and discharge each other, and their boards, officers, officials, insurance companies, bonding companies, parent companies, affiliate companies, subsidiaries, employees, attorneys and representatives, from any and all claims, demands, damages, subcontractor pass-through claims, causes of action, actions, subrogation claims, litigation costs, including attorney's fees, and losses of every kind and nature, whether known or unknown, patent or latent (except for the Reserved Claims), arising from or relating to the Project or the Courthouse Delay Litigation. The Tutor Entities and the County further expressly covenant, promise, and agree, for themselves and their respective successors and assigns, that they shall be and are hereby forever barred and

permanently enjoined from asserting against each other any and all claims, supplemental claims, causes of action, subrogation rights, or damages arising from or relating to the Project and the Courthouse Delay Litigation (except for the Reserved Claims). The Reserved Claims are expressly reserved and are not covered by this release. Nothing in this Agreement shall expand or toll the statute of limitation or period of repose of any of the Reserved Claims from their original accrual of time. The Tutor Entities and the County may enforce the requirement that the other Party comply with the terms and conditions set forth in this Settlement Agreement notwithstanding the release contained in this subsection.

B. Qui Tam Litigation: The Tutor Entities, the County, and Small Brothers, by execution of this Settlement Agreement, hereby release, waive, and discharge each other, and their boards, officers, officials, insurance companies, bonding companies, parent companies, affiliate companies, subsidiaries, employees, attorneys and representatives, from any and all claims, demands, damages, false claims assertions, subcontractor pass-through claims, causes of action, actions, subrogation claims, litigation costs, false claims findings, penalties, debarments, including attorney's fees, and losses of every kind and nature, whether known or unknown, patent or latent (except for the Reserved Claims), arising from or relating to the Project or the Qui Tam Litigation. The Tutor Entities, the County, and Small Brothers further expressly covenant, promise, and agree, for themselves and their respective successors and assigns, that they shall be and are hereby forever barred and permanently enjoined from asserting against one another any and all claims, supplemental claims, causes of action, subrogation rights, or damages arising from or relating to the Project or the Qui Tam Litigation (except for the Reserved Claims). The Reserved Claims are expressly reserved and are not covered by this Release. The Tutor Entities, the County, and Small Brothers may enforce the requirement that the other Parties comply with the terms and conditions set forth in this Settlement Agreement notwithstanding the release contained in this subsection.

C. CCI Subcontract Litigation and CCI Subcontract Appeal: CCI and JAC, by execution of this Settlement Agreement, hereby release, waive, and discharge each other and their boards, officers, officials, insurance companies, bonding companies, parent companies, affiliate companies, subsidiaries, employees, attorneys and representatives, from any and all claims, demands, damages, subcontractor pass-through claims, causes of action, actions, subrogation claims, litigation costs, including attorney's fees, and losses of every kind and nature, whether known or unknown, patent or latent, arising from or relating to the Project, the CCI Subcontract Litigation, and the CCI Subcontract Appeal. CCI and JAC further expressly covenant, promise, and agree, for themselves and their respective successors and assigns, that they shall be and are hereby forever barred and permanently enjoined from asserting against each other any and all claims, supplemental claims, causes of action, subrogation rights, or damages arising from or relating to the Project, the CCI Subcontract Litigation and CCI Subcontract Appeal. CCI and JAC may enforce the requirement that the other Party comply with the terms and conditions set forth in this Settlement Agreement notwithstanding the release contained in this subsection.



5. **Default:** In the event of a default of any of the covenants and conditions set forth herein that is not cured by the defaulting Party within fifteen (15) business days after written notice thereof from a non-defaulting Party, the non-defaulting Party shall have the right to seek Court enforcement of this Settlement Agreement.
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. This Settlement Agreement shall not be filed with any court by any of the Parties unless required to effectuate or enforce this Settlement Agreement.
7. **Full Disclosure and Joint Preparation:** The Parties acknowledge and agree that each is releasing certain rights and assuming certain duties and obligations which, but for this Settlement Agreement, would not have been released or assumed. Accordingly, the Parties agree that this Settlement 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. The Parties acknowledge that the preparation of this Settlement 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. This Settlement Agreement is contingent upon a global settlement of each of the actions set forth herein (except for the Reserved Claims).
8. **Governing Law and Venue:** The Parties acknowledge and agree that this Settlement 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 Settlement 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. Notwithstanding the foregoing, until dismissal of the actions set forth herein, each of the respective Courts shall retain jurisdiction of these actions for enforcement and any other applicable purposes. **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.**
10. **Merger:** This Settlement Agreement incorporates, includes, and supersedes all prior negotiations, correspondence, conversations, agreements, term sheets, 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 Settlement Agreement that are not contained in this written 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. **Counterparts:** This Settlement 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 Settlement 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 shall execute all such further instruments, and agree to take all such further actions, which may be reasonably required by any Party to fully effectuate the terms and provisions of this Settlement Agreement and the transactions contemplated herein.
14. **Modification:** No change or modification of this Settlement Agreement shall be valid unless in writing and signed by all Parties hereto. No waiver of any of the provisions of this Settlement 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 Settlement Agreement shall survive the consummation of this Settlement Agreement.
16. **Notice:** In order for a notice to a Party to be effective under this Settlement Agreement, notice must be sent via U.S. first-class mail, hand delivery, or commercial overnight delivery, each with a contemporaneous copy via e-mail, to the addresses listed below and shall be effective upon mailing or hand delivery (provided the contemporaneous e-mail is also sent). The addresses for notice shall remain as set forth in this section unless and until changed by providing notice of such change in accordance with this section:

For the County:

Broward County Attorney's Office  
Attn: Andrew J. Meyers or Current Broward County Attorney  
115 South Andrews Avenue, Room 423  
Fort Lauderdale, FL 33301  
Email address: [ameyers@broward.org](mailto:ameyers@broward.org)  
Copies to: [mkerr@broward.org](mailto:mkerr@broward.org) and [bcrego@broward.org](mailto:bcrego@broward.org)

For the Tutor Entities:

Robert Nida  
Nida & Romyn, P.C.  
12121 Wilshire Blvd., Suite 1100  
Los Angeles, CA 90025  
(310) 286-3400



[rnida@nidaromyn.com](mailto:rnida@nidaromyn.com)

Gary Smalley  
President  
Tutor Perini Corporation  
15901 Olden Street  
Sylmar, CA 91342  
(818) 362-8391  
Email address: Gary.Smalley@tutorperini.com

For Small Brothers and CCI:  
Daniel R. Wireman  
Small Brothers, LLC  
12810 Tamiami Trail N., Suite 200  
Naples, Florida 34110  
Telephone: (239) 643-8000  
Email address: [dwireman@clevelandconstruction.com](mailto:dwireman@clevelandconstruction.com)

17. **Third-Party Beneficiaries:** The Parties do not intend to directly or substantially benefit a third-party by entering into this Settlement Agreement. Therefore, the Parties agree that there are no third-party beneficiaries to this Settlement Agreement.
18. **Representation of No Assignment:** Each Party expressly warrants, represents, and covenants to each other Party released herein that the respective Party (for the Tutor Entities, a respective Party includes the other Tutor Entities) is presently the legal owner and holder of the claims or causes of action released hereby, and that they have not expressly or impliedly assigned, transferred, pledged or otherwise disposed of any such rights, claims, demands, or causes of action being described herein and released hereby, and each Party is expressly relying upon said warrant, representation, and covenant.
19. **Authority:** The persons who have signed on behalf of corporations or companies hereby warrant that they have the authority to bind those entities to the terms of this Settlement Agreement.

[This space is intentionally left blank.]

IN WITNESS WHEREOF, the Parties have made and executed this Settlement 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 8th day of October, 2024, James A. Cummings, Inc., signing by and through its Vice President, duly authorized to execute same, Tutor Perini Building Corp., signing by and through its President, duly authorized to execute same, Tutor Perini Corporation, signing by and through its Chairman, CEO, duly authorized to execute same, Cleveland Construction, Inc., signing by and through its CEO, duly authorized to execute same, and Small Brothers, LLC, signing by and through its Manager, duly authorized to execute same.

**COUNTY**

ATTEST:

\_\_\_\_\_  
Broward County Administrator, as  
ex officio Clerk of the Broward County  
Board of County Commissioners

BROWARD COUNTY, by and through  
its Board of County Commissioners

By: \_\_\_\_\_  
\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

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

By: **BENJAMIN D. CREGO** Digitally signed by  
BENJAMIN D. CREGO  
Date: 2024.09.25 16:13:32  
-04'00'  
Benjamin Crego (Date)  
Assistant County Attorney

By: **Michael Kerr** Digitally signed by Michael Kerr  
Date: 2024.09.25 16:28:21  
-04'00'  
Michael J. Kerr (Date)  
Chief Counsel



SETTLEMENT AGREEMENT BETWEEN BROWARD COUNTY, JAMES A. CUMMINGS, INC., TUTOR PERINI BUILDING CORP, TUTOR PERINI CORPORATION, SMALL BROTHERS, LLC, AND CLEVELAND CONSTRUCTION, INC.


JAC

WITNESSES:

JAMES A. CUMMINGS, INC.

  
Signature

Michelle DeGrand  
Print Name of Witness above

  
Signature

DEBORAH L. O'CONNELL  
Print Name of Witness above

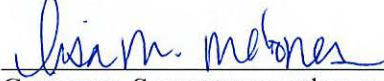
Assistant

By:   
Authorized Signor

GARY G. SMALLEY, VICE PRESIDENT, ASST. TREASURER, ASST. SECRETARY  
Print Name and Title

23<sup>RD</sup> day of SEPTEMBER, 2024

ATTEST:

  
Corporate Secretary or other person authorized to attest

(CORPORATE SEAL OR NOTARY)

SETTLEMENT AGREEMENT BETWEEN BROWARD COUNTY, JAMES A. CUMMINGS, INC., TUTOR PERINI BUILDING CORP, TUTOR PERINI CORPORATION, SMALL BROTHERS, LLC, AND CLEVELAND CONSTRUCTION, INC.

TPBC

WITNESSES:

Deborah L. O'Connell  
Signature

DEBORAH L. O'CONNELL  
Print Name of Witness above

M.D.L.  
Signature

Michelle Debrand  
Print Name of Witness above

Assistant

TUTOR PERINI BUILDING CORP.

By: Ronald N. Tutor  
Authorized Signor

RONALD N. TUTOR, PRESIDENT  
Print Name and Title

23<sup>rd</sup> day of September, 20 24

ATTEST:

Jean M. Melonas  
Corporate Secretary or other person  
authorized to attest

(CORPORATE SEAL OR NOTARY)



SETTLEMENT AGREEMENT BETWEEN BROWARD COUNTY, JAMES A. CUMMINGS, INC., TUTOR PERINI BUILDING CORP, TUTOR PERINI CORPORATION, SMALL BROTHERS, LLC, AND CLEVELAND CONSTRUCTION, INC.

TPC

WITNESSES:

Deborah L. O'Connell  
Signature

DEBORAH L. O'CONNELL  
Print Name of Witness above

MDL  
Signature

Michelle Debranc  
Print Name of Witness above

TUTOR PERINI CORPORATION

By: [Signature]  
Authorized Signor

RONALD N. TUTOR, CHAIRMAN, CEO  
Print Name and Title

23<sup>rd</sup> day of September 2024

ATTEST:

[Signature]  
Corporate Secretary or other person  
authorized to attest

Assistant

(CORPORATE SEAL OR NOTARY)

**SETTLEMENT AGREEMENT BETWEEN BROWARD COUNTY, JAMES A. CUMMINGS, INC., TUTOR PERINI BUILDING CORP, TUTOR PERINI CORPORATION, SMALL BROTHERS, LLC, AND CLEVELAND CONSTRUCTION, INC.**

**SMALL BROTHERS**

WITNESSES

SMALL BROTHERS, LLC

Debbie Fracci  
Signature

Debbie Fracci  
Print Name of Witness above

Stacy Mawomsky  
Signature

Stacy Mawomsky  
Print Name of Witness above

By: [Signature]  
Authorized Signor

Jon Small, MANAGER  
Print Name and Title

23 day of September, 2024

ATTEST:  
[Signature]  
Corporate Secretary or other person  
authorized to attest

(CORPORATE SEAL OR NOTARY)





**SETTLEMENT AGREEMENT BETWEEN BROWARD COUNTY, JAMES A. CUMMINGS, INC., TUTOR PERINI BUILDING CORP, TUTOR PERINI CORPORATION, SMALL BROTHERS, LLC, AND CLEVELAND CONSTRUCTION, INC.**

**CCI**

WITNESSES:

CLEVELAND CONSTRUCTION, INC.

Debbie Fracci  
Signature

Debbie Fracci  
Print Name of Witness above

Stacy Maworsky  
Signature

Stacy Maworsky  
Print Name of Witness above

By: [Signature]  
Authorized Signor

Jon Small, CEO  
Print Name and Title

23 day of September, 2024

ATTEST:  
[Signature]  
Corporate Secretary or other person  
authorized to attest

(CORPORATE SEAL OR NOTARY)

