

MEMORANDUM

Agenda Item No. 8(N)(1)

TO: Honorable Chairman Oliver G. Gilbert, III
and Members, Board of County Commissioners

DATE: July 18, 2023

FROM: Geri Bonzon-Keenan
County Attorney

SUBJECT: Resolution approving Settlement Agreement in Lambert Bros., Inc. v. Miami-Dade County, Case No. 2019-000218 CA (13) in the amount of \$200,000.00 to resolve any and all claims between the parties; and authorizing the County Mayor to execute the Settlement Agreement and exercise all provisions contained therein

The accompanying resolution was prepared by the Transportation and Public Works Department and placed on the agenda at the request of Prime Sponsor Commissioner Raquel A. Regalado.



Geri Bonzon-Keenan
County Attorney

GBK/uw


MDC001

Memorandum



Date: July 18, 2023

To: Honorable Chairman Oliver G. Gilbert, III
and Members, Board of County Commissioners

From: Daniella Levine Cava
Mayor 

Subject: Resolution Approving Settlement Agreement in *Lambert Bros., Inc. v. Miami-Dade County*, Case No. 2019-000218 CA (13) and Authorizing the County Mayor to Execute the Settlement Agreement

Executive Summary

The attached resolution seeks approval of a Settlement Agreement between Miami-Dade County (the "County") and Lambert Bros., Inc. ("Lambert Bros."). The Plaintiff, Lambert Bros., filed a complaint in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida, alleging breach after the County assessed liquidated damages of \$2,712 per day, for a total of \$339,000, which the County alleges were per the terms of the contract between the parties. The lawsuit is styled *Lambert Bros., Inc. v. Miami-Dade County*, Case No. 2019-000218 CA (13) (the "Lawsuit"). The parties have agreed to amicably settle all claims and disputes arising out of the Project (i.e., William Powell Bridge Expansion Joint and Fender System Rehabilitation) which Lambert Bros. asserted or could have asserted in the lawsuit, with the County agreeing to release \$200,000 of the total \$339,000 liquidated damages assessed, subject to approval by the Board of County Commissioners ("Board"). The unreleased portion will cover the cost of staff managing the project from the original completion date (October 2019) to when the project was completed (May 2020).

Recommendation

It is recommended that the Board approve the attached Settlement and Release Agreement between the County and Lambert Bros. The Agreement, which is attached to the resolution, resolves all claims brought by Lambert Bros. against the County for alleged breach of contract for \$200,000.

Scope

The work performed under the contract took place on and around the William Powell Bridge located on the Rickenbacker Causeway, which is in Commission District 7, represented by Commissioner Raquel Regalado.

Delegation of Authority

This item authorizes the County Mayor or the County Mayor's designee to execute the Settlement and Release Agreement on behalf of the County and to carry out all obligations and exercise all rights contained therein.

Fiscal Impact/Funding Source

Under the terms of the Agreement, the County will release to Lambert Bros. \$200,000 of the total \$339,000 liquidated damages assessed as full and final settlement of all disputes relating

to the issues arising from the litigation. The settlement will be paid from the Rickenbacker Causeway Operating Funds which were used to fund the original project.

Track Record/Monitor

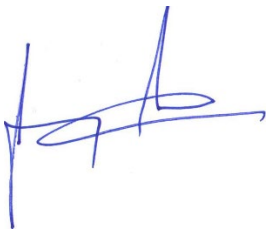
The Department of Transportation and Public Works Assistant Director of Construction, Alejandro Barrios, will oversee the administration of the Settlement and Release Agreement.

Background

On October 3, 2018, the County notified Lambert Bros. it would be recommended for the award of Request for Price Quotation (RPQ) No. 20180090, William Powell Bridge Expansion Joint and Fender System Rehabilitation Project, in the amount of \$4,552,414.58 (the "Project"). The County issued the Notice to Proceed ("NTP") for the Project, with a duration of 300 calendar days. Based on the NTP date, the date for substantial completion of the Project was October 23, 2019; substantial completion of the Project was achieved on May 11, 2020, which the County alleges was 127 days past the substantial completion date established by the contract, as modified by the County's granting of a 73 days non-compensable time extension. The County assessed liquidated damages of \$2,712 per day, for a total of \$339,000, which the County alleges were per the terms of the contract between the parties.

On November 25, 2020, Lambert Bros. submitted a claim resolution dispute request pursuant to Paragraphs 1.16 and 1.17 of the Supplementary Conditions of RPQ No. 20180090. On June 1, 2021, the Contracting Officer issued Findings of Facts and Conclusions of Law, and on July 28, 2021, issued Supplemental Findings of Facts and Conclusions of Law, which collectively addressed each of Lambert Bros.' claims arising from or relating to the Contract.

On August 20, 2021, Lambert Bros. filed a complaint, in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida, alleging breach of contract against the County. The County and Lambert Bros. desire to amicably settle all claims and disputes arising out of the Project which Lambert Bros. asserted or could have asserted in the lawsuit. The settlement between the County and Lambert Bros. provides that the County shall release to Lambert Bros. the total sum of \$200,000 of the \$339,000 liquidated damages assessed to resolve all claims between the parties within 30 days of the effective date of the Settlement Agreement. Within five business days of receipt of the settlement amount, Lambert Bros. shall file or cause to be filed a Notice of Dismissal with Prejudice of the Lawsuit, releasing the County from all claims related to the breach of contract alleged in the litigation.



Jimmy Morales
Chief Operations Officer



MEMORANDUM
(Revised)

TO: Honorable Chairman Oliver G. Gilbert, III
and Members, Board of County Commissioners

DATE: July 18, 2023

FROM: 
Gen Bonzon-Keenan
County Attorney

SUBJECT: Agenda Item No. 8(N)(1)

Please note any items checked.

- "3-Day Rule" for committees applicable if raised
- 6 weeks required between first reading and public hearing
- 4 weeks notification to municipal officials required prior to public hearing
- Decreases revenues or increases expenditures without balancing budget
- Budget required
- Statement of fiscal impact required
- Statement of social equity required
- Ordinance creating a new board requires detailed County Mayor's report for public hearing
- No committee review
- Applicable legislation requires more than a majority vote (i.e., 2/3's present ____, 2/3 membership ____, 3/5's ____, unanimous ____, CDMP 7 vote requirement per 2-116.1(3)(h) or (4)(c) ____, CDMP 2/3 vote requirement per 2-116.1(3)(h) or (4)(c) ____, or CDMP 9 vote requirement per 2-116.1(4)(c)(2) ____) to approve
- Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 8(N)(1)
7-18-23

RESOLUTION NO. _____

RESOLUTION APPROVING SETTLEMENT AGREEMENT IN *LAMBERT BROS., INC. V. MIAMI-DADE COUNTY*, CASE NO. 2019-000218 CA (13) IN THE AMOUNT OF \$200,000.00 TO RESOLVE ANY AND ALL CLAIMS BETWEEN THE PARTIES; AND AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE THE SETTLEMENT AGREEMENT AND EXERCISE ALL PROVISIONS CONTAINED THEREIN

WHEREAS, this Board desires to accomplish the purpose outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board approves the Settlement Agreement in *Lambert Bros., Inc. v. Miami-Dade County*, Case No. 2019-000218 CA (13), in substantially the form attached hereto as Exhibit 1, between Miami-Dade County and Lambert Bros., Inc. in the amount of \$200,000.00 to be released to Lambert Bros., Inc. from the \$339,000.00 liquidated damages assessed, to resolve any and all claims between the parties. This Board further authorizes the County Mayor or County Mayor's designee to execute the Settlement Agreement for and on behalf of Miami-Dade County, and to exercise all provisions contained therein.

The foregoing resolution was offered by Commissioner _____, who moved its adoption. The motion was seconded by Commissioner _____ and upon being put to a vote, the vote was as follows:

Oliver G. Gilbert, III, Chairman
Anthony Rodríguez, Vice Chairman

Marleine Bastien	Juan Carlos Bermudez
Kevin Marino Cabrera	Sen. René García
Roberto J. Gonzalez	Keon Hardemon
Danielle Cohen Higgins	Eileen Higgins
Kionne L. McGhee	Raquel A. Regalado
Micky Steinberg	

The Chairperson thereupon declared this resolution duly passed and adopted this 18th day of July, 2023. This resolution shall become effective upon the earlier of (1) 10 days after the date of its adoption unless vetoed by the County Mayor, and if vetoed, shall become effective only upon an override by this Board, or (2) approval by the County Mayor of this resolution and the filing of this approval with the Clerk of the Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

JUAN FERNANDEZ-BARQUIN, CLERK

By: _____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

D.P.C

Dale P. Clarke

SETTLEMENT AND RELEASE AGREEMENT

THIS SETTLEMENT AND RELEASE AGREEMENT (the "Agreement") is made and voluntarily entered into on this ____ day of _____, 2023, by and between MIAMI-DADE COUNTY (the "County"), a political subdivision of the State of Florida, and LAMBERT BROS., INC. ("Lambert Bros."), a Florida corporation. County and Lambert Bros. are each referred to herein as a "Party" and collectively as the "Parties."

RECITALS

WHEREAS, on or about October 3, 2018, the County notified Lambert Bros. it would be recommended for the award of Request for Price Quotation ("RPQ") No. 20180090, William Powell Bridge Expansion Joint and Fender System Rehabilitation Project, in the amount of \$4,552,414.58 (the "Project"); and

WHEREAS, on February 5, 2019, the County issued the Notice to Proceed ("NTP") for the Project, with a duration of 300-calendar days, and Lambert Bros. execution of the NTP constituted a contract for the Project, as further described in the RPQ; and

WHEREAS, based on the NTP date, the date for substantial completion for the Project was October 23, 2019; and

WHEREAS, substantial completion of the Project was achieved on May 11, 2020, which the County alleges was 127-days past the substantial completion date established by the Contract, as modified by the County's granting of a 73-days non-compensable time extension; and

WHEREAS, the County assessed liquidated damages of \$2,712.00 per day, for a total of \$339,000.00, which the County alleges were per the terms of the Contract between the Parties; and

WHEREAS, on November 25, 2020, LBI submitted a claim resolution dispute request pursuant to Paragraphs 1.16 and 1.17 of the Supplementary Conditions of Project No. 20180090; and

WHEREAS, on June 1, 2021, the Contracting Officer issued his Findings of Facts and Conclusions of Law, and on July 28, 2021, issued his Supplemental Findings of Facts and Conclusions of Law, which collectively addressed each of Lambert Bros.'s claims arising from or relating to the Contract; and

WHEREAS, on August 20, 2021, Lambert Bros. filed a Complaint, in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida, alleging breach

Page 1 of 6

County



Lambert Bros.

MDC007

of contract against the County in the matter styled: *Lambert Bros., Inc. v. Miami-Dade County*, Case No. 2019-000218 CA (13) (the "Lawsuit"); and

WHEREAS, the County and Lambert Bros. desire to amicably settle all claims and disputes arising out of the Project which Lambert Bros. asserted or could have asserted in the Lawsuit,

NOW, THEREFORE, in consideration of the covenants, obligations, payments, promise of release, and dismissal, the receipt, sufficiency, and adequacy of all such consideration being expressly acknowledged, the Parties hereby agree as follows:

AGREED TERMS

1. **Incorporation**: The foregoing recitals of fact were made and shall be a part of this Agreement to the same extent as if fully set forth herein.
2. **Condition; Effective Date**: the "Effective Date" of this Agreement shall be the effective date of the resolution of the Board of County Commissioners of Miami-Dade County, Florida (the "BCC") approving this Agreement.
3. **Payment**: The County agrees to pay Lambert Bros. **TWO HUNDRED THOUSAND DOLLARS (\$200,000.00)** within thirty (30) days of the Effective Date of this Agreement to resolve all claims and disputes arising out of the Project which Lambert Bros. asserted or could have asserted in the Lawsuit ("Settlement Amount").
4. **Release**: The Parties hereby release and discharge each other, and Lambert Bros.'s surety, US Specialty Insurance Company, and their respective past, present, and future officers, directors, employees, shareholders, agents, servants, attorneys, successors, assigns, affiliates, parents, subsidiaries, partners and insurers, from any and all action and actions, cause and causes of action, lawsuits, suits and debts, dues, sums of money, accounts, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, warranties, vacancies, damages, judgments, executions, claims, demands for defense and indemnity, demands for attorneys' fees and costs, statutory and contractual claims for attorneys' fees, judgments and liabilities in law or equity, pre and post judgment interest, obligations, losses, debts, statutory and common law claims against each other that they ever had, now have or may have in the future or hereafter can, past or presently existing, accrued or not yet accrued, known or unknown, foreseen or unforeseen, latent or patent, manifested or unmanifested, without limitation, indemnity claims, third-party claims, assigned claims, that the Parties shall or may have in connection with, that arise from, or in any way relate to the Contract, or which were or could have been raised in the Lawsuit.

Page 2 of 6

County



Lambert Bros.

MDC008

Notwithstanding any provision of this Agreement to the contrary, the Parties agree and understand that the Release of claims contemplated by this section of the Agreement does not extend to, and does not release Lambert Bros. from, warranty work required by Lambert under the subject Contract for work on the Project, including but not limited to warranty repairs required to East Bound joints 1, 5, 14, 20, 29, 32, 35, and 36.

5. **Dismissal of the Lawsuit with Prejudice:** Within five (5) business days of receipt by the Lambert Bros. of the Settlement Amount, Lambert Bros. shall file or caused to be filed a Notice of Dismissal with Prejudice of the Lawsuit, with the Court to retain jurisdiction to enforce the terms of this Agreement, in the Circuit Court of the Eleventh Judicial Circuit in and for Miami Dade County, in the matter styled: *Lambert Bros., Inc. v. Miami-Dade County*, Case No. 2019-000218 CA (13).
6. **No Admission of Liability:** It is understood and agreed by the Parties that this Agreement is entered into as a compromise of disputed claims, and is not intended to, nor shall it be construed as, an admission of any negligence, culpability, liability, wrongdoing, or breach on the part of any Party or person of any kind whatsoever by any of the Parties nor as a confession of judgment by the Parties.
7. **Representations and Warranties:** The Parties represent and warrant the following:
 - a. The person executing this Agreement on its behalf is authorized to do so;
 - b. Each has an interest in and ownership of the claims being released sufficient to grant the releases of those claims contemplated hereby, and that they have not assigned, or in any conveyed, transferred or encumbered all or any portion of the claims discharged by this Agreement, and that they have the exclusive right, capacity and authority to execute this Agreement;
 - c. This Agreement is executed without duress, and without reliance upon any statement, inducement, or representation of the Released Party or its representatives concerning the nature and extent of any damages or injuries and/or legal liability therefore and each Party has had the opportunity to discuss this Agreement with a lawyer of its choice, if so desired;
 - d. The Settlement Amount described in Section 3 is a fair and reasonable settlement and fully and finally resolves all disagreements and matters relating to the claims;
 - e. Each has completely read and fully understands all the terms and conditions in this Agreement, that they fully agree to each and every provision thereof, and hereby acknowledge receipt of a copy hereof.

8. **Amendments:** This Agreement may be modified or amended only in writing signed by all Parties to be bound. A waiver by either Party of any provision of this Agreement shall not waive any other provision of this Agreement.
9. **Entire Agreement:** This Agreement constitutes the entire understanding between the Parties hereto with respect to the subject matter hereof and supersedes any prior agreements, written or oral, with respect thereto. No covenants, agreements, representations or warranties of any kind whatsoever have been made by any Party, except as specifically set forth in this Agreement. All prior discussions and negotiations with respect to the settlement have been and are merged and integrated into, and are superseded by, this Agreement.
10. **Successors and Assigns:** This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.
11. **Severability:** In the event that any provision of this Agreement shall be held to be void, voidable or unenforceable in a particular instance and such provision does not affect the basis of the bargain of the Parties hereunder, such provision shall be severed in such instance and the remaining portions hereof shall remain in full force and effect. Furthermore, in lieu of such severed provision, there shall be added automatically in any such instance as part of this Agreement, a provision as similar to the severed provision as may be possible and be legal, binding and enforceable.
12. **Governing Law and Choice of Forum:** This Agreement shall be construed and controlled by the laws of the State of Florida as construed and applied by courts having jurisdiction therein. In the event that any conflict of law or choice of law principle would otherwise in any way cause the laws of another state to apply to any issue, such conflict of law or choice of law principle shall not apply.
13. **Execution in Counterparts:** This Agreement may be executed by the Parties by signing any one of the multiple copies of this Agreement or by electronic signature. Any copy of this Agreement, when signed by any of the Parties, shall be deemed an original. All of the signed copies shall together constitute one Agreement.
14. **Paragraph Headings, Interpretation:** Paragraph headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. No provision of this Agreement is to be interpreted for or against any party because that party or its legal representative drafted such provision.

IN TESTIMONY WHEREOF, the undersigned have entered into and executed this agreement on the date set forth below under the signature of each.

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Page 5 of 6

County



Lambert Bros.

MDC011

Miami-Dade County

By: _____

Printed Name: _____

Its: _____

Date: _____

Lambert Bros., Inc.

By:  _____

Printed Name: Gregg Lambert

Its: President

Date: 4-13-23

**Approved as to form
and legal sufficiency**

Assistant County Attorney