

SETTLEMENT AGREEMENT

This Agreement is entered into this _____ day of October, 2011, by and between CHARLEY TOPPINO AND SONS, INC., a Florida corporation (the "Contractor"); and THE CITY OF KEY WEST, FLORIDA, a municipal corporation (the "City");

WHEREAS, the City contracted with the Contractor for the construction of a stormwater pump station at White St. located at Charles McCoy Indigenous Park pursuant to a contract dated _____ ("Contract"); and

WHEREAS, the Contractor failed to achieve final completion of the project by the October 5, 2010 deadline as dictated by Contract although the Contractor believes that the delay may be justified; and

WHEREAS, City incurred additional construction administration expenses in the form of payment to CH2M Hill Engineers in the amount of Sixteen Thousand One Hundred Fifteen and 44/100 Dollars (\$16,115.44) in order to oversee the final completion of the project; and

WHEREAS, the White St. Pump Station has been fully operational to the City since November, 2010; and

WHEREAS, all parties now wish to resolve all controversies between them and to settle their differences as set forth herein.

NOW THEREFORE, in consideration of the mutual terms and conditions contained herein, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. The Recitals contained herein are true and correct and incorporated herein by reference.
2. Each party agrees that they have authority to sign this Settlement Agreement on behalf of each party and represents and warrants that such person has the full right and authority to enter into this Settlement Agreement on behalf of such party and to fully bind such party to the terms and obligations of this Agreement.

3. The Contractor agrees to pay, and the City agrees to accept, the sum of Sixteen Thousand One Hundred Fifteen and 44/100 Dollars (\$16,115.44) as full and final settlement of all issues regarding the delay in completion of the aforementioned work performed by the Contractor, .. and therefore the City waives any right to damages resulting from the delay described above and associated with the aforementioned work, including but not limited to liquidated damages, or any other remedies available to City due to the delay described herein.

2.. The City, on its own behalf, and on behalf of its agents, employees, affiliates, successors, and assigns, does hereby remise, release, acquit, satisfy, and forever discharge the Contractor, of and from all, and all manner of action and actions, cause and causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, executions, claims and demands whatsoever, whether presently known or unknown, in law or in equity, contingent or otherwise, of whatsoever kind or nature, which City ever had, now has, or which any personal representative, successor, heir, officer, director, employee, shareholder, agent, administrator or assign of said City, hereafter can, shall or may have, against said Contractor, for, upon or by reason of the Company's failure to achieve completion of the project by the deadline stated in the said Contract for the construction of a stormwater pump station on White Street located at Charles McCoy Indigeneous Park. .

4. The City and Contractor herein expressly acknowledge that this Agreement and the payment to be made by Contractor is a compromise and is made to terminate further controversy respecting all claims for damages that City has heretofore asserted or that City might hereafter assert because of Contractor's failure to achieve completion of the project by the deadline stated in the contract although this Agreement and the payment to be made by Contractor shall never be treated as an admission or recognition of the validity of any claims related to the Contract . Further, the parties to this Agreement expressly agree herein that each party shall be responsible for its own costs and attorney's fees expended in connection with this matter.

5. This Agreement shall be construed under and is enforceable pursuant to the laws of the State of Florida. Any dispute under this Agreement shall be resolved in the courts of Monroe County, Florida.

6. If any provision(s) of this Agreement are held to be illegal, invalid or unenforceable under present or future laws, any such provision(s) shall be curtailed and limited only to the extent necessary to bring it within the requirements of the law. In that event, the remainder of this Agreement shall thereafter be construed and enforced as if such illegal, invalid, or unenforceable provision(s) had never comprised a part hereof and the remaining provisions of this Agreement shall continue in full force and effect and shall not be affected by any such illegal, invalid, or unenforceable provision(s) or by severance therefrom.

CHARLEY TOPPINO AND SONS, Inc., a Florida corporation,

By: _____
Frank Toppino, President

State of Florida }
County of Monroe }

I HEREBY CERTIFY that on this day personally appeared before me, an officer duly authorized to administer oaths and take acknowledgements, Frank Toppino, as President of Charley Toppino and Sons, Inc., to me personally known or who provided _____ as photo identification, and who executed the foregoing instrument and he acknowledged before me that he executed the same individually and for the purposes therein expressed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State last aforesaid, this _____ day of _____, 2011.

Notary Public, State of Florida

My Commission Expires:

City of Key West, Florida

Attest: _____
Cheryl Smith
City Clerk

By: _____
Jim Scholl, City Manager

State of Florida }
County of Monroe }

I HEREBY CERTIFY that on this day personally appeared before me, an officer duly authorized to administer oaths and take acknowledgements, Jim Scholl, to me personally known or who provided _____ as photo identification, and who executed the foregoing instrument and he acknowledged before me that he executed the same individually and for the purposes therein expressed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State last aforesaid, this _____ day of _____, 2011.

Notary Public, State of Florida

My Commission Expires: