



## THE CITY OF KEY WEST

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MEMORANDUM

### EXECUTIVE SUMMARY

**TO:** Jim Scholl, City Manager  
E. David Fernandez, Asst. City Manager

**FROM:** Jay Gewin, Utilities Manager

**DATE:** October 7, 2011

**SUBJECT:** **Approving a Settlement Agreement Between the City and Charley Toppino and Sons for the White St. Stormwater Pump Station Project.**

#### **ACTION STATEMENT:**

This resolution will approve a settlement agreement regarding the White St. Pump Station with Charley Toppino and Sons. The agreement would require Toppino's to pay the City \$16,115.44 in lieu of liquidated damages to cover extra engineering services that were required by CH2M Hill for Construction Engineering Services.

#### **BACKGROUND:**

The City Commission awarded a contract for the White St. Pump Station contract to Charley Toppino and Sons in the amount of \$1,645,000 at its meeting on November 17, 2009. (Resolution 09-296) 65% of the costs of this project is being funded through an Army Corps of Engineers grant.

The White St. Stormwater Pump Station is now able to reduce flooding in the White Street Drainage basin. The project includes a new stormwater pumping and vortex system that empties into two existing wells, along with an elevated generator and platform. The anticipated environmental results include reducing potential health risks to beach bathers by reducing stormwater discharges to nearshore waters which may carry bacterial contamination or other pollutants.

#### **PURPOSE & JUSTIFICATION:**

Although the White St. Pump Station has been operational for several months, there were delays from the contractor that resulted in the project not being fully closed out for some time thereafter. Much of the delays involved such

*Key to the Caribbean – Average yearly temperature 77° F.*

items as operating manuals, spare parts, and warranties; none of which would inhibit that operation of the pump station. These items, along with a time extension previously granted to the contractor due to delays in receiving the pump, required additional engineering services from CH2M Hill. The City Commission previously awarded CH2M Hill a task order (# 03-10-STM) for construction engineering services for the White St. Pump Station project in the amount of \$104,124 via Resolution 09-299.

The contractor, Charley Toppino and Sons, has agreed to fund the entire \$16,115.44 cost of this amendment. This amount will be withheld from their final payment, therefore the amendment will end up being cost-neutral to the City.

The City Commission previously extended this contract with Charley Toppino and Sons to October 6<sup>th</sup>, 2010 on a no-cost basis (Resolution 10-244). Substantial completion was achieved by the contractor on November 30, 2011, with final completion achieved May 16, 2011.

This agreement would waive liquidated damages of \$3,000 a day prior to substantial completion (9/17/10-11/30/10) and \$1,000 per day for final completion (12/30/10-5/16/11). The total of these charges amounts to \$359,000. However, this figure exceeds the amount of actual cost impact to the City due to the delays in project close out. Liquidated Damages are generally established as an estimate before construction of what the actual damages to the City would be if the project was not completed on time. The City has withheld the final payment to the contractor in the amount of \$116,455.53 (including project retainage) until this matter is settled.

#### **OPTIONS:**

1. Approve the settlement agreement with Charley Toppino and Sons to enable all project close-out to be completed. This option will not cost the City any additional funds, due to Charley Toppino and Sons' agreement to cover the additional fees from CH2M Hill.
2. Do not approve the settlement agreement and attempt to collect liquidated damages. This option is not recommended, because the figure of liquidated damages exceeds the actual damages incurred by the City.

#### **FINANCIAL IMPACT:**

There will be no financial cost to the City by agreeing to this settlement agreement. Charley Toppino and Sons will cover all extra engineering costs relating to this project from CH2M Hill.

#### **RECOMMENDATION:**

Staff recommends option # 1, that the City Commission approves this settlement agreement with Charley Toppino and Sons.