

## **STIPULATED PARTIAL SETTLEMENT AGREEMENT**

THIS Partial Settlement Agreement ("Agreement") is entered into this \_\_\_\_ day of July, 2017, by and between Burke construction Group, Inc., a Florida Corporation ("Burke"), and the City of Key West ("City")(Burke and City are collectively herein referred to as the "Parties"), a municipal corporation of the State of Florida, and shall become binding upon approval by the City Commission of the City of Key West, and shall thereafter take effect as set forth herein.

WHEREAS Burke was awarded that certain Contract dated December 19, 2014 ("Contract") agreeing to furnish all of the materials, tools, labor, and all appliances, machinery, and appurtenances for the construction of Josephine Parker City Hall at Historic Glynn Archer School ("Project"); and

WHEREAS Arch Insurance Company ("Arch") has issued Payment and Performance Bonds, Bond No. SU1126426, on behalf of Burke for the Project; and

WHEREAS the City has occupied the City Hall upon reaching substantial completion; and

WHEREAS the Parties have conflicting claims and positions as to the amount, if any, due to Burke from the City for the completion of the Project; and

WHEREAS the Parties desire to amicably settle the claims for amounts due payable to Burke under the Contract for completion of the Project, including off-sets for liquidated damages; and

WHEREAS the City is a municipality organized and existing under the laws of the State of Florida and is empowered to accept this agreement to settle this matter and to protect the public health, safety, and welfare of its citizens; and

WHEREAS this Partial Settlement Agreement is intended to resolve only the issue of amounts due and owing between the Parties and to leave all other aspects of the Contract in full force and effect, including but not limited to all warranty, guarantee and indemnity obligations; and

WHEREAS the obligations of Burke and Arch under the Payment and Performance Bonds remain in full force and effect; and

**NOW THEREFORE**, inconsideration of the premises set forth herein, Burke and the City do hereby covenant and agree to the following:

**I. Incorporation of Recitations:** The matters contained in the preamble are true and correct, and hereby incorporated by reference.

**II. Final Settlement Payment:** The parties agree that Burke shall accept, and the City shall remit, the sum of \$198,203.58 as full and complete payment of all monetary obligations of City under the Contract. The Pending Final Payment Application for the Period to June 26, 2017 in the amount of \$198,203.58 shall be processed for payment and applied to the existing Contract between the Parties previously approved by the City. The payment of \$198,203.58 to Burke pursuant to this Partial Settlement Agreement shall be contingent upon approval by the City Commission of a Contract amendment as recommended by City staff.

**III. Release:** In consideration for receipt of the Final Settlement Payment, Burke does hereby remise, release, acquit, satisfy, and forever discharge the City and its respective representatives, employees, attorneys, agents, affiliates, members, and all other related parties (collectively in this paragraph "Releasees"), of and from all manner of, action and actions, cause and causes of action, suits, debts, sums of money, accounts, bills, covenants, controversies, agreements, promises, damages (including consequential, incidental, punitive, special or other), judgments, executions, claims, liabilities and demands, whatsoever, at law and in equity, which Burke ever had, now has, or which any officer, director, shareholder, representative, successor, or assign of Burke hereafter can, shall or may have against Releasees for, upon or by reason of any matter, cause or thing, whatsoever, from the beginning of the world to the day of these presents, whether known or unknown (either through ignorance, oversight, error, negligence or otherwise), latent or patent, and whether mature or unmatured, and which matter cause or thing relates, in any matter, directly or indirectly, to the Contract or the Project.

**IV. Effective Date:** This Agreement shall become effective immediately upon its approval by the City Commission of the City of Key West after which the Pending Final Payment Application for \$198,203.58 will be submitted and processed for payment.

**V. Scope and Limitation of Partial Settlement:** The terms of this Settlement Agreement constitute the entire agreement of the Parties and are limited in scope to the resolution of amounts due for payment for the construction of the Josephine Parker City Hall at Historic Glynn R. Archer School.

**VI. Miscellaneous:**

A. Burke warrants that it has not assigned, sold, subrogated, transferred to, or conveyed to anyone any actions, causes of action, claims or demands that Burke now has or ever had against the City.

B. No modification, waiver, amendment, discharge or change of this Settlement Agreement shall be valid unless the same is in writing and signed by the party against which the enforcement of such modification, waiver, amendment, discharge or change is sought.

C. This Settlement Agreement contains the entire agreement between the Parties hereto relating to the transaction contemplated by this Settlement Agreement and all prior or contemporaneous agreements, understandings, representations and settlements, oral or written, are merged herein.

D. This Settlement Agreement shall be strictly construed in accordance with the laws of the State of Florida.

E. This Settlement Agreement shall be binding upon and inure to the benefit of the Parties, their respective heirs, administrators, successors and assigns.

F. All pronouns, and any variations thereof shall be deemed to refer to the masculine, feminine, neuter, singular or plural as the identity of the person or persons or entity may require.

G. All sections, titles or captions contained in this Settlement Agreement are for convenience only and shall not to be deemed to be a part of this Settlement Agreement and shall not affect the meaning or interpretation of this Settlement Agreement.

IN WITNESS WHEREOF, the Parties hereby hereto have executed this Settlement Agreement as to the dates set forth below.

BURKE CONSTRUCTION GROUP, INC.

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By:

CITY OF KEY WEST

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Cheryl Smith, City Clerk

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James K. Scholl, City Manager