

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (this “Agreement”) is entered into by and between Martin County, a political subdivision of the State of Florida (“County”) and Crane Creek Property Owners Association, Inc., a corporation of the State of Florida (“CCPOA”) (collectively, the “Parties”). The Agreement is effective on the date last signed by the Parties (the “Effective Date”).

This Agreement is made as a compromise between the Parties for the complete and final settlement of all of their claims, differences, and causes of action as follows:

RECITALS

WHEREAS, County, through its Utilities and Solid Waste Department, installed potable water pipes and other related infrastructure in the subdivision known as Crane Creek in Martin County; and

WHEREAS, County duly selected and contracted with a contractor to install the potable water pipes after a competitive bidding process; and

WHEREAS, CCPOA contends the contractor damaged an arch pipe, which is a large metal pipe for handling stormwater, that runs underneath Crane Creek Avenue; and

WHEREAS, a true and accurate depiction of the damaged arch pipe and a plat showing the location of the arch pipe is attached hereto as Exhibit A;

WHEREAS, CCPOA has demanded County repair the damage to the arch pipe;

WHEREAS, County is willing to pay for the repair as long as the CCPOA contracts directly with a vendor to make the repairs (and County would not be a party to that contract); and

WHEREAS, CCPOA, after soliciting for proposals, has provided County with the lowest-priced proposal for the repair from Southern Underground that is attached hereto as Exhibit B (the “Proposal”); and

WHEREAS, CCPOA has requested County pay CCPOA the amount of \$26,000 for the repair, which includes the estimated amount in the Proposal plus a 12% contingency; and

WHEREAS, County approves of the Proposal;

NOW THEREFORE, in consideration of the foregoing recitals, and the mutual promises, covenants and undertakings contained herein and incorporated into this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree to the following terms and conditions as a full and complete settlement of the damage to the arch pipe and any and all claims related thereto:

1. Recitals. The aforementioned Recitals are incorporated into this Agreement.
2. County agrees to tender to CCPOA within 30 days from the date of this Agreement a check made payable to CCPOA in the amount of \$26,000 for the repair in full accord and satisfaction (the "Proceeds").
3. CCPOA agrees to contract directly with Southern Underground for the repair as outlined in the Proposal, and further, CCPOA agrees CCPOA (and not County) will be solely responsible for supervising and enforcing the contract with Southern Underground for the repair. CCPOA further agrees that if CCPOA has money left over from the Proceeds after final completion, for example, the contingency or a portion thereof, CCPOA will notify County of the same and pay County the amount of the surplusage within 30 days after final completion, if any. No interest shall be assessed. Additionally, CCPOA agrees to provide County the final invoice or statement from Southern Underground showing the total amount paid to Southern Underground by CCPOA. Finally, CCPOA agrees to require any contract for the repair, specifically, the contract with Southern Underground and any contract between Southern Underground and any subcontractor, independent contractor, or materialmen, include a provision that the County is not

a third-party beneficiary to the contracts and the parties to the contracts waive any and all claims against County arising out of the contracts. Nothing herein constitutes a waiver of any claim by CCPOA and County arising out of this Agreement.

4. Indemnification. CCPOA agrees to hold County harmless and indemnify County from any and all claims arising out of CCPOA's contract with the Southern Underground for the repair due to any claimed breach of the contract for the repair or any negligence on the part of CCPOA, Southern Underground, or any subcontractors, independent contractors, or materialmen.

5. The Parties agree the County is not a third-party beneficiary to CCPOA's contract with Southern Underground or any of Southern Underground's subcontractors, independent contractors, or materialmen.

6. General Releases.

- i. CCPOA's Release of County. In consideration for County entering into this Agreement, and for such other good and valuable consideration received from County, the receipt and sufficiency of which is hereby acknowledged, CCPOA, on behalf of itself and any of its agents, assigns, employees, officers, owners, representatives, trustees or anyone else acting on CCPOA's behalf, hereby fully releases, acquits, satisfies, and forever discharges County, together with County's Board of County Commissioners, agents, attorneys, commissioners, employees, and other representatives from: (1) any and all claims, demands, liabilities, debts, judgments, expenses, actions, causes of action, and suits of any kind whatsoever in connection with the damaged arch pipe; (2) reimbursement of any attorneys' fees and any legal costs; and (3) any compensatory or any other damages, if any; and (4) all other legal

responsibilities arising from or relating to the damaged arch pipe, whether known or unknown, suspected or unsuspected, foreseen or unforeseen, real or imaginary, actual or potential.

- ii. County's Release of CCPOA. In consideration for CCPOA entering into this Agreement, and for such other good and valuable consideration received from CCPOA, the receipt and sufficiency of which is hereby acknowledged, County, on behalf of itself and any of its agents, assigns, employees, officers, representatives, or anyone else acting on County's behalf, hereby fully releases, acquits, satisfies, and forever discharges CCPOA, together with its agents, attorneys, commissioners, employees, and other representatives from: (1) any and all claims, demands, liabilities, debts, judgments, expenses, actions, causes of action, and suits of any kind whatsoever in connection with the damaged arch pipe; (2) reimbursement of any attorneys' fees and any legal costs; and (3) any compensatory or any other damages, if any; and (4) all other legal responsibilities arising from or relating to the damaged arch pipe, whether known or unknown, suspected or unsuspected, foreseen or unforeseen, real or imaginary, actual or potential.

7. Invalidation. If any provision of this Agreement is invalidated by a court of competent jurisdiction, then all of the remaining provisions of this Agreement shall remain in full force and effect, provided that the Parties may still effectively realize the complete benefit of the promises and considerations conferred hereby.

8. Entire Agreement. This Agreement constitutes the entire agreement between the Parties hereto with respect to the matters set forth herein and supersedes in its entirety any and all

agreements and communications, whether written or oral, previously made in connection with such matters. Any agreement to amend or modify the terms or provisions of this Agreement must be in writing and executed by both of the Parties hereto. No waiver of any provision of this Agreement will be valid unless it is in writing and signed by the party against whom such waiver is charged.

9. Non-Admission of Liability. This Agreement is the result of a compromise and settlement and shall never be construed as an admission of any liability, wrongdoing, responsibility, or unlawful conduct by County or CCPOA. The Parties acknowledge that this Agreement has been entered into by the Parties to avoid the costs and uncertainty of litigating the damage to the arch pipe.

10. Binding Nature of Agreement. This Agreement shall be binding upon each of the Parties and upon their any successors and assigns, and shall inure to the benefit of each Party and to its successors and assigns.

11. Notice. Whenever either party desires to give notice to the other, such notice must be in writing in at least one of the following methods:

- (a) Certified United States Mail, postage prepaid, return receipt requested; or
- (b) Overnight courier, such as by FedEx or UPS, with a request for receipt acknowledgment; or
- (c) Hand-delivery to a person authorized to accept delivery of notice with a request for a receipt acknowledgment; or
- (d) Email if and only if agreed to in advance by County and CCPOA in writing specifying the email addresses, and if so agreed, the email shall a request receipt acknowledgement.

The place for giving notice shall remain the same as set forth herein until changed in writing in the manner provided in this section. For the present, the parties designate the following:

FOR COUNTY:

Sam Amerson, PE
Director
Martin County Utilities & Solid Waste Department
3473 SE Willoughby Boulevard, Suite 102
Stuart, FL 34994

FOR CCPOA:

Mr. Bernie Barrile
Crane Creek Property Owners Association
3490 SW Centre Court
Palm City, FL 34990

CCPOA shall be required to notify the County, in writing, whenever there is a change in the address of CCPOA (to the place) for which notice is to be sent (giving notice), as required in this section. In the event CCPOA fails to maintain a current address on record with the County as required herein, County shall be deemed to have notified CCPOA by using the last known address on record and County shall not have any responsibility or obligation to investigate the validity of the address that CCPOA has provided. As a result, CCPOA agrees to hold County harmless and defend same for any action or occurrence or non-occurrence as a result of CCPOA not receiving notice due to CCPOA's failure to update its address for notification. All notices sent in accordance with this section shall be deemed to be effective upon receipt or refusal of same unless otherwise expressly provided in this Agreement.

12. Authority. Each Party represents that each person, or authorized counsel, executing this Agreement on its behalf has been authorized to sign on behalf of the respective Party and to

fully bind it to the terms of this Agreement and that the respective Parties have the power and authority to perform their respective obligations as provided by this Agreement.

13. Law, Jurisdiction, Venue, Waiver of Jury Trial. This agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. The exclusive venue for any lawsuit arising from, related to, or in connection with this Agreement shall be in the state courts of the Nineteenth Judicial Circuit in and for Martin County, Florida, except that nothing herein shall prevent County from filing pleadings, including but not limited to a and proof of claim, in United States Bankruptcy Court if necessary. **BY ENTERING INTO THIS AGREEMENT, COUNTY AND CCPOA HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT.**

14. Counterparts. The Parties agree that this Agreement and any and all other documents in connection with settlement of this matter may be executed in exact counterparts, each of which shall be deemed an original but both of which taken together shall constitute one and the same instrument. Any signature page delivered by facsimile transmission or e-mail shall be treated in all manner and respects as an original document.

15. Effective Date. This Agreement is not effective until approved by County's Board of County Commissioners and signed by the Parties, and the effective date of this Agreement is the date of the last signature as set forth below. If County's Board of County Commissioners rejects this Agreement, CCPOA is not bound by any terms and conditions as set forth herein even if CCPOA signs this Agreement first.

16. Time. All time periods in this Agreement are for calendar days, however, if last day of any time period in this Agreement falls on a Saturday, Sunday or legal holiday, the last day is extended to the next day that is not a Saturday, Sunday or legal holiday.

17. Force Majeure. The Parties shall not be liable for any failure of or delay in the performance of this Agreement for the period that such failure or delay is beyond the reasonable control of a party, materially affecting the performance of any of its obligations under this Agreement, and could not reasonably have been foreseen or provided against, for example, an extreme weather event such as a hurricane, but will not be excused for failure or delay resulting from only general economic conditions or other general market effects. If either party to this Agreement invokes this provision to avoid performance of any obligation under this Agreement and a Court determines that party wrongfully invoked this provision to evade performance of such an obligation, the aggrieved party shall be entitled to its reasonable attorney's fees and costs for obtaining the Court's determination of the same.

18. To the extent this Agreement conflicts with any other Agreement between the Parties, the terms of this Agreement control.

[This space is left blank intentionally.]

IN WITNESS THEREOF, the Parties have executed this Agreement on the dates indicated below.

CRANE CREEK PROPERTY OWNERS ASSOC.

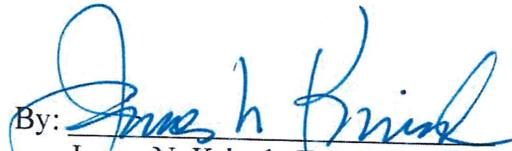


Witness Signature

Print name: Thomas Winter

By:  Date: 9/21/2019
Bernie Barrile
President

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

By: 
James N. Krivok, Esq.

IN WITNESS WHEREOF, this Settlement Agreement and Release has been executed by and on behalf of Martin County, Florida, by its Chairman of its Board of County Commissioners, its seal affixed hereto, as attested by its Clerk as of the _____ day of _____, 2019.

(SEAL)

BOARD OF COUNTY COMMISSIONERS
MARTIN COUNTY, FLORIDA

ATTEST:

By: _____
Edward V. Ciampi, Chairman

By: _____
Carolyn Timmann, Clerk of the
Circuit Court and Comptroller

APPROVED AS TO FORM AND LEGAL
SUFFICIENCY

By: _____
Sarah W. Woods
County Attorney