

SETTLEMENT AGREEMENT

THIS AGREEMENT is made this 13th day of December 2010, by and between AMINO BROTHERS COMPANY, INC. ("Amino"), JACKSON COUNTY, MISSOURI (the "County"), and BURNS & MCDONNELL ENGINEERING COMPANY, INC. ("Burns"). Amino, the County and Burns shall hereinafter be referred to collectively as the "Parties."

RECITALS

WHEREAS, Amino provided labor, materials and services on behalf of the County and the City of Lee's Summit, Missouri for improvements to and construction upon property located at Woods Chapel Road, I-470 to Liggett Road, in Jackson County, State of Missouri (the "Project"); and

WHEREAS, Amino claims it is owed payment for temporary paving labor, materials and services provided to the Project, including claims for extras (the "Claim"); and

WHEREAS, the County has denied that Amino is owed the amount of the payment that Amino demanded for the extra temporary pavement work; and

WHEREAS, Burns provided certain design services, namely the preparation of plans and specifications, including the preparation of quantities for the items of work that Amino agreed to perform at the Project, and such services were utilized and relied upon by the County, the City of Lee's Summit and Amino in connection with the bidding and construction of the Project; and

WHEREAS, Amino claims that the plans and specifications prepared by Burns contained an error or omission with respect to the temporary paving work (Line Item 59) at the Project, which caused Amino to have to supply significant additional labor, materials and services for the construction and performance of the temporary paving work that is the subject of Amino's Claim; and

WHEREAS, Amino denies that it delayed the construction of the Project, Burns denies any errors or omissions in its quantities for the temporary paving work (Line Item 59) or in its plans or specifications for the Project, and all parties deny any additional liability or fault to one another or arising out of their involvement in the Project.

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual undertakings, covenants and agreements set forth below, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. PAYMENT TO AMINO. Payment shall be made to Amino in the total sum of Three Hundred Ninety Nine Thousand Four Hundred Twenty One Dollars and 65/100 (\$399,421.65) (the "Payment"), to be paid as follows:

\$381,921.65 to be paid by the County;  
\$85,000.00 to be paid by Burns (to the County);  
\$17,500.00 to be paid by the County on behalf of the City of Lee's Summit.

The Payment shall be paid out in the following manner: Burns shall make its payment of \$85,000.00 to the County, and the County shall include Burns' contribution of \$85,000.00 and pay those sums with its payment of \$381,921.65. The City of Lee Summit's payment of \$17,500.00 will be disbursed by the County and shall be paid from the City of Lee Summit's CURS account. The Payment shall be made by check(s) or cashier's check(s), to "Amino Brothers Company, Inc.," and shall be delivered to Heather F. Shore, 911 Main Street, Suite 2300, Kansas City, Missouri 64105, no later than 21 days from the date the County Legislature approves this Settlement Agreement. The County will present this Settlement Agreement to the County Legislature for approval by no later than January 18, 2011.

2. WAIVER AND RELEASE OF CLAIM FOR LIQUIDATED DAMAGES. The County shall and hereby does release and waive any right, claim or cause of action it may have against Amino or Burns for liquidated or actual damages, delays, or other damages arising out of or relating in any way to delays or the untimely completion of the Project or Amino's work at the Project (the "Damages").

3. CHANGE ORDER 2. A portion of the Payment, specifically \$279,421.65, which will be made to Amino by and on behalf of the County, will be reflected in Change Order No. 2 and Attachment A thereto. Change Order No. 2 will be issued by the County and signed by Amino in order for the County to process payment of the \$279,421.65. However, Amino's execution of Change Order No. 2 shall not modify the terms of this Settlement Agreement or constitute a waiver or release on the part of Amino of any right to request payment or to assert a claim, demand or cause of action for any payment owed for any other work that Amino performed at the Project (excluding its work on the temporary paving and the Claim, as set forth herein). To the extent there is any conflict between the terms of this Settlement Agreement and the terms of Change Order 2, the terms of this Settlement Agreement shall take precedence and shall govern.

4. AMINO'S RELEASE AND COVENANT NOT TO SUE. Except for the rights and obligations of the County and Burns, which are set forth herein, effective upon delivery of the Payment, Amino, for itself and for all of its past or present officers, directors, trustees, shareholders, members, owners, agents, employees, independent contractors, material suppliers, laborers, representatives, attorneys, sureties, liability insurers, affiliates, subsidiaries, parents, predecessors, successors, and assigns, does release, discharge and abandon the Claim, and any additional past, present or future claims, demands, causes of action, damages, injuries or losses of any type of description, whether legal or equitable, and whether known, unknown, currently existing or arising

hereafter, which it may now have or may have in the future against the County or Burns and Burns' past or present officers, directors, trustees, shareholders, members, owners, agents, employees, independent contractors, material suppliers, laborers, representatives, attorneys, sureties, liability insurers, affiliates, subsidiaries, parents, predecessors, successors, assigns and legislators, arising from or related in any manner to the Claim (collectively, the "Released Claims"). Amino reserves its right to request payment or to assert a claim, demand or cause of action for any payment owed for any other work that Amino performed at the Project (excluding its work on the temporary paving and the Claim).

5. THE COUNTY'S RELEASE AND COVENANT NOT TO SUE. For valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the County hereby, for itself and for all of the its past or present officers, trustees, agents, employees, representatives, attorneys, liability insurers, affiliates, subsidiaries, parents, predecessors, successors, assigns and legislators, releases, acquits and discharges Amino, Burns and their respective past or present officers, directors, trustees, shareholders, members, owners, agents, employees, independent contractors, material suppliers, laborers, representatives, attorneys, sureties, liability insurers, affiliates, subsidiaries, parents, predecessors, successors, assigns and legislators (as the case may be), from any claims which it has or could have asserted against Amino or Burns, relating to the temporary paving work performed by Amino at the Project or the Damages.

6. BURN'S RELEASE AND COVENANT NOT TO SUE. For valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Burns hereby, for itself and for all of the its past or present officers, directors, trustees, shareholders, members, owners, agents, employees, independent contractors, representatives, attorneys, sureties, liability insurers, affiliates, subsidiaries, parents, predecessors, successors, affiliated entities, assigns and legislators, releases, acquits and discharges Amino and the County and their respective past or present officers, directors, trustees, shareholders, members, owners, agents, employees, independent contractors, material suppliers, laborers, representatives, attorneys, sureties, liability insurers, affiliates, subsidiaries, parents, predecessors, successors, assigns and legislators (as the case may be), from any claims which it has or could have asserted against Amino or the County, relating to the temporary paving work performed by Amino at the Project or the Damages.

7. GENERAL PROVISIONS.

A. VOLUNTARY AGREEMENT/ASSUMPTION OF RISKS. The Parties have entered into this Settlement Agreement voluntarily, having fully read and fully understood the meaning and effect of all its terms and provisions, and fully understanding its and their costs and risks. Each Party has consulted with its legal counsel and/or understands and agrees that it has had the opportunity to consult with its legal counsel concerning this Settlement Agreement. Further, the Parties have conducted such discovery and/or inquiry as they deem necessary and advisable prior to entering into this

Settlement Agreement. Except as to the agreements, warranties, releases, covenants and reservations made or contained in this Settlement Agreement, the Parties enter into this Settlement Agreement understanding that facts or other circumstances may exist which are undisclosed, or which are different from or other than those which they believe to be the case, and the Parties voluntarily assume all risks attendant to such undisclosed, affiliate or additional facts or circumstances.

In particular, and without limiting the generality of the foregoing, Amino acknowledges and agrees that, with respect to the claims that were or could have been asserted by it against the County or Burns: (1) The releases and covenants not to sue contained in Settlement Agreement fully discharge and release all Released Claims asserted by Amino against the County or Burns, including all claims for payment not presently known that may develop or be discovered later only with respect to the temporary paving; (2) In making this Settlement Agreement, Amino has relied on its own judgment, belief and knowledge of the nature, extent and duration of its losses and damages, and has not relied in any way on any representation or statement of any kind by any other party hereto or by any consultant, attorney or witness employed by the County or Burns, including any statement or representation regarding Amino's losses or damages as to the temporary paving aspects of its work at the Project; (3) Amino assumes all risk or hazard that its damages arising from the temporary paving work may be or become greater than is now known, anticipated or expected; and (4) Even with knowledge of the possibilities expressed above, it is Amino's desire to fully, finally and forevermore settle this dispute for the consideration stated herein. This assumption of risk runs only to Amino's work on the temporary paving aspects of the Project, and not to any other aspect of its work on the Project; as stated above, Amino reserves its right to request payment or to assert a claim, demand or cause of action for any payment owed by the County for any other work that Amino performed at the Project (excluding its work on the temporary paving).

Further and without limiting the generality of the foregoing, the County acknowledges and agrees that: (1) The releases and covenants not to sue contained in this Settlement Agreement fully discharge and release claims asserted by or which may have been asserted by the County against Amino or Burns, including all claims not presently known that may develop or be discovered later, relating to the temporary paving work performed by Amino at the Project and/or the Damages; (2) In making this Settlement Agreement, the County has relied on its own judgment, belief, and knowledge of the nature, extent, and duration of its losses, damages, and backcharges, and has not relied in any way on any representation or statement of any kind by any other party hereto or by any consultant, attorney or witness employed by Amino or Burns, including any statement or representation regarding Amino's losses or damages; (3) the County assumes all risk or hazard that its damages may be or become greater than is now known, anticipated, or expected; and (4) Even with knowledge of the possibilities expressed above, it is the County's desire to fully, finally and forevermore settle this dispute for the consideration stated herein.

Further and without limiting the generality of the foregoing, Burns acknowledges and agrees that: (1) The releases and covenants not to sue contained in this Settlement Agreement fully discharge and release claims asserted by or which may have been asserted by Burns against Amino or the County, including all claims not presently known that may develop or be discovered later, relating to the temporary paving work performed by Amino at the Project and/or the Damages; (2) In making this Settlement Agreement, Burns has relied on its own judgment, belief, and knowledge of the nature, extent, and duration of its losses, damages, and backcharges (if any), and has not relied in any way on any representation or statement of any kind by any other party hereto or by any consultant, attorney or witness employed by Amino or the County, including any statement or representation regarding Amino's losses or damages; (3) Burns assumes all risk or hazard that its damages may be or become greater than is now known, anticipated, or expected; and (4) Even with knowledge of the possibilities expressed above, it is Burns' desire to fully, finally and forevermore settle this dispute for the consideration stated herein.

B. NO ADMISSION. This Settlement Agreement constitutes a compromise of disputed matters and has been entered into by the Parties in order to avoid incurring costs, delay and distraction associated with continuance of the Released Claims and any claim relating to the Damages, including the possibility of arbitration and/or litigation, and not in acknowledgment of any wrongdoing, liability, responsibility or adverse circumstances in connection with the Released Claims or the Damages. Neither this Settlement Agreement, nor any performance to be rendered hereunder, shall constitute or be deemed to constitute an admission or acknowledgement, express or implied, of any matter or circumstance adverse to the interest of any party, or of any wrongdoing, liability or responsibility of any Party, and all assertions or implications or wrongdoing, liability, responsibility or other adverse circumstances, whether made in the litigation or otherwise, are expressly disputed and denied.

C. AMINO'S WARRANTIES. Amino warrants and represents to the County and Burns that: (1) It has obtained all capacity and authority necessary to enter into this Settlement Agreement, to make the agreements, warranties, releases and covenants made or contained herein, and to bind any and all entities described as bound in such agreements, warranties, releases and covenants made or contained herein, and to bind any and all entities described as bound in such agreements, warranties, releases and covenants to the terms thereof; (2) It owns and is fully possessed of all right, title and interest in and to each and every claim, demand, cause of action, damage, injury and/or loss which it has released pursuant to this Settlement Agreement, and that none of those claims, demands, causes of action, damages, injuries and/or losses have been assigned, transferred, pledged, encumbered or otherwise disposed of in any manner, voluntary or involuntary, in whole or in part; and (3) Any and all liens, encumbrances or claims held by any insurers, attorneys or others as a result of the Released Claims or the release of the Damages have been or will be satisfied, and that the County and Burns will have no responsibility or liability whatsoever with respect to any such claim.

D. THE COUNTY'S WARRANTIES. The County warrants and represents to Amino and Burns that: (1) It has obtained all capacity and authority necessary to enter into this Settlement Agreement, to make the agreements, warranties, releases and covenants made or contained herein, and to bind any and all entities described as bound in such agreements, warranties, releases and covenants made or contained herein, and to bind any and all entities described as bound in such agreements, warranties, releases and covenants to the terms thereof; (2) It owns and is fully possessed of all right, title and interest in and to each and every claim, demand, cause of action, damage, injury and/or loss which it has released pursuant to this Settlement Agreement, and that none of those claims, demands, causes of action, damages, injuries and/or losses have been assigned transferred, pledged, encumbered or otherwise disposed of in any manner, voluntary or involuntary, in whole or in part; and (3) Any and all liens, encumbrances or claims held by any insurers, attorneys or others as a result of the Released Claims or the release of the Damages have been or will be satisfied, and that Amino and Burns will have no responsibility or liability whatsoever with respect to any such claim.

E. BURN'S WARRANTIES. Burns warrants and represents to Amino and the County that: (1) It has obtained all capacity and authority necessary to enter into this Settlement Agreement, to make the agreements, warranties, releases and covenants made or contained herein, and to bind any and all entities described as bound in such agreements, warranties, releases and covenants made or contained herein, and to bind any and all entities described as bound in such agreements, warranties, releases and covenants made or contained herein, and to bind any and all entities described as bound in such agreements, warranties, releases and covenants to the terms thereof; (2) It owns and is fully possessed of all right, title and interest in and to each and every claim, demand, cause of action, damage, injury and/or loss which it has released pursuant to this Settlement Agreement, and that none of those claims, demands, causes of action, damages, injuries and/or losses have been assigned transferred, pledged, encumbered or otherwise disposed of in any manner, voluntary or involuntary, in whole or in part; and (3) Any and all liens, encumbrances or claims held by any insurers, attorneys or others as a result of the Released Claims or the release of Damages have been or will be satisfied and that Amino and the County will have no responsibility or liability whatsoever with respect to any such claim.

F. ATTORNEY'S FEES. Should any action be commenced with respect to any breach of or interference with this Settlement Agreement, or any of its terms or provisions, the prevailing party shall, in addition to any other relief to which it may be entitled, be entitled to an award of reasonable attorneys' fees incurred in the prosecution or defense of the action, including any appeal.

G. ENTIRE AGREEMENT. This Settlement Agreement constitutes the Parties' entire agreement concerning the subjects addressed herein and shall supersede any and all previous or contemporaneous agreements and understandings concerning those subjects, all of which are merged in this Settlement Agreement. This Settlement Agreement has

been the subject of negotiations and discussions between and among the Parties, so that any rule construing ambiguities against the drafter shall have no force and effect.

H. MODIFICATION AND WAIVER. No modification, waiver or supplement of or to any term or provision of this Settlement Agreement shall be effective unless the same is made in writing and signed by the Parties, and no written and signed modification, waiver or supplement shall have any force or effect beyond the specific instance or purpose for which the same is given or made.

I. EXECUTION. This Settlement Agreement may be executed in one or more fax counterparts.

J. GOVERNING LAW. This Settlement Agreement has been negotiated and made in the State of Missouri and shall be interpreted and enforced in accordance with the laws of the State of Missouri.

K. NO THIRD-PARTY BENEFICIARY. This Settlement Agreement is not intended to benefit any third-parties.

EXECUTED BY THE PARTIES to be effective as of the date first stated above.

AMINO BROTHERS COMPANY, INC.

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 2011.

Notary Public \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_

My commission expires: \_\_\_\_\_

[Seal]



JACKSON COUNTY, MISSOURI

Signature: W. Stephen Nixon

Print Name: W. STEPHEN NIXON

Title: COUNTY COUNSELOR

Date: 2/27/2011

Subscribed and sworn to before me this 27 day of February, 2011.

Notary Public Michael A. Wells

Address 415 E. 12th St. 2nd Fl.  
KE., MO 64106

My commission expires: Sept 24, 2012



MICHAEL A. WELLS  
My Commission Expires  
September 24, 2012  
Jackson County  
Commission #108498225

BURNS & MCDONNELL ENGINEERING COMPANY, INC.

Signature: *[Handwritten Signature]*

Print Name: Mr. William DeAtman

Title: Vice President

Date: Feb. 16, 2011

Subscribed and sworn to before me this 16 day of February, 2011.

Notary Public *[Handwritten Name]*

Address 770 Wood Parkway

Kennett, MO 64604

My commission expires: Apr 25 2013

[Seal]

