

ASH01PER

TYPE OF RECORD:	PERMANENT
CATEGORY OF RECORD:	CONTRACT (TERMINATION, RELEASE AND SETTLEMENT STATEMENT)
NAME OF CONTRACTOR:	ASHLEY CONSTRUCTION
SUBJECT/PROJECT:	REMODEL PERSIGO WASTEWATER TREATMENT PLANT LABORATORY
CITY DEPARTMENT:	PUBLIC WORKS AND PLANNING
YEAR:	2001
EXPIRATION DATE:	NONE
DESTRUCTION DATE:	NONE

CONTRACT TERMINATION, RELEASE
AND SETTLEMENT AGREEMENT

This agreement is entered into as of the 27 day of September 2001, by and between Ashley Construction ("Contractor") and the City of Grand Junction ("City").

Recitals.

The Contractor and the City entered into a written contract dated April 12, 1999 ("Contract") to remodel the Persigo Wastewater Treatment Plant Laboratory. The Contractor had certain expectations, as did the City. The Contractor and the City had disagreements about the quality of the work, the timeliness of the work, change orders, and ultimately whether the work was completed. Rather than attempt to attribute reasons for these disagreements, the parties acknowledge that the disagreements exist and neither party is satisfied regarding the Contract. Rather than attempt to resolve whether the respective legal positions are correct, the parties agree to fully and completely resolve the issues between them and regarding the Contract by entering into this Agreement.

The fault, if any, of either the City or Contractor or both is not at issue nor relevant to this Agreement. What is instead relevant, important and necessary to this Agreement is that the City and Contractor recognize that some compensation is owed to the Contractor and that upon payment of a stipulated sum that the relationship will be lawfully ended for all purposes, without need to resort to litigation, arbitration or public discussion.

Contractor has discussed, negotiated and agreed with the City the desire to end the Contract by the payment of a stipulated sum, pursuant to the terms and conditions provided for herein.

The following provisions are the terms negotiated by and between and mutually acceptable to, the City and Contractor, each of which has received the benefit of legal advice:

IN CONSIDERATION of the above recitals and the mutual covenants and agreements contained herein, Contractor and the City agree as follows:

1. Contractor and the City hereby end, quit and terminate the Contract for all purposes.
2. Contractor agrees that upon the payment of \$21,500.00 that it, and its employees, sub-contractors are fully compensated and paid off under the Contract and this Agreement. Furthermore, the Contractor agrees that adequate consideration exists for the other terms of this Agreement as detailed more fully herein.
3. The Contractor and the City acknowledge, agree to waive and hereby waive, and release the other party with regard to, any and all contractual, tort or equitable defenses arising under or

out of the Contract and this Agreement, including but not limited to any and all defenses of lack of notice, right to cure or other contract claims or defenses. Contractor and the City agree that such waiver(s) is enforceable and that adequate consideration supports the same.

4. The customary rule of construction that ambiguities in an agreement are construed against the drafter is expressly waived.
5. If there are any matters relating to termination of the Contract which are not addressed by this Agreement or are omitted by oversight of either party, then Contractor and the City agree that they will proceed in good faith to amicably end the Contract and that when or if a dispute arises concerning this Agreement and/or the ending of the relationship, that each party will negotiate in good faith, prior to initiating litigation, to resolve the dispute as most expeditiously and amicably as practicable but that no further money shall change hands nor assets be transferred.
6. By signing this Agreement the parties hereby and forever release and waive any and all claims, demands, or causes of action that they, or any person claiming through them, may have now or hereafter acquire against the other party. The release and waiver of claims, demands or causes of action includes, but is not limited to, any and all claims, demands, obligations, actions, liabilities, damages and attorneys' fees, known or unknown, of whatsoever kind and nature arising from or in any way arising out of, any and all known and unknown, foreseen and unforeseen, damages, injuries or losses which the parties may have or which may result or be claimed to result, directly or indirectly, from the Contract, the termination of the Contract and/or this Agreement and/or the actions or statements of the parties, and their officers and employees prior to the date hereof. Said release specifically includes, but is not limited to, claims, causes of action, demands or suits arising from breach of contract which have been filed or may be filed arising out of or occasioned by the contractual relationship, including but not limited to claims of lost profit or advantage and damage to trade name or reputation. Claims and damages resulting from negligent and/or intentional acts of the City, its officers, agents and employees that preceded the signing hereof, are specifically included within the scope of this release.
7. Contractor affirmatively represents that it and each of its officer's and employees is aware of no liens of materialmen, laborers, craftsmen or tradesmen, no claims, demands, obligations or causes or action, liabilities or damages filed, pending or accrued against the Contractor arising out of the Contract or Contractor's performance or non-performance thereof, for which the City may be named as a defendant or for which the City may be liable or relating to any City property. Contractor agrees to indemnify and hold the City harmless for any and all such claims occurring or accruing on or after Contractor first accepted the bid for the Contract through the date hereof.
8. The Contractor shall hold the City harmless regarding, and hereby waives and releases the City regarding, interference with contract, supervision or management, work related stress, stress related disorders, age, race or ethnic discrimination, occupational injury, disability or disease, of, for or on behalf of Contractor, its officers and/or partners, employees, contractors

or subcontractors or for unemployment compensation or for any and all other claims which have been filed or may be filed arising out of or occasioned by the contractual relationship with the City. Claims and damages resulting from negligent and/or intentional acts, which preceded the signing hereof, are specifically included within the scope of this release, waiver and hold harmless agreement and, as to said claims or damages, this release is mutual. Contractor intends this as a clean and complete break with the City.

9. Contractor and the City have negotiated and agreed on a sum of money to end and in satisfaction of the Contract. That sum is \$21,500.00. Payment of that sum is contingent on the work being free and clear of liens and encumbrances. To ensure that the work is free and clear the City has begun to advertise in a newspaper of general circulation in Mesa County in its customary manner that the contract is being closed and that any materialmen, craftsmen, laborer or other person with a valid claim against the contract, the Contractor or the work shall make a claim as provided by law or forever be barred. If such claims or liens are hereafter identified, Contractor shall forthwith pay such claims or take action to properly dispute such claims and in either event Contractor shall hold the City harmless with respect to any such claim, lien or encumbrance.
10. The parties agree that the payment of \$21,500.00 to the Contractor includes any claims for change orders, retainage, and any other form of a monetary claim against the City.
11. The representations and agreements of this Agreement are not mere recitals but are contractual in nature. An unjustified breach of this Agreement by either Contractor or the City shall be a basis for suit, claim or demand against the other.
12. By the signatures below the Contractor acknowledges the foregoing and that any waiver, release and agreement is voluntarily made and is with full knowledge and understanding of the consequences. Furthermore, Contractor acknowledges that it has been represented by and has consulted with legal counsel prior to execution of this Agreement.
13. Contractor by and through the signature below does bind all partners, officers and others claiming through Contractor to the foregoing terms, conditions, stipulations and agreements. Contractor represents that the signer has full and complete authority to bind Contractor and the partners, officers and others claiming through Contractor to each and every term of this Agreement.

The City by and through the signature below does bind itself to the foregoing terms, conditions, stipulations and agreements. The City represents that the signer has full and complete authority to sign this Agreement.

14. The City acknowledges that Contractor is releasing a performance bond or surety provided for in fulfillment of its contractual undertaking with the City.

DATED as of the day and year first written above.

Ashley Construction

By:

~~Ronald Ashley~~

Approved as to form and content


John Moore

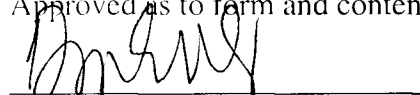
Attorney for Ashley Construction

City of Grand Junction

~~Ron Lippi~~, DAVID HARLEY

Acting City Manager

Approved as to form and content


Dan E. Wilson

City Attorney