

SETTLEMENT AGREEMENT AND RELEASE

THIS SETTLEMENT AGREEMENT AND RELEASE (hereinafter "Settlement Agreement") is effective as of this this ____ day of December, 2014, by and among The City of Lawrence, Kansas ("City") and Emcon, Inc. ("Emcon").

I. RECITALS

WHEREAS, in 2012, the City of Lawrence, Kansas (the "City") entered into a construction agreement ("Contract") with Emcon for the installation and construction of new sanitary sewer improvements known as UT0919CS General Wastewater Pumping Station Improvements or commonly referred to as Pump Station 15 (the "Project").

WHEREAS, as part of its scope of work for the Project, Emcon agreed to, among other things, install a force main, a new pump station and a retaining wall for the pump station in accordance with the Project Contract Documents.

WHEREAS, the Contract originally identified the date for substantial completion to be by February 5, 2013.

WHEREAS, during the course of construction, Emcon's crew damaged the water main and caused it to rupture.

WHEREAS, because of the Water main rupture, the City performed emergency repair service which include releasing water from a fire hydrant at the Project site. The water was directed at neighboring property and some water flowed onto the Project site.

WHEREAS, on or about January 25, 2013, the retaining wall settled. Emcon repaired the Project at a cost of \$93,066.08. (the "Pump Station Repairs"). Emcon requests the City to remit additional compensation and reimbursement in the amount of \$30,000 of the \$93,066.08 Pump Station Repair.

WHEREAS, Emcon's insurance carrier, Cincinnati Insurance Companies has sent a written demand, dated March 25, 2013, for repair costs and reimbursement for "more than \$25,000" under the allegation or contention that the City was "negligent for the wall failure of the Wastewater Pump Station #15..." ("Cincinnati Claim").

WHEREAS, the City denied the Cincinnati claim and contends that retaining wall settled because the backfill was improperly compacted by Emcon.

WHEREAS, after Emcon performed the work, it asserted the substantial completion was achieved by March 22, 2013. The City disagreed that the Project was substantially complete and contends that significant work was not substantially complete at the time.

WHEREAS, the City contends that Emcon failed to reach substantial completion on February 5, 2013 and did not reach substantial completion until April 30, 2013, 84 days late. The Contract provides that the City may assess liquidated damages at the rate of \$1,200 / day for each day the Project is not substantially complete beyond the schedule time in the Contract. The City has calculated accrued liquidated damages in the sum of \$100,800.00.

WHEREAS, the City denies all liability or responsibility to Emcon or Cincinnati for any costs associated with the damage or repair to the retaining wall and Pump Station and Cincinnati Claim and contends that the delays for completion are the responsibility of Emcon.

WHEREAS, Emcon denies all liability or responsibility to the City for costs associated with the damage or repair to the retaining wall and Pump Station, and contends that delays for completion are the responsibility of the City.

WHEREAS, the Original Contract Sum is \$395,339.00 and the City has issued payments in the amount of \$170,983.85 to Emcon in response to applications for payment. A current original balance exists in the amount of \$224,355.15, subject to deductions for any lawful liquidated damage assessments and additions for costs incurred as a result of the actions of the City, per the Contract.

WHEREAS, Emcon has requested a change order for additional work unrelated to the Pump Station Repairs or Cincinnati Claim in the amount of \$17,450.02, and has additional claims for changes in the amount of \$134,251.04 plus interest and attorneys' fees. Emcon has not submitted a final application for Payment.

WHEREAS, the Parties now desire to enter into this Settlement Agreement for the repair of the Project in order to resolve and agree as to the terms of full settlement and discharge of all claims and actions against one another for damages arising out of the Project and Contract.

NOW, THEREFORE, it is hereby agreed as follows:

II. SETTLEMENT AND MUTUAL RELEASE

In consideration for the promises and covenants contained herein, the Parties agree as follows:

1. Emcon agrees to:

- a. Submit an application for final payment in the amount of \$224,355.15 plus \$17,450.52 in Change Orders;
- b. Submit a Final Lien Release and Waiver, and upon receipt of same, the City shall issue such payment of \$17,450.52 to Emcon;
- c. Submit an executed copy of this Settlement Agreement; and
- d. Submit a Final Change Order for \$17,450.52 extending the date for Substantial Completion to April 30, 2013 and as a result, and mentioned below, the City shall waive its claims for assessing liquidated damages.

2. In exchange for the documents identified in Paragraph 1, the City shall execute this Settlement Agreement and the Final Change order for \$17,450.52, extend the date for Substantial Completion to April 30, 2013, approve the final pay application, release the final contract balance, including retention and above referenced final change order monies to Emcon in the aggregate of \$241,805.67 ($\$224,355.15 + \$17,450.52 = \$241,805.67$), and release Emcon for all claims for liquidated damages on the Project.

3. In addition, all warranties relating to all work provided by Emcon for the Project shall remain in effect to the extent available under law or provided by the Contract between the City and Emcon and the contract documents;

4. Upon receipt of final payment and retention described above, and in consideration of the promises herein, Emcon, for itself and on behalf of its parent corporations, subsidiaries, affiliates, predecessors, successors, and their respective directors, officers, agents, employees, insurers and attorneys, does hereby fully, finally and forever release and discharge the City, commission members, officers, directors, agents, employees, insurers, representatives and attorneys, of and from any and all known claims, demands, causes of action, lawsuits, legal proceedings, damages, costs, expenses, attorneys' fees and liabilities of any and every kind, character and description, at law or in equity, in any way arising out of, or relating to, the Contract between the City and Emcon or the Project.

5. Upon receipt of the documents in Paragraph 1, and in consideration of the promises herein, the City, for itself and on behalf of its departments, authorities, commission members, managers, bond holders, successors, and their respective officials, directors, officers, agents, employees, insurers, representatives and attorneys, does hereby fully, finally and forever release and discharge Emcon, officers, directors, agents, employees, insurers, representatives and attorneys, of and from any and all known claims, demands, causes of action, lawsuits, legal proceedings, damages, costs, expenses, attorneys' fees and liabilities of any and every kind, character and description, at law or in equity, in any way arising out of, or relating to, the Contract between the City and Emcon or the Project. Notwithstanding the foregoing, it is agreed that the City's release does not pertain to or bar claims for latent defects and all applicable warranties under Paragraph 3 to the extent claimed by City against Emcon and to the extent provided under the Contract or applicable law. Said liability for latent defects and warranties shall remain in full force and effect and survive the execution of this Settlement Agreement.

6. In addition, Emcon agrees to indemnify, defend and hold the City harmless in the event Cincinnati Insurance or its related entities or assigns seeks to pursue the Cincinnati Claim for reimbursement of repair costs associated with the Pump Station and retaining wall and any other work associated with the Project. It is understood that such indemnity obligation on the part of Emcon arises to the extent the Cincinnati Claim or repair costs with the Pump Station and retaining wall are attributable to the errors and omissions of Emcon or its subcontractors or any other entity for which Emcon is legally responsible.

7. The Parties acknowledge that no admission of fault has been made by City or Emcon. In fact, the City and Emcon specifically deny any allegations of fault.

8. Modifications. This Settlement Agreement may not be amended, altered, modified or otherwise changed except in writing executed by all Parties hereto and expressly stating that it is an amendment to this Settlement Agreement. The undersigned hereby acknowledge and agree that they, and each of them, will make no claim, and hereafter waive any right that they now have or they hereafter have, based upon any alleged oral alteration, oral amendment, oral modification or other changes based upon any alleged oral warranty, representation or promise except as set forth expressly in this Settlement Agreement.

9. Future Cooperation. All parties to this Settlement Agreement agree to fully cooperate, to execute any and all supplementary documents and to take all additional actions that

may be necessary or appropriate to give full force and effect to the terms and intent of this Settlement Agreement which are not inconsistent with its terms.

10. Binding Effect. The Parties agree and acknowledge that this Settlement Agreement shall bind the Parties and their respective heirs, administrators, executors, assigns, shareholders, commissioners, managers, officers, directors, attorneys, servants, insurers, subsidiaries, divisions, affiliates, employees, agents, representatives, insurance carriers, and predecessors and successors in interest, and related entities and shall inure to the benefit of the Parties released and their respective heirs, administrators, executors, assigns, shareholders, officers, directors, members, attorneys, servants, insurers, subsidiaries, divisions, affiliates, employees, agents, representatives, insurance carriers, and predecessors and successors in interest.

11. Reliance. The Parties acknowledge and warrant that, except as stated here, no promises or inducements have been made or offered by the Parties and that this Settlement Agreement is executed by the Parties without reliance upon any other statements or representations made by the Parties concerning the nature or merits of any claims that they might have had against each other. The Parties assume the risk that the facts or law may be otherwise than the Parties believe.

12. Authority to Execute/Counterparts. Each individual executing this Settlement Agreement on behalf of a Party represents and warrants that all actions necessary to authorize its execution on behalf of that Party have been duly performed; that such individual has authority to execute this Settlement Agreement on behalf of such Party; and that such Party shall be legally bound hereby. The Parties further agree that more than one copy of this Settlement Agreement may be signed by them and that the collective signatures of all parties shall constitute a fully executed agreement as though both parties had signed one original document.

13. Governing Law and Attorney's Fees: This Settlement Agreement shall be governed by, construed and interpreted in accordance with the laws of the State of Kansas. In the event a Party fails to comply with the terms of this Settlement Agreement, including, but not limited to, the payment terms and conditions set forth above, and a Party finds it necessary to enforce such terms of the Settlement Agreement, the prevailing party shall be entitled to recover against the other party or parties its costs and reasonable attorneys' fees associated with any lawsuit filed to enforce the terms and conditions of this Settlement Agreement.

14. Integration clause. The Parties represent that this is a completely integrated Agreement. The no oral agreements will be binding on the parties. For any terms to be binding on the parties it must be expressly provided in this Agreement.

BEFORE SIGNING BELOW, THE UNDERSIGNED DECLARES THAT HE OR SHE IS LEGALLY COMPETENT TO EXECUTE THIS SETTLEMENT AGREEMENT AND RELEASE, THAT HE OR SHE HAS READ AND FULLY UNDERSTANDS IT, AND THAT HE OR SHE VOLUNTARILY EXECUTES IT WITH FULL KNOWLEDGE OF ITS CONTENTS AND MEANING FOR THE PURPOSE OF OBTAINING THE ABOVE-STATED CONSIDERATION.

The City of Lawrence, Kansas

Name: David L. Corliss
Title: City Manager

STATE OF KANSAS)
)ss.
COUNTY OF DOUGLAS)

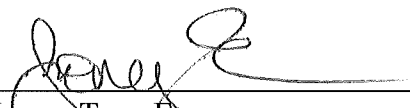
SUBSCRIBED AND SWORN to before me this ____ day of _____, 2014.

Notary Public

My Commission Expires:


BEFORE SIGNING BELOW, THE UNDERSIGNED DECLARES THAT HE OR SHE IS LEGALLY COMPETENT TO EXECUTE THIS SETTLEMENT AGREEMENT AND RELEASE, THAT HE OR SHE HAS READ AND FULLY UNDERSTANDS IT, AND THAT HE OR SHE VOLUNTARILY EXECUTES IT WITH FULL KNOWLEDGE OF ITS CONTENTS AND MEANING FOR THE PURPOSE OF OBTAINING THE ABOVE-STATED CONSIDERATION.

Emcon Excavating, Inc.


Name: Tony Emerson
Title: Vice-President

STATE OF KANSAS)
)ss.
COUNTY OF SHAWNEE)

SUBSCRIBED AND SWORN to before me this 16th day of December, 2014


Notary Public

My Commission Expires:

6-01-2017

