

SETTLEMENT AND RELEASE AGREEMENT

THIS FINAL SETTLEMENT AND RELEASE AGREEMENT is entered into as of the 4th day of May, 2020 by and between Government Contracting Services (hereinafter referred to as "Contractor") and the City of Grand Junction (herein after referred to as "City").

RECITALS

Project: IFB – 458-18-DH (Kannah Creek Intake Project)

Final Contract Price: \$ 873,329.38

Retention Funds Held as of May 1, 2020: \$42,703.50

Liquidated Damages Retained: \$ 19,500.00

The Contractor entered into a contract dated December 21, 2018 ("Contract") to complete the Kannah Creek Intake project ("Project") for and on behalf of the City. The Project included the removal and replacement of dam/diversion structure, installing new PVC pipe for the existing debris screen, installing new PVC pipe and flow measurement devices before reconnecting to existing Kannah Creek Pipeline downstream of the measurement facility and installation of electrical and automation control.

Per the Contract, the final completion deadline for the Project was December 6, 2019. Change Order Number 1 extended the deadline for final completion to December 6, 2019. Work Change Authorization WCA004 extended the deadline to December 13, 2019. Change Order Number 2 specified a conditional deadline for final completion of the Project of February 11, 2020, further detailing that if final completion was not obtained by such date, liquidated damages would be assessed retroactively to December 13, 2019.

Per the Contract, an actuator was installed to assist in the automation control. The actuator was determined to be defective. The Contractor repaired the breach yet failed to meet the conditional extension deadline of February 11, 2020. Per the conditional extension, the City notified GCS of liquidated damages of \$49,000 (\$500 per day/98 days from December 13, 2019 to March 21, 2020).

The City issued substantial completion of the Project on March 21, 2020. Final payment has not been issued to the Contractor. Legal notice was issued for final payment on April 10, 2020 and final payment shall occur May 10, 2020. Final payment shall include the balance of the retention funds after expenses and/or damages have been paid.

City and Contractor agree that compensation is owed to the City for liquidated damages. The City and the Contractor agree that due to the economic circumstances surrounding COVID-19,

the repair of the breach of Contract by the Contractor and the issuance of substantial completion by the City, a reduction in the amount of liquidated damages is reasonable. Upon final payment Settlement and Release Agreement rendered to Contractor, Contractor and City recognize that withholding an amount of the retention funds will compensate City for the liquidated damages and the relationship will be lawfully ended without need to resort to litigation.

The following provisions are the mutually agreeable terms negotiated by and between and mutually acceptable to, the City and Contractor:

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

1. Contractor agrees that upon final payment rendered per the Contract, Contractor agrees to the City withholding of \$19,500 in retention funds for compensation for liquidated damages accumulated due to the failure of Contractor to complete the Project by the conditional deadline of February 11, 2020. Furthermore, City agrees that adequate consideration exists for the other terms of this Agreement as detailed more fully herein.
2. The Contractor and the City acknowledge and agree to waive any and all contractual defenses arising under or out of the Contract. Contractor and the City agree that such waiver(s) is with and/or that adequate consideration supports the same. Nothing herein contained shall be construed to waive any defenses which Contractor may have to any claim asserted against Contractor by City's insurance carrier, CIRSA, or any other entity claiming as an assignee or subrogee of the City.
3. Contractor and the City acknowledge and agree to waive any and all contractual defenses arising under or out of this Agreement. Contractor and the City agree that such waiver(s) is with and/or 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. This Agreement shall provide for and be construed to release any and all claims, demands, or causes of action that the Contractor may have now against the City arising out of or under the Contract.
6. This Agreement shall provide for and be construed to release any and all claims, demands, or causes of action that the City may have now against the Contractor arising out of or under the Contract.

7. The release of claims, demands or causes of action include but are 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 Contractor or the City may have or which may result or be claimed to result, directly or indirectly, from the Contract and/or this Agreement that the City may have now or in the future, including any claims for warranty work. This release specifically includes, but is not limited to, claims, causes of action, demands or suits arising from breach of contract arising out of or occasioned by the contractual relationship with the City, 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 or of the Contractor, its officers, agents or employees, that preceded the signing hereof, are specifically included within the scope of this release.
8. Contractor affirmatively represents that he is aware of no liens of materialmen, laborers, craftsmen or tradesmen, no claims, demands, obligations or causes of 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.
9. The Contractor shall have no claim against the City for or involving 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 partners, employees, contractors or subcontractors or for unemployment compensation, for money lent, interest or late payment fees or charges or for any and all other claims which 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.
10. Contractor and the City have negotiated and agreed that upon final payment of the Contract, a sum of \$19,500 will be withheld by the City from the retention funds for payment of the liquidated damages. Final payment is contingent on the work being free and clear of liens and encumbrances. The Contractor affirmatively represents that there are no liens or encumbrances on the work.
11. 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 had the

opportunity to be represented by and/or consult with legal counsel prior to the execution of this Agreement.

12. 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.

13. 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.

DATED as of the day and year first written above.

Government Contracting Services

By: _____

Casey A. Mills
Vice President

City of Grand Junction

By: _____

Greg Caton
City Manager