

## SETTLEMENT AND MUTUAL GENERAL RELEASE AGREEMENT

This Settlement and Mutual General Release Agreement (“Agreement”) is made this 2<sup>nd</sup> day of April, 2013, by and between Cooley Construction, Inc. (“Cooley”) and the City of Redlands (“City”). Cooley and City are sometimes individually referred to herein as a “Party” and, together, as the “Parties.”

### RECITALS

A. Certain claims and controversies have arisen between the Parties relating to Cooley’s performance of grading work at the City’s Heritage Park (the “Project”).

B. Such claims and controversies relate to Cooley’s alleged failure to comply with City’s specifications for the Project by Cooley’s use of silt fencing for drainage control rather than the use of sand bags, and Cooley’s performance of unpermitted soils excavation work (together, the “Dispute”).

C. It is the intention of the Parties to settle and dispose of, fully and completely, any and all claims, demands and cause or causes of action existing as of the effective date of this Agreement and arising out of, connected with, or incidental to the Dispute between Parties.

### AGREEMENT

1. Silt Fencing. The City agrees to ratify Cooley’s substitution of silt fencing for the use of sandbags, which were required by City’s Project specifications.

2. Saturated Soils Excavation. Cooley agrees that the unapproved extra work Cooley’s undertook removing saturated soils materials from the Project site shall be at the sole expense of Cooley, and at no cost to City.

3. Mutual General Release. In consideration of the mutual general releases contained herein, and for other good and valuable consideration, the receipt of which is acknowledged by each Party, the Parties promise, agree and generally release as follows:

3.1 Except as to such rights or claims as may be created by this Agreement, each Party hereby releases, remises and forever discharges the other Party from any and all claims, demands and cause or causes of action the Parties may have existing as of the Effective Date and arising out of, connected with or incidental to the Dispute.

3.2 The Parties specifically waive the benefit of provisions of Section 1542 of the Civil Code of the State of California, as follows:

“A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.”

4. Representations and Warranties: Each of the Parties represents and warrants to, and agrees with, the other Party, as follows:

4.1 Each of the Parties has received independent legal advice from their respective attorneys with respect to the advisability of making the settlement provided for herein, with respect to the advisability of executing this Agreement, and with respect to the meaning of California Civil Code Section 1542.

4.2 No Party (nor any officer, agent, employee, representative, or attorney of or for any Party), has made any statement or representation or failed to make any statement or representation to the other Party regarding any fact relied upon in entering into this Agreement, and each Party does not rely upon any statement, representation, omission or promise of the other Party (or of any officer, agent, employee, representative, or attorney of or for any Party), in executing this Agreement, or in making the settlement provided for herein, except as expressly stated in this Agreement.

4.3 Each of the Parties has made such investigation of the facts pertaining to this settlement and this Agreement, and all the matters pertaining thereto, as it deems necessary.

4.4 Each of the Parties has read this Agreement and understands the contents hereof.

4.5 In entering into this Agreement and the settlement provided for herein, Cooley assume the risk of any misrepresentation, concealment or mistake. If Cooley should subsequently discover that any fact relied upon by them in entering into this Agreement was untrue, or that any fact was concealed from them, or that their understanding of the facts or of the law was incorrect, Cooley shall not be entitled to any relief in connection therewith including, without limitation on the generality of the foregoing, any alleged right or claim to set aside or rescind this Agreement. This Agreement is intended to be and is final and binding between the Parties, regardless of any claims of misrepresentation, promise made without the intention to perform, concealment of fact, mistake of fact or law, or of any other circumstance whatsoever.

4.6 Neither Party has not heretofore assigned, transferred, or granted, or purported to assign, transfer, or grant, any of the claims or demands related to the Dispute and disposed of by this Agreement.

4.7 Each term of this Agreement is contractual and not merely a recital.

4.8 The Parties are aware that they may hereafter discover claims or facts in addition to or different from those they now know or believe to be true with respect to the matters related herein. Nevertheless, it is the intention of the Parties to fully, finally and forever to settle and release all such matters, and all claims relative thereto, which do now exist, may exist, or heretofore have existed between them. In furtherance of such intention, the releases given herein shall be and remain in effect as full and complete mutual releases of all such matters, notwithstanding the discovery of existence of any additional or different claims of facts relative thereto.

4.9 The Parties will execute all such further and additional documents as shall be reasonable, convenient, necessary or desirable to carry out the provisions of this Agreement.

5. Settlement: This Agreement effects the settlement of claims which are denied and contested, and nothing contained herein shall be construed as an admission by either Party of any liability of any kind to the other Party. Each of the Parties denies any liability in connection with any claim and intends hereby solely to avoid litigation and buy its peace.

6. Miscellaneous:

6.1 This Agreement shall be deemed to have been executed and delivered within the State of California and the rights and obligations of the Parties shall be construed and enforced in accordance with, and governed by, the laws of the State of California.

6.2 This Agreement is the entire agreement between the Parties with respect to the subject matter hereof, and supersedes all prior and contemporaneous oral and written agreements and discussions regarding the same. This Agreement may be amended only by an agreement in writing, signed by the Parties.

6.3 This Agreement is binding upon and shall inure to the benefit of the Parties, their respective agents, employees, representatives, officers, directors, divisions, subsidiaries, affiliates, assigns, heirs, successors in interest and shareholders.

6.4 Each Party has cooperated in the drafting and preparation of this Agreement. Hence, in any construction to be made of this Agreement, the same shall not be construed against any Party.

6.5 In the event of litigation relating to this Agreement, the prevailing Party shall be entitled to attorneys' fees and costs, including fees for the use of in-house counsel by a Party.

6.6 This Agreement, consisting of four pages, is made and entered into on and as of its Effective Date in Redlands, California.

CITY OF REDLANDS

COOLEY CONSTRUCTION, INC.

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Pete Aguilar, Mayor

ATTEST:

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Sam Irwin, City Clerk