

## SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This SETTLEMENT AGREEMENT AND MUTUAL RELEASE (“Agreement”) is entered into this \_\_\_ day of November, 2016, by and between PCL Construction, Inc. (“PCL”) and Great Lakes Environmental and Infrastructure, LLC (“GLEI”) and the City of Tempe (“City”) (collectively, the “Parties”).

### RECITALS:

**A.** On or about November 7, 2013, PCL entered into a Contract (“the Contract”) with the City of Tempe as the Construction Manager at Risk on the Tempe Town Lake Downstream Dam Replacement Project, Project No. 6504221 (“the Project”).

**B.** On or about April 29, 2014, PCL entered into a Subcontract (“the Subcontract”) with Magnus Pacific Corporation (“MPC”) for installation of cement-bentonite scour, cutoff, and lower abutment footing walls in accordance with the terms of the Subcontract, the Uniform Special Conditions to the Subcontract, and the requirements of the approved Plans and Specifications prepared by Gannett Fleming, the Engineer of Record.

**C.** MPC completed the Subcontract in May 2015. Subsequently, on or about July 16, 2015, Magnus Pacific Corp. was converted to Magnus Pacific LLC. Thereafter, on or about March 8, 2016, Magnus Pacific LLC changed its name to Great Lakes Environmental and Infrastructure, LLC (“GLEI”).

**D.** Pursuant to §6.3.3 of the Contract between PCL and the City, PCL agreed to accept all site conditions except those that could not be reasonably foreseen or discovered upon examination of the site, the specifications or the contract documents.

**E.** PCL maintains that the actual subsurface conditions encountered by MPC while excavating the Scour Wall and the Cement Bentonite Cutoff Wall Lower Section (“CB Lower Wall”) could not have been reasonably foreseen or discovered based upon examination of the site, or the information contained in the contract documents and as a result additional costs were incurred in order to timely complete the excavation.

**F.** Pursuant to a Liquidating Agreement between PCL and Magnus Pacific LLC in February 2016, PCL has asserted a Differing Site Condition claim (“the Claim”) against the City for and on behalf of its subcontractor GLEI arising out of its performance of the Project.

**G.** Pursuant to the Contract between the City and PCL, PCL’s claim was subject to the administrative claim review process set forth in §110.3.1 of the MAG Specs.

H. Pursuant to §110.3.1 of the MAG Specs the City issued the decision of its Level III Representative denying PCL's claim on April 28, 2016.

I. The Parties agreed to non-binding mediation pursuant to §110.3.1(A) of the MAG Specs, engaged Michael J. Holden as their mediator, and participated in mediation sessions on October 10, 2016 and November 18, 2016.

J. As evidenced by the Memorandum of Understanding, attached as Exhibit A to this Agreement, on November 18, 2016, and subject to the approval of the Tempe City Council on December 8, 2016, the Parties reached a tentative settlement of the Claim.

K. With the exception of any ongoing obligations between the parties, including but not limited to, warranty, insurance, and indemnity obligations, the parties wish to fully and finally resolve and compromise any and all disputes arising out of, or related in any manner whatsoever to the Claim set forth above.

L. The Parties wish to enter into a written Agreement to set forth the terms of their agreement.

**NOW THEREFORE**, in consideration of the mutual promises contained herein and other valuable consideration the sufficiency and receipt of which is hereby acknowledged, subject to the approval of the Tempe City Council at its next session on December 8, 2016, it is hereby agreed as follows:

1. **INCORPORATION OF RECITALS**

All parties agree that the Recitals set forth above are incorporated herein by reference.

2. **NO ADMISSIONS**

The settling parties hereto desire to resolve their disputes as it relates to all claims asserted or which could have been asserted by PCL for and on behalf of GLEI against the City relating to the Claim, in an amicable fashion and have entered into this Agreement in good faith and with the desire to forever compromise and settle this disputed claim between them. This Agreement will not be used or construed in any way by any party or third party as an admission of liability or wrongdoing by any party to this Agreement. The parties to this Agreement do not admit the sufficiency of any claims, allegations, assertions, contentions or positions of any other party, or the sufficiency of any defenses to any such claims, allegations, assertions, contentions or positions. Further, in making this Agreement, the parties hereto agree that the covenants and releases comprising this Agreement are not intended to be admissions of liability, negligence,

willful conduct, breach of contract, or fault of any kind whatsoever, by any settling party.

3. **PAYMENT**

- a. Upon approval by the Tempe City Council, the City will remit payment of Two Hundred Fifty Thousand Dollars (\$250,000) to PCL in accordance with the requirements of the Contract and applicable law.
- b. Within ten (10) working days after receipt of said funds from the City, PCL shall pay the sum of Five Hundred Thousand Dollars (\$500,000) to GLEI by delivering said payment to the offices of GLEI's counsel:

Michael S. Dulberg, Esq.  
Burch & Cracchiolo, P.A.  
702 East Osborn Road, Suite 200  
Phoenix, Arizona 85014

4. **RELEASE**

The parties to this Agreement, on behalf of themselves and their respective heirs, administrators, executors, affiliates, predecessors, successors, assigns, officers, directors, partners, shareholders, members, attorneys, sureties and agents do hereby mutually release and forever discharge each other and their respective administrators, executors, affiliates, predecessors, successors, assigns, officers, directors, partners, shareholders, members, attorneys, sureties, and agents of and from any and all claims, rights, demands, causes of action arising out of the Claim, as set forth above.

5. **MUTUAL CONSIDERATION**

The parties, by executing this Agreement, acknowledge that they have received all of the consideration from the parties hereto to which they are entitled for the agreements set forth herein, and for performance of all obligations herein undertaken, that pursuant to the conditions set forth above, this release and settlement is made by the parties with full knowledge of the facts and possibilities of their claims. The parties intend, by execution and performance of this Agreement, to provide the full, complete and final release and settlement, resolution and disposition of all claims against each other, except as otherwise set forth herein.

6. **WARRANTIES**

The parties warrant to each other that they are the sole owners of all claims, demands and causes of action herein released; that they have not assigned or transferred or purported to assign or transfer, voluntarily or involuntarily, by operation of law, any claims, demands or causes of action herein released, or any part or portion thereof. Each party hereto agrees not to sue the other or in any way assist any other person or entity in suing the other with respect to any claim released herein.

7. **ACKNOWLEDGMENT OF REPRESENTATION**

The parties acknowledge that they have consulted with their attorneys prior to executing this Agreement, and that they are freely and voluntarily executing this Agreement.

8. **COMPLETE AGREEMENT**

This Agreement constitutes the sole and entire agreement between the parties hereto with regard to the subject matter hereof and supersedes any and all understandings and agreements made prior hereto. There are no collateral understandings, representations, or agreements other than those contained herein. No provision of this Agreement shall be amended, waived or modified except by an instrument in writing, signed by all parties hereto.

9. **ADDITIONAL INSTRUMENTS**

The parties agree to cooperate fully and to execute any and all supplementary documents and take any and all additional actions that may be necessary and appropriate to give full force and effect to the terms and intent of this Agreement.

10. **GOVERNING LAW**

This Agreement shall be governed in all respects, whether as to validity, construction, capacity, performance or otherwise, by the laws of the State of Arizona. If any provision of this Agreement is held by a court or arbitrator of competent jurisdiction to be invalid, void, or unenforceable for whatever reason, the remaining provisions of this Agreement shall nevertheless continue in full force and effect without being impaired in any manner whatsoever.

The parties further agree that the Courts of the State of Arizona have personal jurisdiction over the parties, and in the event any legal proceedings are required to enforce the terms of this Agreement, venue for

any such action shall lie in the Superior Court of Maricopa County, Arizona.

**11. ATTORNEYS' FEES**

In any proceeding or action to enforce this Agreement or to recover damages arising out of its breach, the prevailing party shall be awarded reasonable attorneys' fees reasonable attorneys' fees, court costs, arbitration costs, and other related expenses incurred in connection therewith.

**12. MISCELLANEOUS**

Time is of the essence hereof. In addition, it is mutually understood that the headings used herein are for convenience and reference only and are not intended to define, limit or describe the scope or intent of any provision of this Agreement. This Agreement may be signed in counterparts and transmitted via facsimile. This Agreement shall be effective on the date set forth herein.

DATED this \_\_\_\_ day of November, 2016.

PCL Construction, Inc.

Great Lakes Environmental and  
Infrastructure, LLC

City of Tempe

\_\_\_\_\_  
By: Thomas O'Donnell, Its  
President

\_\_\_\_\_  
By: Louay Owaidat, Its Manager

\_\_\_\_\_  
By: Judith Baumann,  
City Attorney

## MEMORANDUM OF UNDERSTANDING

Subject to the approval of the Tempe City Council and subject to the preparation and signing of more formal documentation which may require formal approval by the City Council, the City of Tempe ("City"), PCL Construction, Inc. ("PCL") and Great Lakes Environmental and Infrastructure LLC ("GLEI") hereby agree to settle all claims that have been asserted against the City by PCL for and on behalf of GLEI arising out of the construction of the Tempe Town Lake Downstream Dam Replacement Project ("the Project") on the following basis:

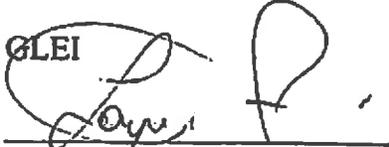
1. If approved by the City Council, payment of \$250,000 will be remitted to PCL pursuant to applicable contract terms and conditions.
2. Within 10 working days after receipt of said funds from the City, PCL shall pay \$500,000 to GLEI.
3. Upon GLEI's receipt of the funds set forth in Paragraph 2, GLEI shall release all claims against the City and PCL arising from construction of the Project.

DATED: November 18, 2016

PCL

  
Mike McKinney, District Manager

GLEI

  
Louay Owaidat, President

City of Tempe

  
Judith Baumann, City Attorney