

CONDITIONAL SETTLEMENT AGREEMENT & RELEASE

THIS CONDITIONAL SETTLEMENT AGREEMENT AND RELEASE (“Agreement”) is entered into by and between the City of Edmonds, a Washington Municipal Corporation (“City”), and Gray & Osborne, Inc. (“G&O”), collectively, the “Parties.”

I. RECITALS

WHEREAS, G&O served as the design consultant for the City on a public works project commonly referred to as the 76th Avenue West / 75th Place West Walkway and 162nd Street Park Project (“Project”); and

WHEREAS, at the conclusion of the Project, the General Contractor for the Project, Precision Earthworks, Inc. (“Precision”), commenced a lawsuit against the City claiming entitlement to additional monies; and

WHEREAS, the City reached an agreed settlement of the lawsuit with Precision, but a dispute has arisen regarding what portion, if any, of the settlement amount paid by the City to Precision is related to Project design work provided by G&O; and

WHEREAS, although the Parties have not reached an agreement as to the underlying facts of this dispute, the Parties recognize the risk and uncertainty of litigation or arbitration if this dispute is not settled and compromised; desire to reach an agreed final resolution of this matter; and have mutually agreed to enter into this Agreement; NOW, THEREFORE,

II. TERMS & CONDITIONS

In consideration of the mutual promises set forth herein and for other good and valuable consideration, which the Parties hereby acknowledge, the Parties and each of them agree to the following terms and conditions:

1. **Incorporation of Recitals.** The Recitals and the definitions contained therein are incorporated into these Terms and Conditions.
2. **Consideration.** The consideration for this Agreement consists of the payment by G & O to the City in the amount of Thirty-Five Thousand Dollars (\$35,000.00).
3. **Release by the City.** Effective upon receipt of the \$35,000.00 payment and the approval of the Edmonds City Council, as set forth in Section 8 below, the City releases and forever discharges G & O and its officers, partners, employees, subcontractors, suppliers, vendors, subconsultants, successors and assigns from any and all debts, demands, damages, liabilities, suits, actions, and causes of action of whatsoever kind,

nature or description (including claims for attorneys' fees, costs and disbursements) arising out of Project design services provided by G & O, which resulted in the City processing a change order and paying additional monies to Precision. The Parties agree that the scope of this Release does not include claims for damages relating to defects in Project construction work resulting from design services provided by G & O or its subcontractors that were not discovered prior to the date of this Agreement.

4. **Underlying Representations.** Except as expressly stated in this Agreement, the Parties acknowledge that no other Party or person, nor any agent or attorney of any Party or person, has made any promise, representation, or warranty whatsoever concerning the subject matter of this Agreement to induce the other Party to execute this Agreement. The Parties further acknowledge that they have not executed this Agreement in reliance on any such promise, representation, or warranty.

5. **Assignments of Interest.** The Parties mutually represent and warrant to each other that they have not assigned, subrogated, or otherwise transferred any interest in any claims that are related in any way to the subject matter of this Agreement.

6. **No Admission of Liability.** This Agreement is a compromise of a dispute and may not be construed as an admission of liability by any Party to any other Party, person, or entity. Further, this Agreement may not be construed as an admission of a violation of any law, rule, or regulation.

7. **Voluntary Execution; Contract Interpretation.** The Parties acknowledge that each has reviewed this Agreement in its entirety and that each Party understands the same. The Parties further acknowledge that each has had the opportunity to consult with independent legal counsel about the Agreement to the extent the Party desires. The Parties further acknowledge that the terms and conditions hereof adequately and correctly reflect each Party's respective understanding of the subject matter hereof. The Parties have generated this Agreement through equal negotiations. This Agreement should not be construed more favorably or unfavorably as to any Party hereto.

8. **Authority to Execute.** Each person who signs this Agreement represents and warrants that he or she has the right and authority to execute this Agreement on behalf of the Party for whom he or she signs and to bind that Party to the terms of this Agreement. This Agreement is conditional only in that it is subject to the approval of, and not binding upon the City unless and until approved by, the Edmonds City Council during an open public meeting. The City's representatives agree to recommend approval to the Edmonds City Council and will inform G & O of the result of the City Council's determination within forty-eight (48) hours of the Council's consideration of this Agreement.

9. **Entire Agreement.** This Agreement contains the entire understanding between the Parties and supersedes any prior understandings or agreements between the Parties with respect to the subject matter hereof. There are no other representations, agreements, arrangements, or understandings, verbal or written, between or among the Parties that relate to the subject matter of this Agreement.

10. **Amendments to Agreement.** No amendment to this Agreement or supplementation of this Agreement is valid and enforceable unless the Parties make the amendment or supplementation in writing and fully execute the same.

11. **Effect of Waiver.** Failure by any party to enforce a term or condition of this Agreement does not constitute a waiver of that term or condition. A party may only waive a term or condition of this Agreement in writing. Waiver of a term of the Agreement does not constitute waiver of any other terms or conditions in this Agreement. Waiver of a term of the Agreement with respect to a party does not constitute waiver with respect to any other party.

12. **Attorneys' Fees and Costs.** The Party that substantially prevails in any dispute or claim arising from this Agreement will be entitled to recover its costs associated with the dispute or claim including, but not limited to, reasonable attorneys' fees.

13. **Governing Law.** This Agreement is governed by the laws of the State of Washington and will be construed and interpreted in accordance with Washington law. The Parties consent to personal jurisdiction in the State of Washington for any dispute or claim related to this Agreement or related to the subject matter of this Agreement. The venue for any dispute or claim related to this Agreement, arising from or related to the subject matter of this Agreement is Snohomish County Superior Court.

14. **Severability.** If a court of competent jurisdiction holds any provision, or portion thereof, of this Agreement to be invalid under any applicable statute or rule of law, such invalidity will not affect the validity of the other provisions of this Agreement. The Parties will substitute the invalid provision with a valid provision that most closely approximates the intent of the invalid provision.

15. **Successors and Assigns.** The rights and obligations set forth in this Agreement will inure to and be binding upon the successors and assigns of each of the Parties to this Agreement respectively.

16. **Signatures on Counterparts.** The Parties may execute this Agreement in multiple counterparts, each of which will comprise an original Agreement. Signatures on faxed copies will be deemed the same as original signatures.

WHEREFORE, the Parties hereby acknowledge their agreement and consent to the terms and conditions set forth above through their respective signatures below.

CITY OF EDMONDS

GRAY & OSBORNE, INC.

DAVE EARLING, Mayor

Signature

DATE: _____

Title

DATE: _____

ATTEST:

SANDY S. CHASE, City Clerk

APPROVED AS TO FORM:

Office of the City Attorney