

## SETTLEMENT AGREEMENT

### PARTIES AND DATE:

This Settlement Agreement ("Agreement") is entered into on this \_\_\_ day of November, 2021, by and between Standard Construction Company, Inc., an Arizona Corporation ("Standard") on the one hand, and the City of Glendale ("the City"), the State of Arizona acting through the State of Arizona Department of Transportation, on the other. The State of Arizona acting through the State of Arizona Department of Transportation is referred to herein as "ADOT." Standard, the City, and ADOT are referred to herein collectively as "the Parties."

### RECITALS:

A. This Agreement settles a dispute arising out of the construction on New River Multi-Use Path, Project No. 0000 MA GLN SS84601C CM-GLN-0(222) T ("the Project").

B. On April 18, 2013, the City and ADOT entered into an Intergovernmental Agreement ("IGA") for construction of the Project, based on an agreed upon cost estimate. The Parties also agreed that the City would be responsible for all costs exceeding this cost estimate.

C. On February 21, 2014, Standard submitted a Proposal and Bid Schedule and was found to be the lowest responsive and responsible bidder. On April 21, 2014, Standard and ADOT entered into a contract for construction of the Project ("the Contract").

D. The Contract provided that the Project would be substantially completed no later than November 8, 2014, subject to permitted extensions of time for a cost of slightly less than \$3 Million.

E. During the course of construction, the Project experienced delays and cost overruns. As a result, Standard submitted Time Extension Requests ("TERs") and Change Orders. The Parties did not resolve the TERs and Change Orders requested by Standard.

F. The work on the Project was substantially completed on or about July 17, 2015.

G. In November 2015, Standard submitted a Request for Equitable Adjustment ("REA") to ADOT seeking relief as set forth in the REA.

H. ADOT denied Standard's REA and asserted certain claims against Standard.

I. Standard and ADOT subsequently engaged in the escalation process set forth in the Contract but did not resolve the Parties' Disputes.

J. Standard commenced an action against ADOT in the Superior Court of Maricopa County on November 29, 2018, Case No. CV2018-014714, *Standard Construction Company, Inc., an Arizona Corporation, v. State of Arizona; Arizona Department of Transportation, a political subdivision of the State of Arizona* ("the Lawsuit").

K. In the Lawsuit, Standard sought to recover all sums it alleged were due and owing to it in connection with the Project.

L. On December 17, 2018, the City moved to intervene in the Lawsuit. The Superior Court granted the City's motion to intervene on January 9, 2019.

M. Without admitting any liability whatsoever but in order to resolve and settle all disputes between them arising out of the Contract, the Project, the Dispute, and/or the Lawsuit, the Parties hereby enter into this Agreement.

#### **COVENANTS:**

In consideration of the foregoing Recitals and the mutual promises and covenants set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged by the Parties, the Parties agree as follows:

1. Payment. The City shall pay Standard \$598,500.00 ("Payment") no later than twenty (20) days after all Parties have signed this Agreement. The Payment shall be made payable to Standard Construction Company, Inc. and shall be sent by wire transfer as directed by Standard.

2. Dismissal of the Lawsuit with Prejudice. Within three days of Standard's receipt of the Payment as required by paragraph 1 above, Standard shall direct its counsel to file a notice of dismissal of the Lawsuit with prejudice, all parties to pay their own costs and attorneys' fees incurred in connection with the Lawsuit and the preparation of this Agreement.

3. Mutual Release. Upon Standard's receipt of the good funds from the Payment, the Parties, individually and on behalf of their officers, directors, elected officials, shareholders, agents, representatives, employees, and respective legal predecessors, successors, and assigns, and any other person or entity acting in any manner for, by or on behalf of each of them, release and forever discharge each other and their respective successors, assigns, affiliates, officers, directors, elected officials, representatives, employees, consultants, agents, accountants and attorneys, acting in any manner for or on behalf of any of them, from any and all claims, counterclaims, crossclaims, costs, liabilities, damages, expenses, losses, demands, rights, obligations, attorneys' fees, actions, liens and/or suits of whatsoever kind and nature, whether known or unknown, asserted or unasserted, disclosed or undisclosed, absolute or contingent, actual or consequential, which were brought or could have been brought in the Lawsuit arising out of or relating to the Contract, the Project, and/or the Lawsuit prior to the date of this Agreement; provided however that nothing contained herein does or is intended to release the Parties from any obligation undertaken in this Agreement. This Mutual Release is a material condition of this Agreement.

4. Attorneys' Fees. The Parties shall be responsible for their own attorneys' fees and costs incurred through the date of this Agreement, provided however that if any of the Parties is required to take action to enforce any term or provision of this Agreement, then the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs incurred in such action as awarded by the Court sitting without a jury.

5. Execution of Agreement. This Agreement may be executed in counterparts, may be executed electronically and may be delivered by facsimile and/or email.

6. No Oral Change. This Agreement and any provisions hereof may not be modified, amended, waived, extended, changed, discharged or terminated orally, or by any act or failure to act by any of the Parties, but only by an agreement in writing signed by the party against whom the enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

7. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns.

8. Further Actions. The Parties shall take all actions reasonably necessary to carry out the provisions and purposes of this Agreement.

9. Severable Agreement. If any provision of this Agreement is held to be illegal, invalid or unenforceable for any reason, such provision shall be fully severable from the Agreement and the remaining provisions shall be fully enforceable and effective notwithstanding the severance of the offending provision.

10. Choice of Law. The validity, construction, interpretation and administration of this Agreement shall be governed by the laws of the state of Arizona. Any action or lawsuit to enforce the terms of this Agreement shall be exclusively brought in Maricopa County Superior Court, Arizona.

11. Integration Clause. This Agreement constitutes the full and complete understanding of the Parties with respect to the subject matters addressed in the Agreement. This Agreement supersedes any and all prior or contemporaneous oral agreements or understandings and is the final agreement of the Parties with respect to the subject matters addressed in the Agreement.

12. Authority to Sign. Each person signing this Agreement represents and warrants that he or she is duly authorized and empowered by the entity on whose behalf he or she is executing this Agreement to execute this Agreement, that he or she has the power and authority to bind the party on whose behalf he or she is executing this Agreement to the terms and conditions set forth herein, and that the party on whose behalf he or she is executing this Agreement will be fully bound to the terms and conditions of this Agreement by his or her signature below.

13. No Admission. This Agreement is the result of a compromise and settlement of disputed claims and is not, and shall not be, construed as an admission of liability by any Party herein. No action taken by the Parties hereto, either previously or in connection with this Agreement will be deemed or construed to be: (a) an admission of the truth or falsity of any claims; or (b) an acknowledgment or admission by a Party of any fault or liability whatsoever to the other Party or to any third party.

14. Approval of Glendale City Council. The Parties recognize that the approval of this Agreement is conditioned on the Glendale City Council's authorization of its terms and the appropriation of adequate funding. The City does not guarantee that the budget item will be actually adopted and the appropriation actually made, as this is a legislative act of the City Council that cannot be pre-determined. If the City Council does not approve this Agreement, the Parties acknowledge that the Agreement shall become null and void.

STANDARD CONSTRUCTION  
COMPANY, INC. an Arizona Corporation

By Diane C. Sutton  
Its Corporate Secretary & Treasurer

CITY OF GLENDALE

By \_\_\_\_\_  
Its \_\_\_\_\_

STATE OF ARIZONA acting through the  
ARIZONA DEPARTMENT OF  
TRANSPORTATION

By \_\_\_\_\_  
Its \_\_\_\_\_