

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Mutual Release (“Agreement”) is made and entered into freely and voluntarily this 14th day of May, 2024 between Southwest Sawcutting and Milling LLC (dba SWB Paving), its agents, successors and assigns (“SWB Paving”), and City of Glendale, its agents, successors and assigns (“City”), (hereafter referred to as the “Parties”).

RECITALS

A. SWB Paving is an Arizona limited partnership doing business in the State of Arizona. SWB Paving has a general engineering with the Arizona Registrar of Contractors, AZ ROC #325429.

B. The City of Glendale (“City”) is an incorporated municipality and political subdivision of the state of Arizona.

C. On or about May 10, 2022, SWB Paving and the City entered into a contract (“Contract”) wherein SWB Paving would provide certain contracting services – specifically asphalt removal, placement and related contracting services (“Services”) – for the City for compensation.

D. SWB Paving performed the Services for the City in the summer and early fall of 2022, sought compensation therefore, and further claimed to have achieved Substantial Completion under the Contract. SWB Paving submitted pay applications to the City for payment of the services, some of which were paid.

E. The City partially compensated SWB Paving for the Services, but the City disputed that the Services were complete under the Contract, disputed that SWB Paving achieved Substantial Completion, and further alleged that some of the Services were deficient in nature. SWB Paving disputed the City’s positions (the “Dispute”).

F. The Parties thereafter entered into a series of discussions over the next 18 months to resolve the Dispute. The Parties now desire to terminate the Contract for convenience.

G. The Parties, after conducting good faith negotiations, recognizing the expense and uncertainties of litigation, desire to settle and resolve all claims and potential claims between them, which are in any way related to, arise out of, or in connection with the Dispute.

AGREEMENT

Now, therefore, in consideration of the foregoing mutual promises and agreements set forth herein and for other good and valuable consideration, the Parties agree as follows:

1. Recitals. That the foregoing recitals are confirmed to be true and accurate and are hereby incorporated by reference into this Agreement.

2. Termination of Contract. The Contract is terminated for convenience, effective December 31, 2022, by mutual agreement of the Parties. SWB Paving avows that all of its suppliers and its own subcontractors have been or will be paid for any work or supplies provided to the City associated with the Services. The City acknowledges that SWB Paving completed SWB Paving's obligations under the Contract as of December 31, 2022, and that SWB Paving has no further obligation to the City under the Contract or under any statutory or common law, except as expressly provided in this Agreement. Likewise, the City has no further obligation to SWB Paving under the Contract or under any statutory or common law for the Services, except as expressly provided in this Agreement.

3. Payment. SWB Paving agrees to pay the City \$850,000 less the SWB Paving retention held by the City (\$293,329.07) and less \$32,175.55 owed to SWB Paving for additional Services provided but not yet paid by the City, for a net payment to the City by SWB Paving of \$524,495.39. SWB Paving will make this payment within 10 business days of the full execution of this Agreement.

4. Mutual Release. For good and valuable consideration, receipt of which is hereby acknowledged, the Parties, on behalf of their successors and assigns, hereby mutually release and forever discharge and acquit each other and each other's respective directors, officers, stockholders, employees, servants, successors, assigns, agents, attorneys, subsidiaries, parents, divisions, partners, and insurers (collectively "Affiliates") from any and all liabilities, obligations, rights, claims, demands, actions or causes of action of whatsoever kind or character, known or unknown, contingent or absolute, liquidated or unliquidated, which they may have against the other which have been or could have been asserted or arise out of the Dispute or the Contract, including any future warranty associated with the Services and any litigation pertaining to the issues of substantial completion of the Services and economic waste related to the Services. The Parties represent and warrant that they have not assigned, and will not assign, any claim that they may have against the other Parties and their Affiliates. Except as specified in this Agreement, the Parties acknowledge that they understand that by entering into this Agreement, they will no longer have the right to assert any claim or

lawsuit of any kind attempting to recover money or any other relief against the other Party or their Affiliate.

5. Future Barricade Services. The City intends on hiring another contractor to make certain repairs to work performed by SWB Paving on Glendale Avenue, which were part of the Services. SWB Paving will provide barricade services for up to 60 calendar days for that Glendale Avenue repair work from the when the mill and overlay work starts, and, in the event that the repair work begins in summer 2024, not later than August 15, 2024. In the event the repair work does not commence until summer 2025, SWB Paving will provide barricade services for up to 60 calendar days for such work commencing on the date the mill and overlay portion of the repair work begins. SWB Paving will have no obligation to provide barricade services for any repair work on Glendale Avenue after August 15, 2025.

6. Third Parties. This Agreement is not intended to and shall not create any partnership, joint venture, or other agreement between the parties. No term or provision of this Agreement is intended to or shall be for the benefit of any person or entity not a party hereto, and no other person or entity shall have any right or cause of action hereunder.

7. Governing Law. This Agreement shall be interpreted and governed in accordance with the laws of the State of Arizona. All Parties have reviewed and participated in the drafting of this Agreement, and no language or provision of this Agreement shall be construed in favor or against a party based on who drafted the language or provision.

8. No Admission of Liability. This Agreement is the settlement and compromise of disputed claims. Nothing contained in this Agreement shall be construed as an admission by the Parties that they have violated any statute, law or regulation, breached any contract or agreement.

9. Nature of this Agreement. Time is of the essence. This Agreement constitutes the sole and entire agreement of the parties and fully supersedes any and all prior agreements or understandings between the parties pertaining to the subject matter and to all aspects of this Agreement. This Agreement shall not be modified, amended, or changed unless done so in writing, signed by all Parties. In the event that any portion of this Agreement is found to be unenforceable, for any reason whatsoever, the unenforceable provision shall be considered to be severable and shall be null and void, and the remainder of the Agreement shall continue to be in full force and effect.

10. Attorney's Fees and Costs. Each party hereto shall bear their own attorney's fees and costs that arose from any and all past actions that were related to this Agreement, the Complaint and all related matters.

11. Warranty of Capacity to Execute Agreement. The Parties represent and warrant that no other person or entity has or has had any interest in the claims, demands, obligations, or causes of action referred to in this Agreement. It has the sole right and exclusive authority to execute this Agreement; and that it has not sold, assigned, transferred, conveyed, or otherwise disposed of any claims, demands, obligations, or causes of action referred to in this Agreement.


12. Additional Documents. The Parties agree to cooperate fully, to execute any and all supplementary documents, and to take all additional actions that may be necessary or appropriate to give full force and effect to the basic terms and intent of this Agreement.

13. Advice of Counsel and Authority to Execute. Each party executing this Agreement warrants that it has read this Agreement; has obtained the advice of legal counsel with respect to the terms of the Agreement; and is legally empowered and authorized to execute the Agreement on its behalf.

14. Effective Date. This Agreement shall become effective following execution by the parties.

15. Counterparts. This Agreement may be executed via facsimile in any number of multiple counterparts. When a counterpart has been executed by each of the Parties, the counterparts, taken together, shall constitute a single agreement. Duplicate originals may also be utilized, each of which shall be deemed an original document. However, this Agreement is not effective until signed by all the Parties.

5/21/2024
Date


John Zyadet, President
Southwest Sawcutting and Milling, LLC

City of Glendale, an Arizona municipal corporation

By: _____

Name: _____

Kevin R. Phelps

Title: City Manager

ATTEST:

By: _____

Name: _____

Title: Julie K. Bower, City Clerk

APPROVED AS TO FORM:

By: _____

Name: _____

Title: Michael D. Bailey, City Attorney