

## **SETTLEMENT AND RELEASE AGREEMENT**

**THIS SETTLEMENT AND RELEASE AGREEMENT** (“Agreement”) is made by and between the **Williamson County, Texas** (“Owner”) and **Ritter Botkin Prime Construction Company, Inc.** (“Contractor”). From time to time throughout this Agreement, the foregoing firms or entities shall be referred to collectively as the “Parties” or individually as a “Party” to this Agreement.

**WHEREAS**, Owner, after conducting a public procurement process pursuant to the Texas County Purchasing Act, entered into a written contract with Contractor entitled Agreement Between Owner and Contractor, dated effective as of November 9, 2018 (“Contract”), pursuant to which Contractor agreed to perform certain construction work in connection with the construction of certain additions and alterations to Owner’s River Ranch County Park Phase I Development (the “Project”), as to which Design Workshop, Inc. serves as Architect (“Architect”).

**WHEREAS**, during the course of work on the Project, Contractor submitted certain claims for extra and additional compensation based on Contractor’s claim that changes in quantities of product or units were necessary and required for the Project.

**WHEREAS**, Contractor submitted such claims for extra and additional compensation to the Owner in the form a Change Event 68 in the amount of \$37,420.35, Change Event 69 in the amount of \$178,869.75 and Change Event 70 in the amount of \$239,794.65, which are more fully identified on **Exhibit “1”** hereto (collectively referred to herein as the “Change Events”).

**WHEREAS**, the Owner’s Architect disputed and denied the Change Events and asserted the Contract Documents require the Contractor to adequately review the plans and specifications for the Project prior to submitting its bid/proposal and required the Contractor to provide the better quality or greater quantity of work that may be required for the Project, all of which was disputed by the Contractor.

**WHEREAS**, on or about March 24, 2020, the Contractor, by and through its attorney, submitted a written claim to Owner for the amounts set forth in the Change Events, which totaled \$456,084.75.

**WHEREAS**, thereafter the parties met on several occasions in an effort to amicably resolve their disputes.

**WHEREAS**, the parties have agreed to amicably resolve their disputes and desire to set forth the terms thereof in writing.

**NOW THEREFORE**, in consideration of the mutual promises and covenants herein contained and intending to be legally bound hereby, the parties agree as follows:

**1. Additional Compensation to Be Paid by the Owner.** Owner agrees to pay to Contractor the total sum of TWO HUNDRED SEVENTY-FOUR THOUSAND SIX HUNDRED TWENTY-FIVE AND 65/100 Dollars (\$274,625.65) (the "Owner Settlement Payment"), in the time and manner hereinafter set forth, in full satisfaction of the Contractor's claims as hereinafter set forth, including the Change Events. The Owner Settlement Payment consists of three components, as follows:

- a. The sum of NINETEEN THOUSAND SIX HUNDRED FORTY-EIGHT AND 75/100 Dollars (\$19,648.75) in full satisfaction for Contractor's Change Event 68, which shall be added to the Contract Sum by Change Order No. 6 in the form attached hereto as **Exhibit "2;"**
- b. The sum of ONE HUNDRED FORTY-SIX THOUSAND SEVEN HUNDRED EIGHTY-ONE AND 75/100 Dollars (\$146,781.75) in full satisfaction for Contractor's Change Event 69, which shall be added to the Contract Sum by Change Order No. 6 in the form attached hereto as **Exhibit "2;"** and
- c. The sum of ONE HUNDRED EIGHT THOUSAND ONE HUNDRED NINETY-FIVE AND 15/100 Dollars (\$108,195.15) in full satisfaction for Contractor's Change Event 70, which shall be added to the Contract Sum by Change Order No. 6 in the form attached hereto as **Exhibit "2."**

**2. Additional Contract Time.** In addition to the Owner Settlement Payment, Owner and Contractor agree to add an additional Thirty (30) days to the Contract Time in relation to Contractor's Change Event 70, which shall be set forth in Change Order No. 6 in the form attached hereto as **Exhibit "2."**

**3. Time and Manner of Payments.**

a. When this Agreement is executed by Contractor and thereafter approved by the Williamson County Commissioners Court, which is the governing body of the Owner, and has been executed by its presiding officer, the parties will execute Change Order No. 6 attached hereto as **Exhibit "2."** The Contractor will then submit its Application for Payment to the Owner, requesting payment of the sum referenced in the change order, as authorized in Paragraph 1. above. The Owner will pay such amount to the Contractor in the time and manner required by the further provisions of the Contract Documents.

**4. Release of Claims by the Contractor.** Except as hereinafter provided, for and in consideration of both the payments to be made by Owner pursuant hereto and the addition of Contract Time set herein above, the sufficiency of which are acknowledged by Contractor, as well as the mutual promises and covenants herein contained, and effective upon the payment of all sums due under this Agreement, Contractor, for and on behalf of itself and all persons claiming by, through or under it, hereby releases and forever discharges the Owner, its Commissioners Court, Architect, and all of their officers, directors, shareholders, employees, attorneys, agents and servants and their respective predecessors, successors and assigns, of and from, any and all claim, loss, liability, damage, cost or expense that arises out of or relates to the Contract or the Project,

from the commencement of the Work through the Effective Date of this Agreement and whether for contract balances, extra or additional work, change orders, delays, acceleration, disruption, lost productivity or inefficiency, cost escalation, extended home or field office overhead or expense, interest, penalties for late payment, attorneys' fees, or any other financial or economic loss or damage of any kind or nature, and whether arising in tort (including negligence and negligent misrepresentation), in contract or otherwise, including, without limitation, the Change Events as more fully set forth on **Exhibit "1"**. Provided, however, that the provisions of this paragraph are not intended to, and shall not release or discharge any claim or defense which the Contractor may have against: (a) other contractors on the Project; (b) the Owner for contract retainage, if any, earned by the Contractor but not yet paid; (c) the Owner for Work shown as incomplete and yet to be performed by Contractor as of as of the Effective Date of this Agreement. Notwithstanding anything otherwise provided herein, the Release of Claims by Contractor contained herein is specifically limited to those claims between Contractor and Owner as they relate to the Project. Nothing herein shall be construed or interpreted to release any potential claims between Contractor and Owner for projects other than River Ranch County Park Phase I Development.

**5. Acknowledgement and Representations of Contractor Regarding Contract Documents.** Contractor hereby reaffirms its prior agreement and acknowledgment that it is the intent of the Contract Documents to describe a functionally complete project to be constructed in accordance with the Contract Documents and that any labor, documentation, services, materials, or equipment that reasonably may be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the indicated result will be provided whether or not specifically called for, at no additional cost to Owner. Contractor also reaffirms that it has had an opportunity to examine, and has carefully reexamined, all of the Contract Documents and Project site, and has fully acquainted itself with the scope of work, design, availability of materials, existing facilities, access, general topography, soil structure, subsurface conditions, obstructions, and all other conditions pertaining to the Work, the site of the Work, and its surrounding; that it has made necessary investigations to a full understanding of the difficulties which may be encountered in performing the Work; and that anything in any Contract Documents, or in any representations, statements, or information made or furnished by Owner or its representatives notwithstanding, Contractor will complete the Work for the Contract Sum stated in the Agreement plus any increases or decreases properly authorized by Change Order or Construction Change Directive following the Effective Date of this Agreement.

**6. Quantities of Products/Units.** Except for any increases or decreases in quantities of products/units due to changes in the Work that are properly authorized by Change Order or Construction Change Directive following the Effective Date of this Agreement, Contractor hereby agrees that all quantities set out in the Contract Documents, as amended and modified by Change Orders Nos. 1-6, are sufficient and that no additional quantities shall be necessary in order for Contractor to complete the construction of the Project in accordance with the Contract Documents and that no future claims for additional compensation will be made in relation to contentions that additional quantities are necessary in order to complete the construction of the Project in accordance with the Contract Documents and that no future claims for additional Contract Time will be necessary in order to complete the construction of the Project in accordance with the Contract Documents.

**7. Completion, Final Close Out and Final Payment.** Nothing set forth in this Agreement is intended or shall be construed to alter the requirements of the Contract Documents for: (a) completion of the Work, including the Work shown as incomplete and yet to be performed by Contractor as of the Effective Date of this Agreement, (b) final close-out and (c) final payment, which requirements shall continue in accordance with their terms. The parties acknowledge that the Work remaining incomplete as of the Effective Date of this Agreement is presently scheduled to be substantially completed on or before August 8, 2020.

**8. Common Terms as to All Parties.**

**a.** Nothing in this Agreement shall constitute an admission of liability with regard to the subject matter of this Agreement. By entering into this Agreement, no Party intends to make, nor shall they be deemed to have made, any admission of any kind. The parties agree that they are entering into this Agreement solely as an accommodation for the purposes of settling certain disputes between them and to avoid the cost of further litigation with respect to these disputes. This Agreement is the product of informed negotiations and compromises of previously stated legal positions. This Agreement shall be deemed to fall within the protection afforded to compromises and offers to compromise and settle claims by the Texas Rules of Evidence and the parties to this Agreement agree to its inadmissibility in any proceeding except an action to enforce any provision of this Agreement.

**b.** In executing this Agreement, no Party has relied upon any oral or written promises, representations or covenants of any other Party or any other Party's representatives except as are expressly provided for herein. The Parties acknowledge that they have each been represented by counsel of their own choosing and that they have carefully and thoroughly reviewed this Agreement, in its entirety, with counsel, that they understand the import and significance of this document, that they are competent to execute this Agreement, and that they are duly authorized to execute this Agreement. The Parties each acknowledge that in executing this Agreement they have relied solely on their own judgment, belief and knowledge, and such advice as they may have received from their own counsel, and that they have not been influenced by any representation or statements made by the opposing Party or opposing counsel.

**c.** This Agreement shall be binding upon the Parties hereto, their predecessors, successors, parents, wholly and partially owned subsidiaries, affiliates, assigns, agents, directors, officers, employees, attorneys, heirs and personal representatives.

**d.** Each party to this Agreement hereby agrees and acknowledges that venue and jurisdiction of any suit, right, or cause of action arising out of or in connection with this Agreement shall lie exclusively in Williamson County, Texas, and the parties hereto expressly consent and submit to such jurisdiction. Furthermore, except to the extent that this Agreement is governed by the laws of the United States, this Agreement shall be governed by and construed in accordance with the laws of the State of Texas, excluding, however, its choice of law rules.

**e.** Should any litigation be commenced to enforce the terms of this Agreement, the prevailing Party shall be entitled to recover its reasonable attorneys fees and all costs of litigation from the

Party(ies) which breached the terms of this Agreement. A breach by one Party to this Agreement shall not diminish the rights, remedies, and defenses of any non-breaching Party.

f. This Agreement may be executed in one or more counterparts, each of which shall constitute an original and all of which shall constitute one and the same agreement. Facsimile signature pages and/or signature pages in or other electronic format shall have the same force and effect as original signatures.

g. Each Party shall bear its own costs, expenses, and attorneys fees in connection with this Agreement and all actions contemplated hereby, unless otherwise expressly noted herein.

h. No addition, amendment, or modification to this Agreement shall be effective unless set forth in a writing signed by all Parties that have executed this Agreement.

i. Owner does not waive, modify, or alter to any extent whatsoever the availability of the defense of governmental immunity under the laws of the State of Texas and of the United States.

j. Except as otherwise defined or set out herein, any capitalized terms in this Agreement shall have the same meanings given to them in the Contract Documents.

k. The Parties agree that this Agreement constitutes the entire agreement between the Parties on the subject matter hereof and supersedes all other oral or written understandings or agreements among the parties regarding the subject matter of this Agreement.

**IN WITNESS WHEREOF**, the undersigned parties have each executed this Settlement and Release Agreement by and through a duly authorized officer to be effective as of the last Party's execution below ("Effective Date").


**OWNER:**

**Williamson County, Texas**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_, 20\_\_\_\_

**CONTRACTOR:**

**Ritter Botkin Prime Construction Company, Inc.**

By:  \_\_\_\_\_  
Name: Brian Ritter  
Title: President  
Date: June 26, 2020

# EXHIBIT "1"

## CHANGE EVENTS



Prime Construction Company Inc.  
20907 Martin Lane  
Pflugerville, Texas 78660  
P: (512) 244-7799  
F: (512) 990-9886

Project: 02.18010 - River Ranch County Park Phase 1 Improvements  
1751 County Road 282  
Liberty Hill, Texas 78642

### CHANGE EVENT #068 - Street Lights

**Origin:**

Date Created: 2/20/2020

Status: Open

Type: TBD

Description: Credit (1) pedestrian lights @ \$2,961.25/ea per bid item unit price

- Bid Item #64
- Qty included: 10
- Qty needed: 9

Supply and install (5) additional street lights @ \$8,076.32/ea per bid item unit price

- Bid Item #65
- Qty included: 60
- Qty Needed: 65

Created By: Brian Ritter

Scope: Out of Scope

Change Reason: Design Development

\*\*\* Will need to verify the current cost of the street lights and adjust price if supplier quotes a higher price.

**Attachments:**

### CHANGE EVENT LINE ITEMS

Cost Code	Cost Type	Vendor / Contract	Revenue			Cost				Over/ Under	Budget Mod.
			ROM	Prime PCO	Latest Price	ROM	RFQ	Commit.	Latest Cost		
			\$(2,961.25)		\$(2,961.25)	\$(2,961.25)			\$(2,961.25)	\$0.00	
		Description: (1) Deduct Pedestrian Lights									
			\$40,381.60		\$40,381.60	\$40,381.60			\$40,381.60	\$0.00	
		Description: (5) Additional Street Lights									
<b>Grand Totals</b>			\$37,420.35	\$0.00	\$37,420.35	\$37,420.35	\$0.00	\$0.00	\$37,420.35	\$0.00	\$0.00



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1751 County Road 282  
Liberty Hill, Texas 78642

## CHANGE EVENT #069 - Site Lighting - Conduit

Origin:  
Date Created: 2/20/2020  
Status: Open  
Type: TBD  
Description: Supply and install 6,325lf of additional underground Electric Conduit, Complete & In Place @ \$25.63/lf  
- Bid Item #68  
- Qty Included: 5,316  
- Qty Needed: 11,641  
Time adjustment required: 30 days

Created By: Brian Ritter  
Scope: Out of Scope  
Change Reason: Design Development

### Attachments:

### CHANGE EVENT LINE ITEMS

Cost Code	Cost Type	Vendor / Contract	Revenue			Cost				Over/ Under	Budget Mod.
			ROM	Prime PCO	Latest Price	ROM	RFQ	Commit.	Latest Cost		
			\$162,109.75		\$162,109.75	\$162,109.75			\$162,109.75	\$0.00	
		Description: Additional Conduit									
			\$16,760.00		\$16,760.00	\$16,760.00			\$16,760.00	\$0.00	
		Description: General Conditions									
Grand Totals			\$178,869.75	\$0.00	\$178,869.75	\$178,869.75	\$0.00	\$0.00	\$178,869.75	\$0.00	\$0.00



Prime Construction Company Inc.  
20907 Martin Lane  
Pflugerville, Texas 78660  
P: (512) 244-7799  
F: (512) 990-9886

Project: 02.18010 - River Ranch County Park Phase 1 Improvements  
1751 County Road 282  
Liberty Hill, Texas 78642

## CHANGE EVENT #070 - Site Utility - Conduit

Origin:

Date Created: 2/20/2020

Created By: Brian Ritter

Status: Open

Scope: Out of Scope

Type: TBD

Change Reason:

Description: Supply and install 2,402lf of additional underground Electrical Conduit, Complete and In Place @ \$68.99/lf  
- Bid Item #187  
- Qty Included: 4,911lf  
- Qty Needed: 7,313lf

Supply and install 8007lf of additional underground Electrical Conduit Only (shared trench) @ \$7.16/lf\*  
- Bid Item #187  
- Qty Included: 0  
- Qty Needed: 8007  
\* Includes concrete back fill where necessary

Time Adjustment Required: 30 days

Attachments:

### CHANGE EVENT LINE ITEMS

Cost Code	Cost Type	Vendor / Contract	Revenue			Cost				Over/ Under	Budget Mod.
			ROM	Prime PCO	Latest Price	ROM	RFQ	Commit.	Latest Cost		
			\$165,713.98		\$165,713.98	\$165,713.98			\$165,713.98	\$0.00	
		Description: Supply and install 2,402lf of Conduit									
			\$57,320.67		\$57,320.67	\$57,320.67			\$57,320.67	\$0.00	
		Description: Supply and install 8007lf of Conduit									
			\$16,760.00		\$16,760.00	\$16,760.00			\$16,760.00	\$0.00	



			Revenue			Cost					
Cost Code	Cost Type	Vendor / Contract	ROM	Prime PCO	Latest Price	ROM	RFQ	Commit.	Latest Cost	Over/ Under	Budget Mod.
Description: General Conditions											
Grand Totals			\$239,794.65	\$0.00	\$239,794.65	\$239,794.65	\$0.00	\$0.00	\$239,794.65	\$0.00	\$0.00

# EXHIBIT “2”

## CHANGE ORDER NO. 6



**PRIME CONSTRUCTION COMPANY, INC.**

[WWW.PCCTUSA.COM](http://WWW.PCCTUSA.COM)

20907 Martin Ln Pflugerville, TX 78660

(office) 512.244.7799

(fax) 512.990.9886

### River Ranch County Park Phase 1 Development Change Order No. 06

This Change Order Estimate includes the following modifications to the scopes of work originally contracted for the subject project between **Ritter – Botkin Prime Construction Company Inc.** (Contractor) **Williamson County** (Owner):

#### SCOPE:

Furnish and install all materials, tools and labor required for the following scopes of work:

#### Change Event #068: Street Lights

**\$19,648.75**

- Credit (1) pedestrian lights @ \$2,961.25/ea per bid item unit price
- Bid Item #64
- Qty included: 10
- Qty needed: 9
- Supply and install (5) additional street lights @ \$8,076.32/ea per bid item unit price
- Bid Item #65
- Qty included: 60
- Qty Needed: 65

#### Change Event #069: Site Lighting – Conduit

**\$146,781.75**

- Supply and install 6325lf of additional underground Electric Conduit, Complete & In Place @ \$25.63/lf
- Bid Item #68
- Qty Included: 5,316
- Qty Needed: 11,641

#### Change Event #070: Site Utility – Conduit

**\$108,195.15**

- Supply and install 757lf of additional underground Electrical Conduit, Complete and In Place @ \$68.99/lf
- Bid Item #187
- Qty Included: 4,911lf
- Qty Needed: 5,668lf
- Supply and install 7,817lf of additional underground Electrical Conduit Only (shared trench) @ \$7.16/lf\*
- Bid Item #187
- Qty Included: 0
- Qty Needed: 7,817
- \* Includes concrete back fill where necessary
- Time Adjustment Required: 30 days



## PRIME CONSTRUCTION COMPANY, INC.

WWW.PCCUSA.COM

20907 Martin Ln Pflugerville, TX 78660

(office) 512.244.7799

(fax) 512.990.9886

This Change Order shall constitute full and final negotiations for the said scope of work with no assumptions, additional obligations, or promises made other than what is strictly written within this document. This instrument cannot and does not change, modify, or exclude any terms within the original contract entered into previously by both parties unless specifically stated above. This change order will only become effective, in whole, with signatures from both parties noted below.

Current Contract Amount: \$ 12,587,496.47

Change Order 06: \$ 274,625.65

New Contract Amount: \$ 12,862,122.12

Williamson County

Signature / Date

Printed Name

Prime Construction Company Inc.

BR 6/19/2020  
Signature / Date

Brian Ritter  
Printed Name

Design Workshop

Signature / Date

Printed Name