

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

THIS SETTLEMENT AGREEMENT (“Agreement”) is made and entered into effective as of the last date written beside the signatures of the parties below (“Effective Date”), by and between Contractors Northwest, Inc. an Idaho corporation (“CNI”) and the City of Hailey, an Idaho municipal corporation (“City”). CNI and the City may hereinafter be collectively referred to as the “Parties.”

RECITALS

WHEREAS, the Parties entered into a contract for the construction of certain improvements, commonly referred to as the Hailey Biosolids Project at the Hailey Sewer Plant (“Project”);

WHEREAS, disputes arose between the Parties related to delays and payment of state sales taxes during the course of the Project;

WHEREAS, CNI has submitted its request for final payment under the terms of the Parties’ contract in the amount of \$203,340.37;

WHEREAS, the Parties have mutually agreed to a reduction of the final payment in the amount of \$97,971.90, resulting in a final payment of \$105,368.47;

WHEREAS, the Parties agree that the final payment of \$105,368.47 includes payment of all retainage under the Parties’ contract;

WHEREAS, one of the subcontractors on the Project, PEMB Construction, Inc. has filed a Claim of Lien on City Property; and

WHEREAS, the Parties desire to resolve any and all disputes arising out of or in any way related to the Project, based upon the terms and conditions set forth in this Agreement.

AGREEMENT

In consideration of the mutual covenants and conditions set forth herein and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

A. Consideration.

1. The City shall pay CNI the total sum of One Hundred Five Thousand Three Hundred Sixty Nine and 37/100 Dollars (\$105,368.47), as a full and final settlement of all claims CNI may have related to the Project.

2. The Parties shall bear their own costs, expenses and attorney fees in connection with the Project.

B. Release of Claim of Lien. Before the payment described in Paragraph A is delivered to CNI, CNI will deliver a conditional final lien release for the amount of the Claim of Lien satisfactory proof to Hailey that the Claim of Lien recorded by PEMB Construction has been released or will be released upon payment to PEMB by CNI. Following payment by the City as provided in Paragraph A, CNI shall cause any claim of lien recorded against the City Property on which the Project is located, including the Claim of Lien recorded by PEMB Construction, Inc., to be released, and a copy of the recorded release of claim of lien to be delivered to the City.

C. Mutual Release. Except as otherwise provided herein, upon payment of the sums set forth above, the Parties do hereby mutually release and forever discharge each other party hereto, together with their respective successors, estates, legal representatives, insurers, employees, shareholders, officers, attorneys, heirs, agents, assigns, and all other persons or entities acting for, by, or through such party from any and all claims, counterclaims, damages, demands, debts, liabilities, obligations, subrogations, and costs, of whatever nature, character, or description, whether known or unknown, anticipated or unanticipated, which they may have directly or indirectly arising out of or related to the Project. The Parties expressly acknowledge that the claims identified in §15.07 of the General Conditions of the Parties' contract are specifically excluded from this mutual release.

D. General Terms

1. Effective Date: This Agreement shall become effective on the date that the last of the Parties executes it.

2. Choice of Law: This Agreement shall be governed by the laws of the State of Idaho.

3. Costs and Attorneys Fees: If any party is required to enforce or defend against any claim arising out of this Agreement, the prevailing party shall be entitled to all reasonable attorneys' fees and costs incurred including, but not limited to, those fees and costs incurred in connection with arbitration, mediation, litigation, trial or appeal.

4. Counterparts: This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. If a Party signs this Agreement and transmits an electronic facsimile of its signature, each other Party may rely upon the facsimile and treat it as a signed original of this Agreement.

5. No Admission of Liability: It is understood and agreed that this Agreement and the covenants and the release contained herein are the result of a compromise and for the purpose of settling disputed claims and shall not at any time or for any purpose constitute or be considered or deemed an admission of liability or responsibility on the part of any party thereto.

6. No Assignment of Claim: The Parties hereby represent and warrant that no portion of any claim, demand, cause of action or other matter which is the subject of this Agreement or the release contained herein has been assigned or transferred to any other party or

entity, either directly or operation of law, and further represents and warrants it is fully authorized to enter into this Agreement.

7. Binding: This Agreement shall be binding upon the representatives, successors, insurers and assigns of the Parties, and each of them, and no inducement or agreement not herein expressed has been made to the undersigned. The terms of this Agreement are contractual in nature and not mere recitals.

8. Further Acts: The Parties agree to do any further acts, or to execute and deliver any and all further documents or instruments as any other party hereto may reasonably require for the purpose of giving full effect to the provisions of this Agreement.

9. Headings: The headings in this Agreement are inserted for convenience only, and shall not affect the meaning or interpretation of this Agreement in any manner.

10. Integrated Agreement: This Agreement contains and constitutes the entire agreement between the Parties concerning the subject matter of the Agreement and supersedes any and all prior agreements, arrangements, or understandings between the Parties relating to such subject matter. No oral understandings, statements, representations, promises or inducements contrary to the terms of this Agreement exist. No express or implied representations, warranties, covenants or conditions, other than those set forth herein or imposed by law, have been made or relied upon by any Party.

11. Amendment: This Agreement may be amended or modified only by an instrument in writing executed by the Parties.

12. Time of essence: Time is of the essence in the performance of the obligations of the Parties under this Agreement.

13. Severability: If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable for whatever reason, the remaining provisions not so declared shall, nevertheless, continue in full force and effect, without being impaired in any manner whatsoever, provided the material intent of the Agreement is not compromised.

14. No Construction Against Author: This Agreement shall be construed without regard to the person or entity who drafted it and as if all Parties had participated equally in its drafting.

15. Independent Legal Advice: The Parties, and each of them, represent and warrant that they have read this Agreement and understand and voluntarily accept its terms and conditions, and that they have received or had the opportunity to obtain independent legal advice from their respective attorneys with respect to the meaning of this Agreement and the advisability of making the settlement on the terms and conditions contained herein. No presumption shall be made in favor of or against any party as a result of the preparation or drafting of this Agreement. Each party, together with the party's advisors, had made such investigation of the facts and the law pertaining to this Agreement, and of all the matters

pertaining thereto, as the party deems necessary. Each party forever waives all rights to assert this Agreement was the result of a mistake in law or in fact.

16. No Waiver of Right to Enforce: A waiver of any breach of, or failure to enforce, any of the terms or conditions of this Agreement shall not in any way affect, limit or waive a party's right to enforce noncompliance with each and every term and condition of this Agreement.

17. Authority to Execute: Each party signing this Agreement warrants and represents that he or she has full authority to so execute the Agreement on behalf of the named party or on whose behalf he or she so signs. Each party separately acknowledges that this representation and warranty is an essential and material provision of this Agreement and shall survive the execution of this Agreement.

IN WITNESS WHEREOF, the undersigned have executed this Agreement on the date stated.

City of Hailey

Date: _____

By: _____
Fritz X. Haemmerle, its mayor

ATTEST:

Mary Cone, Clerk

Contractors Northwest, Inc.

Date: _____

By: _____
Its: _____