

SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement ("Agreement") is entered into as of the date last set forth below (the "Effective Date"), by and among Iowa Trenchless, LLC ("Iowa") and the City of Grand Island ("City"). Iowa and City are collectively referred to herein as the "Parties," and sometimes individually referred to as a "Party."

RECITALS

WHEREAS, on or about June 10, 2014, City entered into a construction project known as the Sewer Project District 528 and District 53T Sanitary Collection System Improvements ("Project") with an entity known as Van Kirk Brothers Contracting ("Van Kirk");

WHEREAS, on June 12, 2014, Iowa entered into a Subcontract Agreement with Van Kirk to perform certain labor and furnish certain materials and equipment to the Project;

WHEREAS, in the course of the Project, Iowa alleges that it was required to perform "extra work" to which it was entitled to additional compensation;

WHEREAS, the City denies that either Iowa or Van Kirk would be entitled to any payment above what has previously been received;

WHEREAS, without any admission of liability or wrongdoing, and in order to avoid the expenses and burden of litigation, and to bring closure to all matters, claims, causes of action, demands, debts, liabilities, and controversies that the Parties have asserted, or could have asserted, in relation with the City's Project, as set forth in further detail below, the Parties have reached an agreement to settle their disputes as set forth herein.

SETTLEMENT AND RELEASE

NOW, THEREFORE, in consideration of the promises set forth in this Agreement, and other good and valuable consideration the sufficiency and receipt of which are hereby acknowledged, the Parties agree as follows:

1. **Recitals**: The above-referenced recitals to this Agreement are incorporated into this Agreement by reference as if fully set forth herein.
2. **Settlement Proceeds**: The City shall pay the sum of Seventy-Five Thousand Dollars and 00/100 (\$75,000.00) to Iowa. Said payment shall be made within two (2) weeks following City Council approval of the settlement.
3. **Release**:
 - a. In consideration for this Agreement, effective once the settlement proceeds have been paid in full, Iowa, on behalf of itself and its respective principals, partners, members, owners, agents, directors, officers, employees, heirs, assigns, successors,

predecessors, insurers, subsidiaries, subcontractors, suppliers, and affiliates (collectively the "Related Parties"), **HEREBY RELEASE AND FOREVER DISCHARGE** the City from all liabilities, obligations, responsibilities, indebtedness, agreements, promises, covenants, claims, actions, causes of action, suits and demands of whatever kind or nature, in law or in equity, that have accrued from the beginning of time through the Effective Date, whether known or unknown, that Iowa or its respective Related Parties had, have, or may have in the future against the City including, without limitation, those that directly or indirectly arise out of or relate in any way to the Project.

- b. Nothing herein shall constitute a release, waiver, relinquishment or abandonment of any claim, demand, defense, or cause of action of any Party to this Agreement arising out of or related to execution of or performance under this Agreement whether sounding in tort, contract, or any other theory of recovery.

4. **Not an Admission of Liability:** The Parties acknowledge and agree that this Agreement constitutes settlement of disputed claims and shall not be construed as an admission of liability on the part of the Parties or their respective Related Parties.

5. **Ownership of Claims:** The Parties warrant that they have not assigned or otherwise transferred any of the claims released herein.

6. **Modification; Non-waiver:** This Agreement may be modified or amended only by a written instrument executed by an authorized signatory of each of the Parties. Any waiver of any breach of a provision of this Agreement shall not constitute the waiver of any additional breach of that provision or breach of any other provision of this Agreement.

7. **Entire Agreement and Integration:** The Parties declare and represent that this Agreement contains the entire agreement between the Parties hereto, that the terms of this Agreement are contractual and not a mere recital, and that there are no other prior representations, warranties, or agreements between the Parties except as described and/or referenced herein. The Parties further declare and represent that this Agreement constitutes as single integrated written agreement expressing the entire agreement and understanding between the Parties concerning the subject matter and replaces all prior negotiations and/or proposed agreements either written or oral.

8. **Authorship and Headings:** This Agreement shall be construed as if the Parties jointly prepared it, and shall not be construed against any individual Party as an author, and any uncertainty or ambiguity shall not on grounds of authorship be interpreted against any Party. The captions and headings in this Agreement are for the convenience of the Parties only and are not to be construed as defining, limiting, or expanding, in any way, the scope or intent of the provisions of this Agreement.

9. **Choice of Law, Jurisdiction, and Venue:** All questions pertaining to the validity, interpretation, or administration of this Agreement shall be determined in accordance with the laws of the State of Nebraska without regard to its conflict of laws rules. The Parties agree that the exclusive venue for any proceeding relating to or arising out of this Agreement shall be in Hall



County, Nebraska, and further agree that any action arising out of or related to this Agreement must be instituted and maintained only in a state or federal court of general jurisdiction in Hall County, Nebraska. Each Party irrevocably submits to the exclusive jurisdiction of such courts and waives any objection to either the jurisdiction or venue of the courts.

10. **Counterparts and Electronic Transmissions:** This Agreement may be executed in counterparts, which shall together constitute one and the same fully executed Agreement. The Parties agree that the executed counterparts may be delivered by electronic transmission, which such copies shall be deemed original copies.


11. **No Other Inducements:** The Parties acknowledge that no promise or inducement has been offered to them except as set forth herein, and that this Agreement is executed without reliance upon any statement or representation by the other Party or its respective principals, servants, employees, agents, representatives, or attorneys. The Parties acknowledge they are relying on their own judgment, belief, and knowledge.

12. **Signing Party is Authorized Representative:** Each Party declares and represents that the individual signing this Agreement on its behalf is a duly authorized representative of the Party and has the authority to bind the Party to this Agreement.

13. **Severability:** If any provision of this Agreement is adjudged to be void or unenforceable, the same shall not affect any other provision hereof or the validity or the enforceability of the remainder of this Agreement.

14. **Binding Effect of Agreement:** This Agreement shall be binding upon, and shall inure to the benefit of, the Parties to this Agreement and their respective Related Parties.


AGREED TO AND ACCEPTED BY:



Iowa Trenchless, LLC
By: Jason R. Clark
Its: President

1/11/2021

Date



City of Grand Island
By: Roger G. Steele
Its: Mayor

1/14/2021

Date



Interim City Attorney

1/14/21