

## **SETTLEMENT AGREEMENT AND MUTUAL RELEASE**

THIS SETTLEMENT AGREEMENT AND MUTUAL RELEASE (the “Agreement”) by and between JE Associates, Inc. (“Jacobs”) and the City of Detroit, a Michigan municipal corporation, by and through its Board of Water Commissioners of the Detroit Water and Sewerage Department (“DWSD”) is entered into as of the date it has been executed by both Jacobs and DWSD (the “Entry Date”). Jacobs and DWSD are hereinafter sometimes individually referred to as a “Party” or collectively, as the “Parties.”

### **RECITALS**

The following is a recital of facts underlying this Agreement:

- A. Jacobs is a corporation organized and existing under the laws of the State of Missouri.
- B. The City of Detroit (the “City”) is a Michigan municipal corporation.
- C. The Detroit Water and Sewerage Department (“DWSD”) is a department of the City acting under the direction of the Board of Water Commissioners.
- D. On or about January 31, 2006, Jacobs and DWSD entered into a contract, Contract No. CS-1431 (the “Contract”) for Jacobs to provide design and construction management services for the Rouge River CSO Tunnel Project (the “Project”).
- E. Section 11.02 of the Contract permitted DWSD to terminate the Contract without cause at any time (“For Convenience”) by issuing a Notice of Termination to Jacobs at least fifteen days prior to the effective date of the termination. The Contract further provided that in the event of such termination, Jacobs would be compensated for services rendered prior to termination.
- F. On December 17, 2010, DWSD formally terminated the Contract For Convenience by issuing its Notice of Termination of Contract.
- G. Anticipating DWSD’s formal termination of the Contract For Convenience and alleging that DWSD had, *de facto*, already terminated the Contract For Convenience, Jacobs submitted a claim to DWSD on December 1, 2010 alleging it was owed \$3,115,119 for services rendered (the “Claim”).
- H. DWSD has denied any liability to Jacobs on account of or, in any, way relating to or arising out of the Contract’s termination or the Claim.
- I. Jacobs and DWSD now wish, subject to and expressly conditioned on the approval of this Agreement by the Board of Water Commissioners, as provided for below, to fully and finally resolve the Claim as well as all other differences, disputes and claims of every other type and kind which the Parties have or may have against each other arising out of or, in any way, relating to the Contract, its termination or any services

rendered or to be rendered by Jacobs under the Contract, based on the consideration, mutual promises, release and terms stated below.

NOW THEREFORE, Jacobs and DWSD agree as follows:

## **TERMS**

1. **Recitals.** The above Recitals are true, correct and incorporated herein.

2. **Conditions Precedent.** The Parties recognize and acknowledge that this Agreement must be approved by the Board of Water Commissioners and that it is being executed by the Parties subject to and expressly conditioned upon that approval being obtained. In the event that the Board of Water Commissioners does not approve this Agreement, it is immediately void and of no force and effect.

DWSD will present this Agreement to the Board of Water Commissioners for its review, consideration and approval at the Board of Water Commissioners April 24, 2013 board meeting, provided that the Agreement has been executed by the Parties no later than April \_\_, 2013. In the event the Agreement is not fully executed by that date, the Agreement will be presented to the Board of Water Commissioners for review, consideration and approval at the next scheduled board meeting following the April 24, 2013 date.

3. **Effective Date.** The Effective Date of this Agreement shall be the date on which the Agreement is approved by the Board of Water Commissioners.

4. **The Settlement Amount and Payment.** DWSD shall pay Jacobs the total sum of Six Hundred Seventy-Five Thousand (\$675,000) Dollars (the "Settlement Amount").

The Settlement Amount shall be paid to Jacobs within twenty-eight (28) days of the Effective Date of this Agreement. The Settlement Amount shall be payable to JE Associates, Inc., and shall be sent, by first class mail, to the attention of its corporate counsel, John M. Limbaugh, 501 North Broadway, ST. Louis, MO 63102-2131.

5. **Settlement Incorporated Into Change Order.** Jacobs acknowledges and agrees that excluding the payments previously received from DWSD and the Settlement Amount being paid pursuant to paragraph 4 above, the remaining balance of the Contract remains the sole and exclusive property of DWSD. Should DWSD, in its sole discretion, determine it to be necessary or appropriate, the terms of this Agreement shall be incorporated into a bilateral lump sum negotiated change order which shall also close out the Contract and credit DWSD after payment of the Settlement Amount with the remaining balance of the Contract (the "Change Order"). Jacobs shall, subsequent to the execution of this Agreement by the Parties and upon DWSD's request, immediately execute the Change Order for subsequent approval by the Board of Water Commissioners. In the event the Agreement is not approved by the Board of Water Commissioners, the Change Order shall, like the Agreement, shall be void.

**6. Release by Jacobs.** Upon the payment of the Settlement Amount, Jacobs does, except for a breach by DWSD of its express obligations under this Agreement, for itself and on behalf of its past, present or future officers, consultants, directors, partners, managers, members, shareholders, employees, agents, attorneys, insurers, sureties, representatives, successors, and assigns, as well as on behalf of its present or former, parent, related or affiliated companies, divisions, partnerships, or subsidiaries (collectively, the “Jacobs Parties”), irrevocably and unconditionally forever release the City, DWSD, and the Board of Water Commissioners and their respective past, present, and future officials, members, commissioners, agencies, departments, agents, employees, representatives, attorneys, insurers, sureties and consultants (collectively, the “Released DWSD Parties”) from any and all claims, actions, suits, debts, liabilities, injuries, causes of actions, demands, damages, sums of monies, refunds, rebates, disputes, duties, rights, costs, fees, attorney fees, obligations, compensation and expenses of any kind, known or unknown, accrued or unaccrued, which the Jacobs Parties have, had, may have had or may hereafter have against the Released DWSD Parties on account of, or in any way relating to or arising out of, the Contract; the Contract’s termination; the Claim; services rendered under the Contract; or any dealings, representations, contacts, communication between the Jacobs Parties and the Released DWSD Parties regarding the Contract, its performance, or its termination.

**7. Release by DWSD.** Upon the payment of the Settlement Amount, DWSD does, except for a breach by Jacobs of its express obligations under this Agreement, on its own behalf and on behalf of the Board of Water Commissioners and the City and each of their present, former and future officials, members, commissioners, agencies, departments, agents, employees, representatives, attorneys, consultants and insurers (collectively, the “DWSD Parties”), irrevocably and unconditionally forever release Jacobs and its past, present or future officers, directors, partners, managers, members, shareholders, employees, agents, attorneys, insurers, representatives, sureties, consultants, successors and assigns as well as its present or former parent, related or affiliated companies, divisions, partnerships or subsidiaries (collectively, the “Released Jacobs Parties”) from any and all claims, actions, suits, debts, liabilities, injuries, causes of actions, demands, damages, sums of monies, refunds, rebates, disputes, duties, rights, costs, fees, attorney fees, obligations, compensation and expenses of any kind, known or unknown, accrued or unaccrued, which the DWSD Parties have, had, may have had or may hereafter have against the Released Jacobs Parties on account of, or in any way relating to or arising out of the Contract; the Contract’s termination; the Claim; services rendered under the Contract; or any dealings, representations, contacts, communications between the DWSD Parties and the Released Jacobs Parties regarding the Contract, its performance, or its termination.

**8. Indemnification and Hold Harmless.** Jacobs agrees to indemnify and hold harmless the Released DWSD Parties from any and all liability, injuries, damages, losses, costs, fees, attorney fees, obligations, compensation or expenses of any kind that any of the Released DWSD Parties may suffer or incur as a result of any claim, action, suit or legal action of any kind instituted, commenced or brought by any subcontractor, sub-subcontractor, supplier or vendor or by any of Jacobs’ sureties, insurers or employees against any of the Released DWSD Parties relating to or arising out of the Contract, the Contract’s termination or the Project including, but not limited to, any claims for compensation, damages, injuries, losses, costs, fees or expenses of any kind relating to any work, services or materials that were performed, provided

or furnished in connection with or arising out of the Contract or the Project (the “Third Party Claims”).

Jacobs shall also defend the Released DWSD Parties against such Third Party Claims and shall be liable for and shall pay all attorney fees, costs and expenses incurred in such defense.

DWSD shall give Jacobs written notice of any Third Party Claims within five (5) business days of DWSD’s receipt or written notice of any Third Party Claims. Such notice shall be given to Jacobs’ corporate counsel at the address previously stated in paragraph 4.

In exchange for the indemnification provided by Jacobs, DWSD grants Jacobs the right to control the defense of any Third Party Claims including, but not limited to, the right to retain attorneys and expert witnesses at its own expense and the right to settle or compromise such Third Party Claims.

**9. Non-Admission of Liability.** By entering into this Agreement, neither Party is admitting any liability or wrongdoing. Nothing herein shall be construed as an admission of liability by either Party to the other or to any other person or entity on any claim.

**10. Governing Law.** This Agreement and each and every term and provision hereof is made under and shall be governed by the law of the State of Michigan.

**11. Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the Parties’ successors and assigns provided that it is approved by the Board of Water Commissioners.

**12. Tax Consequences of Agreement.** Jacobs shall be solely responsible for any tax consequences arising out of the payment of the Settlement Amount and shall hold the DWSD Parties harmless thereon.

**13. Non-Assignment.** The Jacobs Parties represent that they have not assigned or transferred to any other person or entity any of the claims being released pursuant to paragraph 5. The DWSD Parties represent that they have not assigned or transferred to any other person or entity any of the claims being released pursuant to paragraph 6.

**14. Entire Agreement.** This Agreement contains the entire agreement between the Parties with respect to the subject matter hereof and supersedes any and all prior communications, representations, understandings, and discussions, either oral or written, between them or any of their representatives. The Parties further acknowledge and agree that there are no oral or written agreements, understandings, representations, directly or indirectly relating to this Agreement that are not set forth herein. Neither this Agreement nor any of its provisions may be altered, changed or modified except by a subsequent written agreement signed by the Parties.

**15. Agreement Not to Sue.** Except for a breach by a Party of its obligations under this Agreement, the Parties agree not to bring any claim or suit against the other Party arising out of or in any way relating to any of the claims being released by this Agreement.

**16. Authority to Sign.** Each of the undersigned who are executing this Agreement on behalf of a Party represent and warrant that he or she has obtained the appropriate authority to execute this Agreement with full legal force and effect on behalf of the Party for whom he or she is signing the Agreement.

**17. Voluntary Agreement.** This Agreement is freely and voluntarily executed by the Parties without any duress or coercion after each Party has carefully read all of the terms and provisions of this Agreement and had the opportunity to consult with their own counsel concerning the meaning, effect and consequences of this Agreement.

**18. Construction.** The Agreement shall be construed fairly as to both Parties and not in favor of or against either Party, regardless of which Party prepared the Agreement.

**19. Captions.** Section captions or headings used in this Agreement are for convenience of reference only and shall not affect the construction of Agreement.

**20. Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which constitute one and the same instrument.

**21. Disputes.** Any dispute regarding the meaning, scope, or terms of this Agreement shall be resolved by Mediator William Sankbeil.

I/WE HAVE READ THE FOREGOING SETTLEMENT AGREEMENT AND MUTUAL RELEASE IN FULL AND FULLY UNDERSTAND IT.

**JE Associates, Inc.**

By: \_\_\_\_\_  
*Signature of Authorized Representative*

*Print Name*

\_\_\_\_\_  
*Title*

\_\_\_\_\_  
*Date*

**The City of Detroit**

**By: Detroit Water and Sewerage Department**

By: \_\_\_\_\_  
*Signature of Authorized Representative*

*Print Name*

\_\_\_\_\_  
*Title*

\_\_\_\_\_  
*Date*