

## MUTUAL SETTLEMENT AND RELEASE AGREEMENT

This Mutual Settlement and Release Agreement (“Agreement”) is entered into this \_\_\_\_ day of March, 2013, by and among the City of Detroit, a municipal corporation, acting through and with the authority of its Detroit Water and Sewerage Department (collectively “DWSD”) on the one hand, and on the other, L. D’Agostini & Sons, Inc., a Michigan corporation (“D’Agostini”).

DWSD and D’Agostini are sometimes also referred to collectively in this Agreement as “Parties” and each respective side as a “Party.” Capitalized terms appearing in this Agreement shall have the meanings ascribed to them in this Agreement.

### RECITALS

This Agreement is made under the following circumstances:

A. The City of Detroit is a municipal corporation located in Wayne County, Michigan and is a political subdivision of the State of Michigan. The Detroit Water and Sewerage Department, a department of the City, provides water service and wastewater treatment services to residents of the City and certain southeastern Michigan communities.

B. The Detroit Water and Sewerage Department periodically solicits the services of contractors to perform various engineering, construction and management services.

C. D’Agostini provides general construction, engineering, environmental and energy services to federal and municipal governmental agencies, as well as commercial clients. During the past and for many years, D’Agostini served as a contractor on a number of DWSD contracts.

D. DWSD filed an intervening complaint asserting claims against D’Agostini in a lawsuit titled *Macomb Interceptor Drain Drainage District v. Kwame Kilpatrick, et al.*, Case No. 2:11-cv-13101, which complaint is currently pending before the Honorable Robert H. Cleland, United States District Court, Eastern District of Michigan (the “Cleland Litigation”), although the claims against D’Agostini were dismissed without prejudice on February 11, 2013 and DWSD has not filed any new or amended claims.

E. D’Agostini filed a lawsuit asserting claims against the City and DWSD in a lawsuit titled *L. D’Agostini & Sons, Inc. v. City of Detroit*, Case No. 12-cv-10041-JCO-MKM, which was pending before the Honorable John C. O’Meara, United States District Court, Eastern District of Michigan, which was dismissed with prejudice on August 16, 2012 by order of the district court, and is currently pending on appeal to the United States Court of Appeals for the Sixth Circuit, Case No. 12-2311 (the “O’Meara Litigation”).

F. DWSD and the City, on the one hand, and D’Agostini, on the other hand, now desire to settle, compromise and resolve all of their respective actual or potential disputes, claims, or actions against the other Parties in accordance with the terms of this Agreement.

The Parties agrees as follows:

### AGREEMENT

1. Dismissal of the DWSD Lawsuit. The Parties agree that the Cleland Litigation shall be dismissed with prejudice and without costs or attorney's fees. The Parties agree to stipulate to entry of the Stipulated Order of Dismissal attached as Exhibit A to this Agreement.

2. Dismissal of the D'Agostini Lawsuit. The Parties agree that the O'Meara Litigation shall be dismissed with prejudice and without costs or attorney's fees. The Parties agree to stipulate to entry of the Joint Motion to Dismiss Appeal With Prejudice attached as Exhibit B to this Agreement.

3. Mutual Release. The "DWSD Releasees" are the Detroit Water and Sewerage Department, its Director, its Board of Commissioners, its Affiliates, its parent organization (i.e., the City) in such capacity, as well as any and all of their members, officers, employees, agents, attorneys, representatives, heirs, executors, administrators, legal representatives, successors, and assigns. DWSD agrees to the terms of this Section 3 on behalf of all the DWSD Releasees.

The "Contractor Releasees" are D'Agostini, and its predecessors, their parents, subsidiaries, and their Affiliates, as well as any and all of those entities' respective shareholders, partners, members, managers, directors, officers, employees, agents, attorneys, representatives, insurers, sureties, heirs, executors, administrators, legal representatives, successors, and assigns. Each of the Contractor Releasees agrees to the terms of this Section 3 on its own behalf and on behalf of its parents, subsidiaries, Affiliates, and each of its and their shareholders, partners, members, managers, directors, officers, employees, agents, attorneys, representatives, heirs, executors, administrators, legal representatives, successors, and assigns.

"DWSD's Claims" are any and all obligations, claims, damages, demands, causes of action, suits, cross claims, counterclaims, indemnity and contribution claims, administrative proceedings, quasi-legal proceedings, duties, liabilities, promises, and agreements of any nature or kind, in law or in equity, whether known or unknown, accrued or unaccrued, which any of the DWSD Releasees had or could have had at any time on or before the date of this Agreement, asserted in or relating to the subject matter of DWSD's intervention complaint in the Cleland Litigation.

"D'Agostini's Claims" are any and all obligations, claims, damages, demands, causes of action, suits, cross claims, counterclaims, indemnity and contribution claims, duties, liabilities, promises, and agreements of any nature or kind, in law or in equity, whether known or unknown, accrued or unaccrued, which any of the Contractor Releasees had or could have had at any time on or before the date of this Agreement, asserted in or relating to the subject matter of the O'Meara Litigation.

The DWSD Releasees hereby forever release, discharge, and hold harmless the Contractor Releasees of and from any and all of DWSD's Claims and claims relating to or

arising under DWSD Contracts 748, 812, 849, 864, 865, 1368, 2012, and 2014. This paragraph does not apply to (i) claims to enforce this Agreement, and (ii) any performance or warranty claims for defective work or materials. The Contractor Releasees hereby forever release, discharge, and hold harmless the DWSD Releasees of and from any and all of D'Agostini's Claims as defined above, including, without limitation, claims relating to or arising under DWSD's suspension of D'Agostini in December 2011 (later voided *ab initio*) and DWSD's approval and enforcement of a Responsible Vendor Policy. This paragraph does not apply to (i) any claims to enforce this Agreement, and (ii) any and all claims for unpaid work including, without limitation, DWS-812. The claims released by this paragraph are hereinafter referred to as the "Released Claims."

The Parties acknowledge that they may hereafter discover facts in addition to or different from those which they now know or believe to be true with respect to the Released Claims, but the Parties intend to fully, finally, and forever settle and release all the Released Claims. The releases given under this Section 3 shall be and remain in full and complete effect regardless of the discovery or existence of any additional or different facts relating to the Released Claims.

Each of the Parties represent and warrant that it has not assigned any of the Released Claims to a Person who is not bound by this Section 3, except that DWSD represents that it assigned certain rights to the Macomb Interceptor Drain Drainage District and/or the County of Macomb effective on or about September 2, 2010 through the Macomb Interceptor Acquisition Agreement, the "Settlement Agreement" (between the same parties), and the Bill of Sale executed contemporaneously with Macomb Interceptor Acquisition Agreement, all of which documents DWSD has provided to the Contractor Parties (collectively, the "Assignment"). The Parties are aware of and acknowledge the Assignment and agree that any claims assigned to Macomb County or any other third party as a result of the Assignment are not the responsibility of DWSD or any of the DWSD Releasees.

Each Party agrees to waive (if waivable) the benefits of any state or federal statutory provision that would otherwise forgive any Party from releasing a Claim that the Party was not aware of when it executed this Agreement.

4. No Acknowledgement of Liability or Wrongdoing. The execution of this Agreement by the Parties shall not constitute an admission of any wrongdoing or an acknowledgement of liability by any Party for any Claims that had been or may be asserted by a Party but for the execution of this Agreement.

5. Opportunity to Consult with Counsel. The Parties respectively represent and certify that they secured independent legal advice and consultation in connection with this Agreement and any rights they may be relinquishing hereby, and that they have not relied upon any representations or statements made by any other Party or by any other Party's counsel or representatives in executing this Agreement, other than as stated expressly herein.

6. Responsible Bidder Status. The City and DWSD agree that the existence of this Agreement and the facts underlying its execution, or the actual or perceived existence of any Claims held by the City or DWSD prior to the execution of this Agreement against any of the

Contractor Releasees, shall not be considered or deemed relevant in any determination of the status of D'Agostini, or its parent, subsidiaries or Affiliates, as a responsible or non-responsible vendor for purposes of bidding on any contracts let by DWSD. D'Agostini agrees that this Agreement releases any claims it has relating to the Responsible Vendor Policy.

7. Provisions Severable. This Agreement is intended to be performed in accordance with, and only to the extent permitted by, all applicable laws, ordinances, rules and regulations. If any provision of this Agreement, or the application thereof to any person or circumstances, shall for any reason to any extent be invalid or unenforceable, the remainder of this Agreement, or the application of such provision to the unaffected persons or circumstances, shall not be affected thereby but rather shall be enforced to the greatest extent permitted by law.

8. Fees and Expenses. The Parties bear their own costs, attorney's fees, and other expenses incurred in the Cleland Litigation and the O'Meara litigation.

9. Entire Agreement; Amendment. This Agreement and the exhibits attached hereto set forth the entire Agreement of the Parties relating to the subject matter of this Agreement and supersede all prior and contemporaneous agreements, negotiations, correspondence, undertakings and communications of the Parties, oral or written, respecting such subject matter. This Agreement shall not be amended or modified except by an agreement in writing duly executed by all of the Parties.

10. Choice of Law; Venue. This Agreement shall be enforced in accordance with the laws of the state of Michigan, irrespective of its conflict of laws principles. The Parties agree that the United States District Court for the Eastern District of Michigan, Southern Division, or Wayne County Circuit Court, shall have exclusive jurisdiction over this Agreement and that any disputes arising out of or related in any manner to this Agreement shall be properly brought only in such Court.

11. Required Approvals. Upon execution of this Agreement, the City and DWSD shall take all actions reasonably necessary to effect the covenants and understandings provided in this Agreement and take such steps as are necessary to ensure that all required approvals of relevant city government authorities, including but not limited to the City Council and the Mayor, are obtained.

12. Waiver. No failure of any Party to exercise any right or remedy given to such Party under this Agreement or otherwise available to such Party or to insist upon strict compliance by any other Party with its or his obligations hereunder and no customer practice of the Parties in variance with the terms hereof, shall constitute a waiver of any Party's right to demand exact compliance with the terms hereof, unless such waiver is set forth in writing and executed by such Party. Any such written waiver shall be limited to those items specifically waived therein and shall not be deemed to waive any future breaches or violations of other non-specified breaches or violations unless, and to the extent, expressly set forth herein.

13. Construction. The language used in this Agreement shall be deemed to be the language chosen by the Parties to express their mutual intent, and no rule of construction shall

be applied against any Party.

14. Successors and Assigns. This Agreement shall be fully binding upon and inure to the benefit of the Parties and their respective successors, assigns, heirs, personal representatives, administrators, executors and agents.

15. Counterparts; Deliveries. This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which together shall constitute one in the same instrument, and to the extent signed and delivered by means of a facsimile machine or other electronic transmission (including pdf files), shall be treated in all manner and respects for all purposes as an original agreement.

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Signature Page to Mutual Settlement and Release Agreement

City of Detroit, a Michigan municipal corporation, acting through, and with the authority of, its Water and Sewerage Department and its Board of Water Commissioners

By: \_\_\_\_\_  
James G. Fausone

Its: Chairman, Board of Water Commissioners

and

By: \_\_\_\_\_  
Sue F. McCormick

Its: Director, Detroit Water and Sewerage Department

L. D'Agostini & Sons, Inc., a Michigan corporation

By: \_\_\_\_\_

Its: Sac, Treas & General Counsel