

## SETTLEMENT AGREEMENT AND RELEASE

THIS SETTLEMENT AGREEMENT (hereafter referred to as the "Agreement") is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the City of San Antonio, Texas, a Texas Municipal Corporation (hereafter referred to as "City") and Yantis Company (hereafter referred to as "Claimant") with its principal business office located at 3611 Paesanos Parkway, San Antonio, Texas 78231 (hereafter, City and Claimant collectively referred to as "the Parties").

WHEREAS, the City entered into four (4) construction contracts with Claimant dated between January 2010 – December 2010 (hereafter referred to as the "Contracts") to perform certain construction for the following City projects:

1. 36<sup>th</sup> Street Project: US 90 to Growdon
2. Walters Street Project: IH 35 to Fort Sam Houston Gate
3. Jones Maltsberger Project: Redland Road to Thousand Oaks
4. Indian Creek Channel Improvements – Phase I Project

(hereafter collectively referred to as the "Projects"); capitalized terms not otherwise defined herein shall have the meanings set forth in the Contracts; and

WHEREAS, the Parties have asserted certain claims against one another growing out of the Projects, which claims collectively are referred to herein as the "Yantis Projects Claims"; and

WHEREAS, bona fide disputes and controversies exist between the Parties, with respect to the Yantis Projects Claims, but the Parties wish and agree to settle the Yantis Projects Claims and any and all other matters relating to the Projects;

NOW THEREFORE, in consideration of the mutual covenants, promises, representations, conditions warranties and agreements set forth herein, and other good and valuable consideration, receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. The final agreed Contracts sums are set forth on **Exhibit A**, attached hereto and incorporated herein.
2. City will make a final payment, which shall be the final amount due either party under the Contracts (with the exception of potential warranty and indemnity obligations, as set forth in Paragraph 4 herein), to Claimant in the net amount of FIVE HUNDRED FOURTEEN THOUSAND THREE HUNDRED FIFTY SEVEN DOLLARS and 04/100 (\$514,357.04). Payment to Claimant shall be made upon the completion of all of the items listed the Final Punch List Items set forth on **Exhibit B**, attached hereto and incorporated herein. Upon completion of said Final Punch List item, City shall promptly process final payment to Claimant.

3. Claimant, its respective officers, directors, members, employees, agents, representatives and their respective successors, heirs and assigns, does hereby release, acquit and forever discharge City and its respective officers, directors, members, employees, agents, representatives and their respective sureties, successors, heirs and assigns from any and all actions, suits, debts, demands, accounts, claims, reckonings, bonds, bills, liabilities, controversies, damages, judgments, and causes of action, whether known or unknown, actual or potential, whether based on law or in equity, in tort, contract, by statute or in law, which either now has or ever has had by reason of any matter, cause or thing, which in any way relate directly or indirectly to the Projects. It is the express intent of the Parties that this Agreement operate as a bar to any subsequent proceedings initiated by or on behalf of Claimant with respect to any claims, causes of action, lawsuits, debts, demands, accounts, claims, reckonings, bonds, bills, liabilities, controversies, damages, and judgments, perceived or actual, that Claimant may have incurred or accrued, arising from or related to the Contracts or Projects.
4. With the exception of any claims and/or lawsuits brought by a third party as a result of Claimant's actions or inactions on any of said Projects, City, its respective officers, directors, members, employees, agents, subcontractors, representatives and their respective successors, heirs and assigns, does hereby release, acquit and forever discharge Claimant and its respective officers, directors, members, employees, agents, representatives and their respective sureties, successors, heirs and assigns from those actions, suits, debts, demands, accounts, claims, reckonings, bonds, bills, liabilities, controversies, damages, judgments, and causes of action, whether based on law or in equity, in tort, contract, by statute or in law, with the exception of such warranty and indemnity provisions of the Contracts as survive completion of the work there under and any implied warranties applicable by operation of law. It is the express intent of the Parties that this Agreement operate as a bar to any subsequent proceedings initiated by or on behalf of City with respect to any claims, causes of action or lawsuits, debts, demands, accounts, claims, reckonings, bonds, bills, liabilities, controversies, damages, and judgments, perceived or actual that City may have incurred or accrued arising from or related to the Contracts or Projects, with the exception of warranty and indemnity provisions of the Contracts as survive completion of the work there under and any implied warranties applicable by operation of law. The Parties expressly agree that Claimant's warranty obligations, both express and implied, under the Contracts shall remain in full force and effect in accordance with the terms thereof.
5. This Agreement is a negotiated Lump Sum settlement between the Parties. Any action(s) taken pursuant to the Agreement does not constitute and shall not be construed as an admission of liability on the part of either Party.
6. Each Party warrants and represents that it has read this Agreement, that it understands this Agreement and that it freely and voluntarily enters into this Agreement.

7. Claimant represents and warrants that it is the sole and lawful owner of all right, title and interest in and to every claim and other matter that Claimant is purporting to release or settle by this Agreement and that Claimant previously has not assigned or transferred, either by act or operation of law, to any party or entity, any claim or other matters release by this Agreement. It further is understand and specifically agreed, in the event that City is subject to further claims, whether in law or in equity, by any Subcontractor, Sub-Consultant, supplier, person, firm, corporation or other entity, acting under any actual or purported right of subrogation or assignment, Claimant shall indemnify, hold harmless and defend City from any such claim or demand.
8. Each Party warrants, represents and agrees that no promise, agreement, representation or statement not explicitly and expressly contained in the Agreement has been made or relied upon in entering the Agreement. This Agreement is a complete integration and represents the entire agreement among and between the Parties relating to the subject matter hereof. This Agreement supersedes and replaces any and all previous understandings or agreements, whether oral or written.
9. Each signatory warrants and represents that:
  - (i) it legally is competent and has the power to execute this Agreement on behalf of the party for whom it purports to execute this Agreement; and
  - (ii) it has entered the Agreement with full and complete knowledge of its contents and the effects thereof, solely motivated by its own free will and accord.
10. Each Party warrants and represents that it will cooperate fully in executing, preparing and filing any and all documents that may be necessary or appropriate to give full force and effect to the Agreement.
11. This Agreement shall inure to the benefit of and be binding upon the respective successors, heirs and assigns of the Parties hereto.
12. This Agreement may not orally be modified, amended, waived or terminated. No modification, amendment, termination or claimed waiver of any of the Agreement's provisions shall be binding unless made in writing and signed by the Parties hereto.
13. This Agreement may be executed in counterpart by each signatory and when each party has done so, such will have the same force and legal effect as if each had signed the same document.
14. If any portion of this Agreement is held to be invalid or restricted for any reason, the remainder of this Agreement shall continue in full force and effect.

15. This Agreement is made and performable in Texas, and shall be construed in accordance with the substantive law of the State of Texas, without giving effect to Texas's conflict of law provisions, and all obligation hereunder are to be performed in San Antonio, Bexar County, Texas. Any actions arising out of this Agreement shall be brought in the State District Court of San Antonio, Bexar County, Texas.
  
16. If any action in law or in equity, to include any action for declaratory relief, is brought to enforce or interpret the provisions of this Agreement, the substantially prevailing party shall be entitled to recover reasonable attorney's fees from the other Party, which fees may be set by the Court in the trial of such action or may be enforced in a separate action brought for that purpose and which fees shall be in addition to any other relief which may be awarded.

IN WITNESS WHEREOF, the Parties each have duly executed this Settlement Agreement on the dates represented below.

City of San Antonio, Texas

Yantis Company

By: \_\_\_\_\_  
 Peter Zanoni  
 Assistant City Manager

By: Arnold Borjones  
 ARNOLD BORJONES  
 Title: EXECUTIVE VICE PRESIDENT

Execution Date: \_\_\_\_\_

Execution Date: 3/24/14

APPROVED AS TO FORM:

\_\_\_\_\_  
 City Attorney

## EXHIBIT A

### CALCULATION OF NET LUMP SUM SETTLEMENT PAYMENT

Negotiated lump sum settlement total:	\$ 1,150,000.00
<b>Jones Maltsberger Project:</b>	
Release of retainage by City:	<\$ 356,727.76>
Change Order paid by City (CIMS-21, CIMS22) :	<\$ 37,418.25>
<b>36<sup>th</sup> St. US 90 to Growden Project:</b>	
Material Escalation Paid on CIMS-46	<\$ 92,205.45>
<b>Indian Creek Project:</b>	
Release of retainage by City:	<\$ 149,291.50>
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Net Lump Sum Settlement Payment Due Yantis:	<b>\$ 514,357.04</b>

## **EXHIBIT B**

### **FINAL PUNCH LIST ITEMS**

**(All to be completed by Yantis, prior to City paying Net Lump Sum Settlement Payment)**

#### **36<sup>th</sup> Street: US 90 to Growdon Project:**

1. Plan Redlines delivered to City
2. Affidavit delivered to City attesting to Payment to all Project Subcontractors
3. Elevation Certification delivered to City
4. Fire Hydrant Adjustments

#### **Walters Street: IH 35 to Fort Sam Houston Gate Project:**

1. Plan Redlines delivered to City
2. Storm Water Repair(s)
3. Palm tree replaced
4. Drop Zone parking lot repairs
5. TY 1 PVMRK (address TxDOT's comment on thickness)
6. Affidavit delivered to City attesting to Payment to all Project Subcontractors
7. Elevation Certification delivered to City
8. Irrigation system repairs

#### **Jones Maltsberger: Redland Road to Thousand Oaks Project**

1. San Antonio Water System MH coating (TCEQ requirement, due to non-passing of concrete testing)
2. Completed and fully executed Release of Retainage form delivered to City

#### **Indian Creek Channel Improvements Phase I Project:**

1. Completed and fully executed Release of Retainage form delivered to City

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