



LEGISLATIVE COVER MEMO

- Meeting Date:** May 4, 2026
- Agenda Item:** Settlement Agreement and Release between the City of Franklin, Ohio and Kelchner, Inc.
- Submitted by:** Jonathan Westendorf, City Manager
- Scope/Description:** The proposed Settlement Agreement and Release between the City of Franklin and Kelchner, Inc. resolves outstanding disputes related to the Franklin Main Street Streetscape Project.
- Budget Impact:** The Agreement reduces the contract balance by \$224,651.55, resulting in a final payment of \$314,847.94 to Kelchner, contingent upon satisfaction of all conditions.
- Recommendation:** Staff recommends Council authorizes, via oral motion, the City Manager to execute a Settlement Agreement in substantially the same format as presented.

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (the “Agreement”), is entered into by and between the City of Franklin, Ohio (the “City”), and Kelchner, Inc. (“Kelchner”), each alternatively referred to individually as a “Party,” and together as the “Parties.” This Agreement shall be effective as of the date the City executes this Agreement.

WHEREAS, the City and Kelchner are parties to a contract to construct certain public improvements (the “Contract”) and known as the Franklin Main Street Streetscape Project (the “Project”); and

WHEREAS, claims have arisen between the Parties regarding (i) defective and non-conforming work; (ii) retainage withheld in the amount of \$539,499.49 (the “Contract Balance”); and (iii) Project completion, including liquidated damages, and delivery of closeout documents (collectively, the “Claims”); and

WHEREAS, the overhead catenary lighting system above 4th Street (the “Catenary Lighting System”) that was installed by Kelchner by its subcontractors and suppliers on the Project, which include B&J Electric, Leesman, and/or Lumenpulse, are not operating in accordance with the Contract for the Project.

WHEREAS, the issues with the Catenary Lighting System include sections of the streetlights that do not operate at all and sections of streetlights that are out of sync with other streetlights on 4th street (the “Catenary Lighting Issues”); and

WHEREAS, the City and Kelchner agree that the reasonable and appropriate resolution of the Claims is a deductive change order (the “Change Order”) followed by the release of the Contract Balance, less the amount identified in the Change Order, and receipt of the Project closeout documents by the City; and

WHEREAS, the Parties desire to resolve the disputed issues relating to the Project and avoid further dispute or litigation; and

WHEREAS, Project funding was provided in whole or part through the Warren County Port Authority (the “Port Authority”), and payment of funds from the City is subject to the Port Authority’s release of funds upon direction from the City.

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

1. **No Admission**. The Parties understand, acknowledge and agree that this Agreement constitutes a compromise and settlement of the disputed Claims and is being entered into to avoid the expense of litigation. Neither this Agreement nor any of the terms hereof shall constitute, or be construed as, or be deemed evidence

of an admission on the part of either party of any liability or wrongdoing whatsoever.

2. **Consideration.**

a. **Adjustment to Contract Balance.** In exchange for Kelchner's Full Release as described herein, the City shall decrease the Contract Balance by \$224,651.55. The revised Contract Balance will be \$314,847.94 (the "Revised Contract Balance"). The Revised Contract Balance shall be paid to Kelchner by the Port Authority upon execution of this Agreement, execution of the deduct Change Order, repair Cantenary Lighting Issues so they perform in accordance with the Contract for the Project and delivery of the Project Closeout Documents. Upon completion of the foregoing, the City shall direct the Port Authority to release the Revised Contract Balance to Kelchner within ten (10) days.

3. **Full Release by Kelchner.** Upon the execution of this Agreement, Kelchner, on behalf of itself and all members, officers, directors, employees, predecessors, successors, shareholders, subsidiaries, parents, contractors, agents, and assigns, shall fully release and forever discharge the City, including all of the City's council members, officers, directors, employees, predecessors, successors, agents, and assigns, from any and all past and future claims, demands, damages, obligations, causes of action or liabilities arising out of, concerning, pertaining or relating to the Project, including the Claims.

4. **Full Release by the City.** Upon the execution of this Agreement and Change Order, the City, on behalf of its council members, officers, directors, employees, predecessors, successors, agents, contractors, and assigns, shall fully release and forever discharge Kelchner, its members, officers, directors, employees, predecessors, successors, shareholders, subsidiaries, parents, contractors, agents, and assigns, from any claims, demands, damages, obligations, causes of action or liabilities for the costs arising out of, concerning, pertaining or relating to the Claims.

5. **Conditions Precedent.** As stated above, and as an express condition precedent to any obligation of the City to direct payment of the Revised Contract Balance, Kelchner shall perform all work necessary to repair and resolve Cantenary Lighting Issues and confirm that the Cantenary Lighting System operation in accordance with the requirements in the Contract, and submit to the City complete, final, and Contract-compliant closeout documentation, including without limitation: (i) final invoice for payment reflecting the Change Order; (ii) final affidavits listing all subcontractors and suppliers and confirming payment in full; (iii) final lien releases from Kelchner, all subcontractors, and suppliers; (iv) prevailing wage affidavits; (v) all warranty and guarantee documents; (vi) all testing reports; and (vii) any additional documentation required by the Contract for final closeout.

- a. **No Waiver by Review.** The City's review or acceptance of Closeout Documents shall not constitute a waiver of any rights unless expressly stated in writing.
6. **Payment and Timing.**
 - a. **Direction to Port Authority.** Upon (i) full execution of this Agreement, (ii) execution of the Change Order, (iii) completion of all work necessary to repair and resolve Cantenary Lighting Issues and (iv) the City's receipt and acceptance of all required Closeout Documents, the City shall direct the Port Authority to issue release of the Revised Contract Balance to Kelchner, in the total amount of \$314,847.94 (including retainage).
 - b. **Best Efforts to Achieve Timely Payment.** The City shall use best efforts to cause the Port Authority to release the Revised Contract Balance within ten (10) days following satisfaction of all conditions set forth in this Agreement. Kelchner expressly acknowledges that the City does not control the Port Authority's internal processing timelines.
 - c. **No Interest or Penalties.** No interest, late charges, or penalties shall accrue on the revised Contract Balance.
7. **Entire Agreement.** This Agreement is the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior and contemporaneous oral and written agreements and discussions on the subject matter hereof. This Agreement may be amended only by agreement, in writing, signed by all the Parties hereto. This Agreement is binding upon, and shall inure to the benefit of, the Parties hereto and their respective agents, employees, representatives, officers, directors, shareholders, subsidiaries, affiliates, assigns, heirs, and successors in interest.
8. **Governing Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio, with venue lying exclusively in Warren County, Ohio.
9. **Voluntary Agreement/Assistance of Counsel.** Each Party has cooperated in the preparation of this Agreement, and the Agreement shall not be construed for or against any of the Parties. Each Party further represents that they have had an opportunity to read, understand, and seek legal advice with respect to each term and condition of this Agreement, and that they fully understand each of the terms and conditions contained herein. No Party relies or has relied on any statement, representation, omission or promise of the other Party (or of any officer, member, agent, employee, representative or attorney for any other party or their affiliate) in executing this Agreement, or in making this settlement provided for herein, except as expressly stated in this Agreement. No Party is relying on the legal advice of any other Party.

10. **Counterparts.** This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument. The Parties acknowledge that this Agreement may be executed by facsimile and/or PDF Format, and that execution of signatures in such format shall be considered to be made as an original.
11. **Severability.** The invalidity, in whole or in part, of any term of this Agreement does not affect the validity of the remainder of this Agreement or the Contract.

IN WITNESS WHEREOF, the Parties have executed this Agreement as evidenced by their respective signatures below.

City of Franklin, Ohio

Kelchner, Inc.

By: _____
Jonathan Westendorf
Its: City Manager

By: _____
Its:

Date

Date

Approved as to Form
City of Franklin, Ohio
Law Director

Date

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