

SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement (“Agreement”), by and between Zurich American Insurance Company and Fidelity and Deposit Company of Maryland (collectively “Zurich”), including its successors and assigns, and the City of Wilsonville (“City”), including its successors and assigns.

WHEREAS, Emerick Construction Company (“Emerick”) entered into a construction contract (the “Contract”) between Emerick and the City on a construction project relating to the Public Works Operations Complex — General Contractor Project referenced in Bond No. 9401412 as the City of Wilsonville Capital Improvement Project #8113 (the “Project”) on August 1, 2022;

WHEREAS, the Contract between Emerick and the City was amended on January 25, 2024;

WHEREAS, Zurich, as surety, issued Performance and Payment Bond No. 9401412 (collectively the “Bond”) on behalf of Emerick, as principal, and the City, as obligee, in connection with the Project, in the penal sum of NINETEEN MILLION SEVEN HUNDRED THOUSAND DOLLARS (\$19,700,000.00);

WHEREAS, the total Contract sum less amounts paid to Emerick results in the City holding FIVE HUNDRED FOURTY-ONE THOUSAND FIVE HUNDRED FORTY-NINE DOLLARS AND TWENTY-TWO CENTS (\$541,549.22) in retention (“Retention”);

WHEREAS, certain warranty work remains incomplete and which must be completed before the City is obligated to release Retention under the Contract;

WHEREAS, the City has agreed to manage completion of the warranty work and to release any remaining Retention to Zurich upon Zurich reimbursing the City for the costs to pay subcontractors to perform the following warranty work, plus a 15% contingency and an additional 10% management fee as follows:

<u>Warranty Work Scope (“Remaining Work”)</u>		<u>AMOUNT</u>
LVT (or comparatively priced alternative agreed to by City) and carpet repair		\$ 13,777.00
Gutter		\$ 5,415.00
Metal panels for trash enclosure		\$ 11,385.00
Patio sealant work		\$ 5,112.00
Interior injection scope		\$ 80,305.00
Night Work Allowance*		\$ 8,500.00
	Sub-Total	\$ 124,494.00
	15% Contingency	\$ 18,674.10
	Sub-Total Plus Contingency	\$ 143,168.10
	10% Management Fee	\$ 14,316.81

	Total	\$ 157,484.91
	Retainage currently withheld	\$541,549.22
	Total reimbursement from Zurich to City (herein “City Compensation”)	\$157,484.91
	Retainage to be released	\$541,549.22
* allowance for work at night or weekends in high-traffic/egress areas that need to stay open during weekdays. Covers two-person crew working off hours for four (4) night or Saturday shifts.		

WHEREAS, the Public Works Operation Manager for the City will serve as project manager (“Project Manager”) overseeing the Remaining Work performed by subcontractors to complete the outlined and agreed upon warranty work;

WHEREAS, the existing warranty provisions in Section 3.5 of the Contract remain in effect. The warranty provisions found in Section 3.5 of the Contract are reproduced here for ease of reference:

§3.5 Warranty

§3.5.1 Contractor shall provide a full warranty for all Work, for a period of one (1) year from the date of Final Acceptance of all Work. Contractor shall supply all manufacturer warranties to Owner no later than Final Completion.

§3.5.2 In addition to, and not in lieu of, any other warranties provided by various manufacturers and suppliers, Contractor fully warrants all Work for a period of one (1) year from the date of Final Acceptance of the Work and shall make all necessary repairs and replacements to remedy, in a manner satisfactory to the City's Project Manager and at no cost to the City, any and all defects, breaks, or failures of the Work occurring within one (1) year following the date of completion due to faulty or inadequate materials or workmanship. Repair of damage or disturbances to other improvements under, within, or adjacent to the Work, whether or not caused by settling, washing, or slipping, when such damage or disturbance is caused, in whole or in part, from activities of Contractor in performing Contractor's duties and obligations under this Contract, is also covered by the warranty when such defects or damage occur within the warranty period. The one (1) year warranty period shall, with relation to such required repair, be extended ten (10) years from the date of completion of such repair.

§3.5.3 If Contractor, after written notice, fails within ten (10) days to proceed to comply with the terms of this Section, the City may have the defects corrected, and Contractor and Contractor's surety shall be liable for all expense incurred. In case of an emergency where, in the opinion of the City's Project Manager, delay would cause serious loss or damage, repairs may be made without notice being given to Contractor, and Contractor or Contractor's surety shall pay the cost of repairs. Failure of the City's Project Manager to act in case of an emergency shall not relieve Contractor or Contractor's surety from liability and payment of all such costs.

§3.5.4 Current State Law (ORS 12.135) provides for a ten (10) year period, from the time of Substantial Completion, for the City to file a claim for repairs of defective Work due to Contractor's improper use of materials and/or workmanship, and Contractor agrees it is bound thereby.

§ 3.5.5 All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 9.8.4;

WHEREAS, Zurich will provide the warranties outlined in Section 3.5 of the Contract;

WHEREAS Zurich agrees that, with respect to the Remaining Work only, Emerick's warranty obligations stated in the Contract and reproduced here for easy reference shall apply for a ten (10) year period from the date of Final Acceptance of the Remaining Work. For purposes of determining when Final Acceptance has occurred with respect to the Remaining Work, the City shall give notice to Zurich of that date by sending an email clearly referencing Bond No. 9401412 to reportsclaims@zurichna.com, identifying each subcontractor whose performance of the Remaining Work may be the subject of a warranty claim in the future, and contact information for a representative with each subcontractor identified. Zurich further agrees that, with respect to the Remaining Work only, it will fulfil all of Emerick's warranty obligations consistent with the obligations created by the Contract, terms of Bond, and governing law, including to the extent applicable ORS 12.135. Nothing in this Agreement shall be construed so as to expand Zurich's obligations beyond those created by the express terms of the Contract, Bond, and applicable law.

WHEREAS, Emerick signed a General Indemnity Agreement ("Indemnity Agreement") dated April 18, 2018, in favor of Zurich;

WHEREAS, under the Indemnity Agreement, Emerick assigned to Zurich all rights under any contracts bonded by Zurich, including all rights, title, and interest in and to all contract funds, contract rights, retainage, etc.;

WHEREAS, Zurich, having satisfied payment bond claims on the Project, is equitably subrogated to the rights of Emerick, the City, and/or the claimants it paid;

WHEREAS, the City has agreed to release Retention to Zurich in the amount of FIVE HUNDRED FOURTY-ONE THOUSAND FIVE HUNDRED FORTY-NINE DOLLARS AND TWENTY-TWO CENTS (\$541,549.22) in exchange for payment from Zurich to the City for the City Compensation amount for completion of Remaining Work in the amount of ONE HUNDRED FIFTY-SEVEN THOUSAND FOUR HUNDRED EIGHTY-FOUR DOLLARS AND NINETY-ONE CENTS (\$157,484.91) as a cash settlement of any claims as between the City and Zurich in connection with the Project and the Bond, including previous, current, and future, known or unknown, claims against the Bond furnished by Zurich. Retention shall be released by the City to Zurich upon receipt of the City Compensation funds and written confirmation from Zurich to the City that payment for all work by all subcontractors related to the Project and the Contract has been resolved between Zurich and all subcontractors through settlement, conditional release of liens, unconditional release or liens, or denial. This written confirmation shall consist of copies of all

denial letters, or any non-confidential release documents, settlement documents, or proof of payment;

WHEREAS, a list of all known subcontractors and the status of any known claims as of the date of signing this agreement is attached as Exhibit A to this Agreement; and

WHEREAS, the City Compensation cash settlement and release of Retention is acceptable to Zurich and the City;

NOW THEREFORE, in consideration of these mutual promises and the terms and conditions set forth herein, the parties agree as follows:

1. Settlement Terms and Release. The foregoing recitals and attached Exhibit A are correct and are made a part of this Agreement, and for and in consideration of the sum of ONE HUNDRED FIFTY-SEVEN THOUSAND FOUR HUNDRED EIGHTY-FOUR DOLLARS AND NINETY-ONE CENTS (**\$157,484.91**) paid by Zurich to the City, and other good and valuable consideration, including the mutual release herein, the receipt and sufficiency of which is hereby acknowledged, City does hereby fully and completely release and discharge Zurich of all obligations under the Bond, and does hereby release, acquit and forever discharge Zurich of and from any and all claims, rights, demands and/or causes of action of whatever kind or nature which City has or may ever claim to have, now or in the future, against Zurich, under and/or by reason of the Bond furnished to City for the Project. Payment to the City is to be made via check made payable to City of Wilsonville, and mailed as follows:

City of Wilsonville
Attn: Finance Department
29799 SW Town Center Loop East
Wilsonville, OR 97070

The check shall clearly reference Bond No. 9401412 in the memo section.

1.2 Release of Retention to Zurich. In exchange for the mutual release between City and Zurich and other valuable consideration, the City does hereby agree to release the Retention to Zurich in the amount of FIVE HUNDRED FOURTY-ONE THOUSAND FIVE HUNDRED FORTY-NINE DOLLARS AND TWENTY-TWO CENTS (**\$541,549.22**), within ten (10) business days following the City's receipt of payment from Zurich outlined in Section 1 above and written confirmation from Zurich that payment or claims of payment for all work by all subcontractors related to the Project and the Contract has been resolved by between Zurich and each subcontractor through settlement, conditional or unconditional release of liens, or denial. This written confirmation shall consist of copies of all denial letters, and any non-confidential release documents, settlement documents, or proof of payment. Payment for the release of Retention is to be made via check made payable to The Vertex Companies, LLC, and mailed to Traci Mann, 30 BRAINTREE HILL PARK, SUITE 301, BRAINTREE, MA 02184.

1.3 Release of Claims against City and Contract Funds. As part consideration for this Agreement, Zurich does hereby release, acquit and forever discharge the City from any claim, right, demand and/or cause of action arising out of the Contract and the Bond issued by Zurich.

2. **Reserved Claims.** The Parties agree that this Agreement shall not operate as a waiver, release, or modification of Zurich contractual indemnity, equitable subrogation, or other legal rights as against any indemnitors or parties not signatory to this Agreement, including but not limited to any claims to retainage and/or contract proceeds on other Zurich bonded projects. Zurich expressly reserves any and all rights, legal or equitable, any indemnitors or parties not signatory to this Agreement, including but not limited to rights under any indemnity agreements, collateral security agreements, or other agreements with any indemnitors not a party to this Agreement.

3. **Further Acts.** The Parties agree to perform any other acts and execute and deliver any other documents that may be reasonably necessary to carry out the terms and conditions of this Agreement.

4. **Disputed Rights.** The Parties expressly acknowledge and covenant that this Agreement represents a settlement and compromise of disputed rights, claims and defenses, and that except as specifically set forth in this Agreement, by entering into this Agreement, no party admits or acknowledges any liability, wrongdoing, or negligence, all such liability, wrongdoing or negligence being expressly denied.

5. **Warranty of Authority to Execute Agreement.** The Parties represent and warrant that no other person or entity has or has had any interest in the claims referred to in this Agreement, and that they have the sole right and exclusive authority to execute this Agreement, including any and all applicable releases, satisfactions, and assignments.

6. **Representation by Counsel.** The Parties represent and warrant that they are each represented by independent attorneys with respect to this Agreement and all matters contained in it, that their respective attorneys have fully advised them concerning their rights with respect to its execution and effects and that they understand the same.

7. **Binding Effect.** This Agreement shall be binding upon the Parties and their respective agents, assigns, officers, directors, employees, executors, predecessors, representatives and successors.

8. **Governing Law and Forum.** This Agreement shall in all respects be construed, enforced and governed under the laws of Oregon. Venue and jurisdiction of any action regarding this Agreement shall be in the county where the Project is located.

9. **Notices.** Any notice required or permitted under this Agreement shall be in writing and shall be given when actually received if delivered in person or three (3) calendar days after having been emailed or deposited in the United States mail as first class mail or certified mail, return receipt requested, addressed to the addresses set forth below, or to such address or email address as one party may indicate by written notice to the other party.

To City: City of Wilsonville
 Attn: Legal Department
 29799 SW Town center Loop East
 Wilsonville, OR 97070
 legal@wilsonvilloregon.gov

To Zurich: Zurich American Insurance Company
1299 Zurich Way, 5th Floor
Schaumburg, Illinois, 60196-1056
reportsfclaims@zurichna.com

All notices shall clearly reference Bond No. 9401412 in the notice.

10. Headings. Section headings are used in this Agreement for convenience and reference only and shall not affect the meaning of any provision of this Agreement.

11. Entire Agreement; Amendments. This Agreement, including any exhibits incorporated herein, represents the final and entire agreement and understanding between the Parties, supersedes all prior agreements and understandings between the Parties, whether written or oral, and may be amended only by a writing duly executed by each party hereto. No amendment, modification, termination or waiver of any provision of this Agreement or consent to any departure from the terms hereof, shall in any event be effective unless the same shall be in writing and signed by the Party against whom enforcement of the amendment, modification, termination or waiver is sought.

12. Counterparts. This Agreement may be signed in counterparts, each of which shall (when the Agreement is or counterparts have been signed by all parties) be an original, to the same effect as if all signatures were on the same instrument. Facsimile or other electronic copies of signatures shall be sufficient to demonstrate a party's assent to this Agreement.

WE, THE UNDERSIGNED, HAVE COMPLETELY READ THIS AGREEMENT AND FULLY UNDERSTAND AND VOLUNTARILY ACCEPT IT.

This Agreement is executed and shall become effective as of the last date(s) written below.

CITY OF WILSONVILLE

FIDELITY AND DEPOSIT COMPANY OF
MARYLAND

By: _____
Name: _____
Its: _____
Date signed: _____

By: _____
Name: _____
Its: _____
Date signed: _____

ZURICH AMERICAN INSURANCE COMPANY

By: _____
Name: _____
Its: _____
Date signed: _____

Exhibit A

Status of Subcontractor Payment or Claim Resolution

Subcontractor	Status	Confirmation of Status Received by City
3Form	Denial	Documents Received
Absco Solutions	No Claim	No Documents Received
Acme Construction Supply Co., Inc.	No Claim	No Documents Received
ALCAL Specialty Contracting, Inc.	No Claim Vendor Refused	No Documents Received
Aluma Systems Concrete Construction, LLC	No Claim	No Documents Received
Amodeo Structural Engineering	06/05/2025	Unconditional Waiver and Release on Final Payment Received
Amplified Wireless Solutions Inc	No Claim	No Documents Received
Arrow Roofing & Sheet Metal, Inc.	No Proof of Claim Sent Vendor Refused	No Documents Received
Aurora Landscape	06/10/2025	Unconditional Waiver and Release on Final Payment Received
Bird-B-Gone	No Claim No executed contract	No Documents Received
Black Line Glazing	04/29/2025	Unconditional Waiver and Release on Final Payment Received
Brite Inc.	No Claim No executed contract	No Documents Received
Brix Paving Northwest, Inc.	04/28/2025	Unconditional Waiver and Release Received
Bryker Enterprises	06/06/2025	Unconditional Waiver and Release on Final Payment Received
Cadman, Inc.	No Claim	No Documents Received
Canby Builders Supply	No Claim	No Documents Received
Canby Consulting Company 3Cs	No Claim	No Documents Received
Carlson Testing, Inc.	No Claim	No Documents Received
Chown Hardware	2/12/2026	Unconditional Waiver and Release on Final Payment Received
Coast Pavement Services	No Claim Vendor Refused	No Documents Received
COJON LLC	No Claim	No Documents Received

Construction Specialties, Inc.	No Claim No executed contract	No Documents Received
COSCO Fire Protection	04/27/2025	Interim Lien/Claim Waiver Final Received
Covenant Systems LLC	No Claim	No Documents Received
Cowlitz Fence Co. (2X)	05/02/2025	Unconditional Waiver and Release on Final Payment Received
Cudahy Lumber Company	No Claim	No Documents Received
Cumming Group	No Claim	No Documents Received
Custom Designed Skylights, Inc.	No Claim Vendor Refused	No Documents Received
Delta Connects	No Claim	No Documents Received
Design Space Modular Buildings	No Claim	No Documents Received
DP Nicoli	No Claim	No Documents Received
Eco-Pan, Inc.	No Claim	No Documents Received
Eder Flag	No Claim No executed contract	No Documents Received
Elemental Energy	No Claim	No Documents Received
Elevated Acoustics	No Claim Vendor Refused	No Documents Received
Emerick Construction Company	Rights Assumed by Surety	No Documents Received
Emerick Construction Company SPW	Rights Assumed by Surety	No Documents Received
England Industrial	No Claim Vendor Refused	No Documents Received
Flourish Contractors	02/26/2026	Unconditional Waiver and Release on Final Payment Received
GB Manchester Corporation	No Claim	No Documents Received
Gonsalves & Santucci Inc. dba: Conco	02/11/2026	Unconditional Waiver and Release on Final Payment Received
Greg Law Landscaping LLC	No Claim No executed contract	No Documents Received
Guardian Fall Protection	No Claim	No Documents Received
Hard-Core Contractors Inc.	04/30/2025	Unconditional Waiver and Release on Final Payment Received
Harlen's Drywall, Inc.	No Claim	No Documents Received
Heidelberg Materials	Denial	Document Received
Hilti	No Claim	No Documents Received
HM Pacific Northwest, Inc.	No Claim	No Documents Received
Huntco Supply, LLC	No Claim	No Documents Received

	No executed contract	
Hydro-Temp Mechanical, Inc.	02/12/2026	Unconditional Waiver and Release on Final Payment Received
Industrial Concrete LLC	04/29/2025	Unconditional Waiver and Release on Final Payment Received
Instafab Company, Inc.	No Claim	No Documents Received
Interface Engineering Inc.	No Claim	No Documents Received
Interior Tech	Denial	Document Received
Ironmark LLC.	No Proof of Claim Sent Vendor Refused	No Documents Received
Ironside Services	No Claim	No Documents Received
Key West Retaining Systems, Inc.	Denial	Document Received
Keycode Media	No Claim	No Documents Received
Konell Const. & Demolition Corp.	05/06/2025	Unconditional Waiver and Release on Final Payment Received
Leavitt Machinery	4/1/2025	Conditional Final Release and Ratification Agreement Received
LMCurbs	No Claim No executed contract	No Documents Received
Magnum Masonry	No Claim Vendor Refused	No Documents Received
MC Interiors	06/05/2025	Unconditional Waiver and Release on Final Payment Received
Mobile Modular	No Claim	No Documents Received
Ness & Campbell Crane, Inc.	No Claim	No Documents Received
Norlift of Oregon, Inc.	No Claim No executed contract	No Documents Received
Northwest Cascade	No Claim	No Documents Received
Northwest Masonry Restoration LLC	Denial	Document Received
NW Flooring Solutions, LLC	No Claim Vendor Refused	No Documents Received
Nystrom, Inc.	No Claim No executed contract	No Documents Received
Oregon Cascade Plumbing & Heating	No Claim	No Documents Received
Otis Elevator Company	No Claim	No Documents Received
Overhead Door Company of Salem	04/29/2025	Unconditional Waiver and Release on Final Payment Received
Pacific Pole Base & Drilling	No Claim	No Documents Received
Paladeni Concrete	No Claim	No Documents Received

Pedestal Pro	No Claim No executed contract	No Documents Received
PlanB Consultancy	No Claim	No Documents Received
Portland Electrical Construction, Inc. (2X)	9/2/2025	Settlement Agreement and Mutual Release and Partial Release and Assignment Received
Portland Sheet Metal Works	02/11/2026	Unconditional Waiver and Release on Final Payment Received
Precision Rebar & Accessories, Inc.	02/11/2026	Unconditional Waiver and Release on Final Payment Received
Premier Sales NW	No Claim No executed contract	No Documents Received
ProSteel, Inc.	02/11/2026	Unconditional Waiver and Release on Final Payment Received
Pure Floors	Denial	Document Received
Rich Holland Painting	03/10/2026	Unconditional Waiver and Release on Final Payment Received
River Bend Consulting	02/11/2026	Unconditional Waiver and Release on Final Payment Received
Rixir Systems	No Proof of Claim Sent Vendor Refused	No Documents Received
Rubenstein's Contract Carpet LLC	04/30/2025	Unconditional Waiver and Release on Final Payment Received
Salem Concrete Paving, Inc.	No Claim	No Documents Received
Scott Edwards Architecture LLP	No Claim	No Documents Received
SCS Fencing	No Claim	No Documents Received
SI Contracting, Inc.	Denial	Document Received
Silver Falls Insulation, LLC	No Claim	No Documents Received
Smarttab, LLC	No Claim	No Documents Received
Spacesaver Specialists, Inc.	Denial	Document Received
State of Oregon Elevator Services	No Claim	No Documents Received
Steele Electric	No Claim	No Documents Received
Straight Up Carpentry	02/11/2026	Unconditional Waiver and Release on Final Payment Received
Sunstate Equipment Co., LLC	No Claim	No Documents Received
The Harver Company	No Claim	No Documents Received
TopCon Solutions	No Claim	No Documents Received

TT&L Sheet Metal	No Claim	No Documents Received
Valley Shades, Inc.	No Claim Vendor Refused	No Documents Received
W.H. Cress Company, Inc.	02/25/2026	Unconditional Waiver and Release on Final Payment Received
WDY Structural-Civil Engineers	No Claim	No Documents Received
Web Steel Buildings NW	No Claim	No Documents Received
Western States Carpenters Trust	Denial	No Documents Received. Confirmed no formal denial letter exists but claim was denied as time-barred
White Cap - Portland	No Claim	No Documents Received
Williams Form Engineering Corp.	No Claim No executed contract	No Documents Received
Wilsonville Concrete Products	06/06/2025	Unconditional Waiver and Release on Final Payment Received
Zavala Corporation, Inc.	No Claim	No Documents Received