

EXHIBIT A TO CHANGE ORDER NO. [BILL]

THIS SETTLEMENT AND MUTUAL RELEASE AGREEMENT ("Agreement") is between the City of Fresno ("City") and Euro Style Management, Inc. ("ESM" and/or "Contractor") (City and ESM are collectively referred to herein as the "Parties"). **This Agreement is subject to approval by City Council.**

RECITALS

A. The Rehabilitation at Digester #8 Project, Bid File Number 3731, consisted of rehabilitation work at the Fresno-Clovis Regional Water Reclamation Facility ("RWRF") (hereinafter "Project"). On or about June 25, 2020, the City of Fresno awarded the contract to ESM for its submitted bid of \$677,544.00.

B. During the course of the Project, several change orders were executed by the parties which increased the contract amount by \$357,842.02.

C. Substantial completion timely occurred on or about May 13, 2021.

D. During construction of the Project, various issues, allegations and disputes arose between the Parties. ESM asserted claims against the City for additional compensation on the Project.

E. The Parties complied with the contractual claims prerequisites and undertook a mediation in an attempt to resolve the remaining claims between them.

F. The Parties wish to avoid continued dispute resolution proceedings and/or litigation between each other relative to their claims which were or could have been asserted arising out of the Project and in that regard agree to the following compromise.

AGREEMENT

In consideration of the foregoing recitals, the mutual understandings contained in this Agreement, and other good, valuable, and sufficient consideration, the Parties hereto agree as follows:

1. Final Payment of Balance Due on this Project to ESM. In conjunction with the final change order, City agrees to pay ESM \$45,000.00 in compromise of ESM's outstanding claims. Payment will be made within 30 days of Council approval.

a. This payment is for all sums that may be due and owing on the contract, for any and all proposed change orders, claims of extended performance costs, time extensions, claims for defective plans, claims of interference of contractor's means and methods, field overhead, office overhead or otherwise alleged to have been experienced by the contractor.

b. Additionally, except as outlined in the final change order, this payment by the City shall have taken into account all credits that may exist to those payments (i.e., liquidated damages, back charges).

2. Releases.

a. Release by ESM. Except for the rights and obligations expressly retained or created by and described in this Agreement and in consideration of the covenants described herein, including but not limited to the payment described above, ESM, on its own behalf and on behalf of its past, present and future officers and directors, assignees, stockholders, agents, representatives, successors-in-interest, and attorneys hereby forever releases and discharges City and all elected and administrative officers, employees and attorneys thereof from any and all claims, demands, actions, causes of action and rights of whatsoever character related to the Project whether known or unknown. Nothing herein is intended as a release of the obligations set forth in this Agreement.

b. Release by City. Except for the rights and obligations expressly retained or created by and described in this Agreement and in consideration of the covenants described herein, City on its own behalf and on behalf of its past, present and future officers and directors, assignees, stockholders, agents, representatives, successors-in-interest, and attorneys hereby forever releases and discharges ESM, and all of their past, present and future officers and directors, employees, assignees, stockholders, agents, representatives, successors-in-interest, and attorneys from any and all claims, demands, actions, causes of action and rights of whatsoever character related to the Project whether known or unknown. Nothing herein is intended as a release of the obligations set forth in this Agreement.

3. With respect to the releases described in Paragraph 2 of this Agreement, the Parties expressly waive all rights under California Civil Code section 1542 which provides that a general release does not extend to unknown or unsuspected claims which, if known, would have materially affected the settlement. California Civil Code section 1542 provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

The Parties acknowledge that they may hereafter discover facts different from, or in addition to, those which they now believe to be true with respect to the release of claims related to the Project and agree that this Agreement shall remain effective in all respects, notwithstanding such different or additional facts, or the discovery thereof.

4. It is understood and agreed that both the ESM's release of the City of Fresno, as well as the City of Fresno's release of ESM exclude the following:

a. Personal Injury/Property Damage Claims. Notwithstanding the mutual releases set forth above, the Parties agree to expressly except from this agreement releases of any and all rights they have against each other relative to claims from third party individuals or entities for personal injury and/or property damage.

b. Warranty/Construction Defect Claims. Notwithstanding the mutual releases set forth above, the Parties agree to expressly except from this agreement releases of any and all rights they may have against each other relative to claims which relate to any warranties and/or construction defects as to the design, work performed and/or equipment and materials supplied on the Project.

c. Claims of Defense and Indemnity. Notwithstanding the mutual releases set forth above, the Parties agree to expressly except from this Agreement releases of any and all continuing contractual obligations, including the obligation to defend and/or indemnify the other Party.

d. Employee Claims. Notwithstanding the mutual releases set forth above, the Parties agree to expressly except from this Agreement claims asserted by workers, trust funds, apprenticeship programs or other governmental agencies seeking penalties, wages, benefits or apprenticeship payments, trust fund contributions, damages, forfeitures, injunctive or other relief.

e. Claims by Subcontractor/Vendors. Notwithstanding the mutual releases set forth above, the Parties agree to expressly except from this Agreement claims by any subcontractor, vendor or taxing authorities seeking to recover for amounts that lower tier subcontractors or vendors did not pay.

f. Matters Not Released. Any claim or potential claim that cannot be waived or released under applicable California or federal law or that relate to another project.

5. No Admission of Liability. Liability for the matters included in this Mutual Release and Settlement Agreement is disputed and this Agreement shall not be construed as an admission thereof.

6. City Council Approval. The enforceability of this agreement is contingent upon the approval of the City Council of the City of Fresno. It is understood that both the current settlement and the final change order will be presented to City Council. The failure to approve both will operate to deny the agreement.

7. Representation and Warranty. The Parties and signatories hereto each represent, covenant and warrant that they are authorized (individually or by their

respective principals) to enter into and execute this Agreement and that they have not previously assigned any claims released or assigned in this Agreement, in whole or in part, or taken any other steps which would adversely affect the rights which are the subject of this Agreement. In the event that any of the above representations/warranties are breached or any of the representations and/or warranties contained in this subparagraph prove false, the breaching/misrepresenting party hereby agrees to defend, indemnify and hold the other party harmless from all damages, loss, liability, costs and attorneys' fees resulting from said breach/misrepresentation.

8. Consultation With Legal Counsel. The Parties represent that they have consulted legal counsel prior to the execution of this Agreement and have executed this Agreement with full knowledge of its meaning and effect.

9. Execution of Terms of Agreement. The Parties agree to perform any acts and execute any documents consistent with the terms and conditions of this Agreement which may be needed, desired or required to effectuate the terms, conditions and provisions hereof.

10. Drafting of Agreement. The Parties agree that this Agreement shall not be construed in favor of, or against, any party by reason of the extent to which any party or his counsel participated in the drafting of this Agreement.

11. Amendment of Agreement. This Agreement can be amended only by a writing signed by each of the Parties hereto.

12. Agreement Binding on Successors. It is agreed that this Agreement, together with the releases, shall be binding upon and inure to the benefit of the heirs, executors, administrators, personal representatives, successors in interest and assigns of the respective Parties hereto.

13. No Other Actions. Except as provided herein, ESM has not commenced or prosecuted and will not commence or prosecute any other action or proceeding for recovery of damages or for any form of equitable relief, declaratory relief or any other form of action or proceeding or arbitration against the City or any other person or entity based upon the claims released in this Agreement including, but not limited to, the Action. This Agreement shall constitute a judicial bar to the institution of any such action or proceeding or any assignment thereof.

14. Entire Agreement. This Agreement embodies the entire understanding between the Parties pertaining to the matters described herein. Each party acknowledges that no party, agent or representative of the other party has made any promise, representation or warranty, express or implied, not expressly contained in this Agreement, that induced the other party to sign this document. No modification of this Agreement shall be valid unless agreed to in writing by the Parties.


15. Attorney's Fees for Enforcement of This Agreement. Each party to the Agreement shall bear such party's own respective costs and attorneys' fees as incurred to date concerning the prosecution or defense of the above-referenced matter/Project and the preparation of this Agreement. Should suit or action be instituted to enforce any provision of this Agreement, the prevailing party shall be entitled to recover its costs and reasonable attorney's fees.

16. Counterparts. This Agreement may be executed in separate counterparts, the whole of which shall constitute a binding agreement. Facsimile signatures, when received, shall have the same force and effect as original signatures.

17. Governing Law. This Agreement shall be construed in accordance with and be governed by the laws of the State of California. If any action is brought to interpret or enforce any term of this Agreement, the action shall be brought in a state or federal court situated in the County of Fresno, State of California.

EURO STYLE MANAGEMENT, INC.

Dated: 11/8/2021


By: Lilia Bugryeva
Title: C.F.O

CITY OF FRESNO

Dated:

By:
Name:
Michael Carbajal, City of Fresno Public Utilities Director