

CITY OF UNALASKA
UNALASKA, ALASKA

RESOLUTION 2020-15

A RESOLUTION OF THE UNALASKA CITY COUNCIL AUTHORIZING THE CITY MANAGER TO SIGN A SETTLEMENT AGREEMENT WITH ADVANCED BLASTING SERVICES, LLC ("ABS") TO RESOLVE CITY OF UNALASKA v. ADVANCED BLASTING SERVICES, LLC, CASE NO. 3UN-19-0025 CI

WHEREAS, on or about September 25, 2012, ABS and the City entered into a Construction Contract designated as Wastewater Treatment Plant Civil Site Preparation, DPW Project No. 12501-03 and DPW Project No. 12802, City of Unalaska Cells II-1 & II-2 Landfill Expansion (the "Contract") wherein ABS agreed to work in accordance with the terms, conditions and specifications stated in the Contract documents (the "Project"); and

WHEREAS, certain issues and disputes have arisen between the City and ABS related to the Contract and the work performed on the Project by ABS; and

WHEREAS, the City and ABS are presently in litigation with each other in the Superior Court of the State of Alaska, Third Judicial District at Unalaska, Case No. 3UN-19-0025 CI (the "Suit"); and

WHEREAS, the City claimed ABS breached the contract by over-excavation of the subgrade, and leaving undetonated explosives on the site of the Project, and sought a judgment in excess of Five Hundred Thousand Dollars (\$500,000) plus costs and attorney's fees; and

WHEREAS, ABS claimed the City owed ABS the balance of the contract price in the amount of Ninety Four Thousand Seven Hundred and Ten Dollars (\$94,710) and disputed having breached the Contract; and

WHEREAS, the City and ABS negotiated in good faith resulting in a proposed Settlement Agreement whereby ABS agrees to pay the City Two Hundred Fifty Five Thousand Two Hundred Ninety Dollars (\$255,290) and both ABS and the City release each other from other claims under the Contract and dismiss the Suit with prejudice; and

WHEREAS, the City Attorney and City Manager recommend the City Council approve the Settlement Agreement.

NOW, THEREFORE, IT IS HEREBY RESOLVED THAT THE UNALASKA CITY COUNCIL authorizes the City Manager to sign the Settlement Agreement between the City of Unalaska and Advanced Blasting Services, LLC.

PASSED AND ADOPTED by a duly constituted quorum of the Unalaska City Council on March 10, 2020.


Vincent M. Tutlakoff, Sr.
Mayor

ATTEST:


Marjie Veeder, CMC
City Clerk



MUTUAL RELEASE AND SETTLEMENT AGREEMENT

This Mutual Release and Settlement Agreement (“Agreement”) is by and between the City of Unalaska (“City”) and Advanced Blasting Services, LLC (“ABS”) collectively referred to herein as the “Parties,” or individually as a “Party.”

WHEREAS, the City and ABS entered into an agreement designated as Wastewater Treatment Plant Civil Site Preparation, DPW Project No. 12501-03 and DPW Project No. 12802 City of Unalaska Cells II-1 & II-2 Landfill Expansion (the “Contract”) wherein ABS agreed to work (the “Project”) in accordance with the terms, conditions and specifications stated in the Contract documents; and

WHEREAS, certain issues and disputes have arisen between the parties related to the Contract and the work performed on the Project by ABS; and

WHEREAS, the Parties are presently in litigation with each other in the Superior Court of the State of Alaska, Third Judicial District at Unalaska, Case No. 3UN-19-0025 CI (the “Suit”)

WHEREAS, the City and ABS desire to amicably resolve any and all claims that have been asserted or which could have been asserted by either party concerning the Contract and/or the Project prior to the date of this Agreement.

NOW, THEREFORE, intending to be legally bound, and in consideration of the terms of this Agreement, and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the parties agree as follows:

1. ABS shall pay to the City the sum of TWO HUNDRED FIFTY-FIVE THOUSAND TWO HUNDRED NINETY DOLLARS AND NO/100 (\$255,290.00) (the “Settlement Payment”), and shall perform the other obligations set forth in this paragraph and this agreement, as a complete and final settlement of all outstanding issues, damages and claims arising out of the contract and/or the Project, including, but not limited to all claims that have been asserted or which could have been asserted by the City prior to the effective date of this Agreement. Said amount shall be paid to the City on or before April 1, 2020.

2. The City, on behalf of itself and its subsidiaries and affiliates, attorneys, directors, agents, subcontractors, successors and assigns, hereby fully and finally releases, remises and forever discharges ABS, and the Ohio Casualty Insurance Company (“Ohio Casualty”) and their subsidiaries, sureties, affiliated corporations, and each of respective present and former consultants, representatives, attorneys, officers, directors, agents, subcontractors, successors and assigns, of and from all manner of debts, demands, actions, causes of actions, suits, accounts, damages, contracts and agreements and any and all other claims and liabilities whatsoever, in law and in equity, known or unknown,

related to, arising from or in any way concerning the Contract, the Project or the work performed thereon and all other claims that have been asserted or which could have been asserted by the City prior to the effective date of this Agreement.

3. ABS on behalf of itself and Ohio Casualty and their subsidiaries, sureties, affiliates, attorneys, directors, agents, subcontractors, successors and assigns, hereby fully and finally releases, remises and forever discharges City, its subsidiaries, affiliated corporations, and each of its respective present and former consultants, representatives, attorneys, elected officials, officers, directors, agents, subcontractors, successors and assigns, of and from all manner of debts, demands, actions, causes of actions, suits, accounts, damages, contracts and agreements and any and all other claims and liabilities whatsoever, in law and in equity, known or unknown, related to, arising from or in any way concerning the Contract, the Project or the work performed thereon and all other claims that have been asserted or which could have been asserted by ABS or its sureties prior to the effective date of this Agreement.

4. Within ten (10) days after receipt of the Settlement Payment by City, the Parties will stipulate to dismissal of the Suit with prejudice and without costs or fees assessed to any Party.

5. This Agreement is in full and final settlement of disputed claims, and it contains the entire agreement between the undersigned parties with regard to the matters set forth herein, and all prior negotiations, understandings and agreements are merged and incorporated herein. This Agreement may not be modified except by a further writing signed by all the parties hereto.

6. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of each of the parties hereto.

7. Each party represents that in entering into this Agreement that; 1) it has the authority to do so, 2) the execution of this Agreement has been duly and properly authorized by the Party on whose behalf this Agreement is executed; and 3) the consent of all persons or entities necessary to the execution of this Agreement has been obtained. Each Party further warrants that it is represented by counsel, that it has made such investigation of the facts as it has thought necessary and appropriate, and that it has relied on the advice of its own attorneys. Except as set forth below, each party will bear its own attorney's fees and disbursements incurred in connection with this matter.

8. The parties to this Agreement further agree that they will not, either individually or in concert with others, maintain or cause to be maintained, any further claims, demands, actions, lawsuits, arbitrations, or similar proceedings in any capacity whatsoever against each other as a result of, or pertaining to, the claims and disputes referenced in this Agreement.

9. The parties to this Agreement warrant that the terms of this Agreement have been completely read and are voluntarily accepted; that they are not executing this Agreement as a result of financial disadvantage; that no promise or inducement has been offered or made except as herein set forth; that this Agreement is executed without reliance upon any statement or representation by any party to this Agreement, or any agents or attorneys of any party to this Agreement, concerning the nature and extent of the other party's damages, or the legal liability, financial responsibility, financial status, or assets of the other party.

10. The parties to this Agreement hereby acknowledge, represent and warrant that they have not voluntarily or involuntarily assigned, transferred, conveyed, sold or given, or granted or suffered a security interest in or encumbrance or lien against, all or any part of the claims against any or all of the parties that are released, discharged and acquitted in this Agreement.

11. The parties have reviewed and understand: (a) the decisions of the Alaska Supreme Court in (i) *Witt v. Walkins*, 579 P.2d 1065 (Alaska 1978), (ii) *Young v. State*, 455 P.2d 889 (Alaska 1969), (iii) *Totem Marine Tug and Barge v. Alyeska Pipeline Services Co.*, 584 P.2d 15 (Alaska 1978), and (iv) *Zeilinger v. Sohio Alaska Petroleum Company*, 823 P.2d 653 (Alaska 1992); and (b) the decision of the United States District Court for the District of Alaska in *United States v. Ramstad Construction Co.*, 194 F. Supp. 379 (D. Alaska 1961). The parties represent and warrant that they understand and accept the consequences of this Agreement despite these decisions and that none of the principles in any of these cases make this Agreement invalid or unenforceable.

12. In the event that a question, dispute or requirement for interpretation or construction should arise with respect to this Agreement, the jurisdiction and venue therefore shall lie exclusively with the courts for the Third Judicial District for the State of Alaska, at Unalaska, Alaska.

13. This Agreement and the respective rights, remedies and obligations of the parties hereunder shall be construed and interpreted in accordance with the laws of the State of Alaska.

14. In the event of a dispute arising under this Agreement, the prevailing Party shall be entitled to its reasonable attorneys' fees and costs.

15. The parties understand and agree that (i) the settlement embodied in this Agreement is a compromise of doubtful and disputed claims; and (ii) that this Agreement and the financial arrangement provided for herein are not to be construed as an admission of liability on the part of any party hereto to any other party, or other person or entity.

16. This Agreement may be executed in one or more counterparts, and each counterpart is deemed to be an original. Signature pages may be transmitted by Portable

Document Format via email or by facsimile, which shall be admissible in evidence.

17. This Agreement shall be effective when all of the parties to this Agreement have executed it and the City has approved it.

EACH PARTY WHO OR WHICH HAS EXECUTED THIS AGREEMENT, EITHER INDIVIDUALLY OR THROUGH ITS AUTHORIZED AGENT, ATTORNEY OR REPRESENTATIVE, HAS CAREFULLY READ IT, THOROUGHLY KNOWS AND UNDERSTANDS THE CONTENTS, CONSEQUENCES AND MEANING OF IT, AND EXECUTED AND DELIVERED IT AS ITS FREE, KNOWING AND VOLUNTARY ACT AND DEED.

CITY OF UNALASKA

ADVANCED BLASTING SERVICES, LLC

By: _____	By: _____
Name: Erin Reinders _____	Julia Saunders
Title: City Manager _____	Title: President
Date: _____	Date: _____

BOYD, CHANDLER, FALCONER & MUNSON, LLP

ATTORNEYS AT LAW
SUITE 302
911 WEST EIGHTH AVENUE
ANCHORAGE, ALASKA 99501
TELEPHONE: (907) 272-8401
FACSIMILE: (907) 274-3698
bcf@bcfaklaw.com

MEMORANDUM

TO: Unalaska City Council



FROM: Brooks W. Chandler, City Attorney

RE: Unalaska v. ABS Settlement Agreement

DATE: March 4, 2020

Advanced Blasting Services LLC has agreed to settle the WWTP litigation for \$255,290. This amount reflects a settlement value of \$350,000 but gives credit to ABS for \$94,710 in previously withheld payments on a \$3,952,788 contract. The amount of the payment ABS agreed to make is consistent with the direction previously provided to our office and will fully resolve all outstanding disputes associated with construction of the WWTP. The settlement agreement requires ABS to make this payment by April 1. I recommend approval of the Resolution authorizing the city manager to sign the settlement agreement.

The settlement is good value for the City. The City's claims against ABS exceeded \$500,000. Not all the claims were strong. They did involve fairly technical issues regarding blasting technique and geotechnical investigation. There is risk and significant expense associated with any complex litigation. The settlement agreement reflects a fair outcome for the City.

I can be available by telephone to answer any questions.