

SETTLEMENT AND LIMITED RELEASE AGREEMENT

This Settlement and Limited Release Agreement (this “Agreement”) is made and entered this ___th day of October, 2016, by and between Swinerton Builders (“Swinerton”), Tri State Inc., dba Journey Electrical Technologies (“Journey”), Golden Eagle Insurance Corporation (“GEIC”) and the City of Manhattan Beach (the “City”). The term “Swinerton” as used in this agreement includes all related companies, together with their affiliates, subsidiaries, predecessors, successors, assigns, officers, directors, agents, servants, employees, subcontractors, attorneys, legal representatives, heirs, executors. Swinerton, Journey, and the City are collectively referred to herein as the “Parties.”

RECITALS

A. The City and Swinerton entered into a public works contract (the “Contract”) (defined terms are set forth in Section 1 hereof) for construction of the Project (defined in Section 1 hereof).

B. On April 29, 2015, the City filed its Complaint in the Action (defined in Section 1 hereof) contending, *inter alia*, that Swinerton was responsible for various defects and deficiencies on the Project (“Claims”) (defined in Section 1 hereof). Swinerton then filed a Cross-Complaint in the Action on October 2, 2015, seeking *inter alia*, indemnification and contribution from Journey.

C. After mediation on August 4, 2016 before the Honorable Stephen J. Sundvold, Ret., the Parties have now agreed to reach a full and conclusive settlement of all allegations and issues which were raised in the Action between the Parties.

D. Swinerton tendered its defense and indemnity with respect to the Claims to GEIC. On August 13, 2015, GEIC agreed to defend Swinerton subject to a reservation of rights.

NOW THEREFORE, in consideration of the foregoing and of the mutual promises and covenants hereinafter set forth, it is hereby agreed by and among the Parties hereto that as of the date this Agreement shall have been executed by all of the Parties hereto, all claims, contentions, allegations and causes of action which are contained or alleged in the Action, are to be compromised and settled without any admission of liability or concession by any of the Parties that the contentions of any of the other Parties is correct, on the following terms:

1. Defined Terms (In Alphabetical Order).

1.1 “Action” shall mean and refer to the City’s complaint and all related pleadings filed in the Superior Court of the State of California, County of Los Angeles, bearing case number YC070562.

1.2 “Complaint” shall mean the City’s operative complaint filed in the Action, and all DOE amendments thereto.

1.3 “Contract” shall mean and refer to the contract entered into by and between the City and Swinerton on or about December 16, 2003 for the construction of the Project.

1.4 “Cross-Complaint” shall mean and refer to Swinerton’s cross-complaint filed in the Action on or about October 2, 2015 against Journeyseeking, *inter alia*, indemnification and contribution.

1.5 “Project” shall mean and refer to the “Manhattan Fire & Police Facility,” more specifically described in the plans and specifications incorporated by reference in the Contract.

1.6 “Claims” shall mean and refer to the City’s claims of defects and related damages pertaining to the design, construction and repair of the Project as identified in the Complaint and the related City demands, defect reports, costs of repair, repair proposals and repair invoices arising from or related to the Claims and the Action.

2. Monetary Obligations of Swinerton and Journey.

Within 30 days of the full execution of this Agreement, Swinerton individually and Journey through its insurer GEIC shall each deliver to the City’s counsel of record in the Action a fully negotiable check totaling Fifty-Thousand Dollars (\$50,000.00) made payable to the “City of Manhattan Beach” for a total settlement payment of One-Hundred Thousand Dollars (\$100,000.00) (“Total Settlement Payment”). Swinerton and Journey/GEIC are only responsible for their respective portion of the Total Settlement Payment.

3. Dismissal of Complaint and Cross-Complaint.

Upon the full performance of payment obligations set forth in Section 2 hereof, the City and Swinerton shall promptly file a dismissal with prejudice of the Complaint and Cross-Complaint.

4. Limited Releases.

4.1 Upon City’s dismissal of its Complaint and Swinerton’s dismissal of its Cross-Complaint, this Agreement shall serve as a full release and discharge by Swinerton and Journey on behalf of each other, their principals, officers, agents, representatives, assigns, employees, architects, consultants, engineers, subcontractors, laborers, materialmen, insurers, sureties, administrators, trustees, heirs, beneficiaries, and successors in interest, in consideration of the mutual covenants and promises contained herein, and of the City of Manhattan Beach, the members of the City of Manhattan Beach City Council, and the City’s officers, agents, representatives, assigns, employees, administrators, trustees, insurers, attorneys, heirs, beneficiaries, and successors in interest, from all claims or cross-claims and from all causes of action, including those for damages, refunds, compensation, attorney’s and expert’s fees and costs, interest, injunctive or declaratory relief, or for relief by way of writ of mandate, or for demands, damages, refunds, debts, liabilities, reckonings, accounts, obligations, costs, expenses,

liens, actions, causes, and causes of action of whatever kind, at law or in equity, known or unknown, with respect to the Claims and the Action.

4.2 Upon full performance of the payment obligations set forth in Section 2 hereof, the City on behalf of itself, its assigns, insurers, trustees, beneficiaries, successors in interest, agents, employees, and administrators, in consideration of the mutual covenants and promises contained herein, hereby releases Swinerton and Journey, their respective agents, representatives, architects, consultants, engineers, subcontractors, assigns, employees, administrators, trustees, insurers, sureties, attorneys, heirs, beneficiaries, and successors in interest, from all claims or cross-claims and from all causes of action, including those for damages, refunds, compensation, attorney's and expert's fees and costs, interest, injunctive or declaratory relief, or for relief by way of writ of mandate, or for demands, damages, refunds, debts, liabilities, reckonings, accounts, obligations, costs, expenses, liens, actions, causes, and causes of action of whatever kind, at law or in equity, known or unknown, with respect to the Claims and the Action.

4.3 GEIC hereby waives, releases, acquits and forever discharges Swinerton its respective agents, representatives, consultants, engineers, subcontractors, assigns, employees, administrators, trustees, insurers, sureties, attorneys, heirs, beneficiaries, and successors in interest and assigns, from all claims demands, fees, costs, causes of action including but not limited to any *Buss* reimbursement, subrogation or contribution claims arising out of or related to the Claims and the Action.

4.4 Nothing herein shall be construed as a waiver or release by Swinerton of any claims against its subcontractors other than Journey. Further, Swinerton does not expressly waive their rights, against Journey or others, to any action or claim for express indemnity, equitable implied indemnity, equitable/comparative indemnity, declaratory relief, breach of implied warranties, breach of express warranties, negligence, implied contractual indemnity and breach of contract they have or may have based upon any existing or potential claims not released by the City herein. In addition, nothing herein shall be construed as a waiver or release of any additional insured claims Swinerton has, or may have, against any insurer other than GEIC.

5. The Parties acknowledge that after entering into this Agreement they may discover different or additional facts underlying the Action, as identified generally above, this Agreement, and/or the understanding of those facts. Each of the Parties expressly assumes and acknowledges the risk that different or additional facts may subsequently arise and each of the Parties agrees that this Agreement should, in all respects, be effective and not subject to rescission, cancellation or termination by reason of any such different, unknown or additional facts. Therefore, each of the Parties acknowledges that it has fully read this release and knows the contents therein and hereby *expressly waives* any and all rights and benefits to which it may be entitled under Section 1542 of the Civil Code, if any, which reads as follows:

**CERTAIN CLAIMS NOT AFFECTED BY GENERAL
RELEASE—“A GENERAL RELEASE DOES NOT EXTEND
TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR**

SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.”

This 1542 release is limited to express release set forth in this Agreement, and does not in any way apply to the respective rights and obligations of the Parties created by this Agreement.

6. Repairs and Handling of Settlement Amounts. The City acknowledges and agrees that they are solely and completely responsible for any and all redesign, repairs, remediation, corrective work and/or maintenance performed and/or not performed at the Project relating to the matters or claims released herein. The City acknowledges and agrees no other party bears any responsibility whatsoever as to said redesign, repairs, remediation, corrective work or to otherwise remedy any of the matters or claims released herein.

7. Warranty against Subrogation and Subsequent Claims. The City represents and warrants that they have not initiated, have not concluded, nor are aware of, nor will they make any allegations or claims against any entity or insurer for any claims encompassed by the releases set forth in the Agreement.

8. Covenant Not To Sue. The City covenants and agrees that it has not, and that it shall not, bring any other claim, action, suit or proceeding against any entity relating to the matters settled, released and dismissed herein and that this Agreement is a bar to any such claim, action, suit or proceeding.

9. Enforcement of Agreement. The Parties do hereby agree that each has the right to enforce this Agreement, or any provision thereof, by filing any appropriate motion or proceeding, including, without limitation, a motion pursuant to Code of Civil Procedure section 664.6, in the appropriate law and motion department of the Los Angeles County Superior Court. The Parties further agree, acknowledge, and stipulate that the Court in the Action shall have jurisdiction over the Parties to determine any motion brought pursuant to Code of Civil Procedure section 664.6.

10. Resolution of Ambiguities. This Agreement is deemed to have been prepared by each of the Parties hereto, and any uncertainty and ambiguity herein shall not be interpreted against the drafter, but rather, if such uncertainty or ambiguity exists, shall be interpreted according to the applicable rules of interpretation of contracts under the laws of the State of California.

11. Right To Independent Counsel. The Parties, and each of them, acknowledge that in connection with the negotiation and execution of this Agreement, they have each been represented by independent counsel of their own choosing and the Parties executed the Agreement after review by such independent counsel, or, if they were not so represented, said non-representation is and was the voluntary, intelligent and informed decision and election of the party

not so represented; and, prior to executing this Agreement, each of the Parties has had an adequate opportunity to conduct an independent investigation of all the facts and circumstances with respect to the matters which are the subject of this Agreement.

12. Integration Clause. This Agreement contains all of the terms and conditions agreed upon by the Parties. No other agreements, oral or otherwise, shall be deemed to exist or to bind any of the Parties hereto. No representative of any of the Parties hereto had or has any authority to make any representation or promise not reflected or contained in this Agreement, and each of the Parties acknowledges that he, she or it has not executed this Agreement upon any such promise. This Agreement cannot be modified or changed except by written instrument signed by all the Parties.

13. Event of Partial Invalidation. If any portion, provision, or part of this Agreement is held, determined or adjudicated to be invalid, unenforceable, or void for any reason whatsoever, each such portion, provision or part shall be severed from the remaining portions, provisions or parts of this Agreement, and shall not affect the validity or enforceability of such remaining portions, provisions or parts.

14. Duty To Effectuate Terms and Conditions of Agreement. Each of the Parties agrees to take, or cause to be taken, all action and to do, or cause to be done, all things necessary, proper or advisable under applicable laws and regulations to consummate and make effective the terms and conditions of this Agreement.

15. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to constitute one and the same document.

16. Headings. The various headings of the paragraphs of this Agreement have been inserted for convenience of reference only and shall not affect the meaning or interpretation of this Agreement or any provision hereof.

17. Fees Costs and Expenses. Each Party to this Agreement shall bear its own fees, costs and expenses relating to the Action. However, in any action to enforce this Agreement, the prevailing party shall be entitled to receive from the other its reasonable attorney's fees and costs.

18. No Admission and No Evidence. Nothing in this Agreement shall be deemed to be an admission of liability on behalf of any party to this Agreement.

19. Confidentiality. GEIC, Journey, and Swinerton agree that the terms of this Agreement shall remain confidential unless disclosure of the same is otherwise required by court order or otherwise agreed to in advance by them in writing. Subject to the foregoing, GEIC, Journey and Swinerton may disclose to any third-party the fact that the Parties have settled their claims against each other which were the subject matter of the Action. GEIC, Journey and Swinerton also have the right to disclose the terms of the Agreement to their attorneys, auditors, tax advisors, insurers and reinsurers (where applicable). Non-compliance with this confidentiality provision by GEIC, Journey and Swinerton constitutes breach of a material term of this Agreement. The Parties agree and acknowledge that the City is not bound by this confidentiality

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20. Duplicate Originals. This Agreement may be executed in duplicate originals and shall become effective on the last date said originals have been signed by all of the Parties. The Parties further agree that a true and correct copy of the executed signature page shall be deemed to have the same legal force and effect as an original signature page. Each party has caused this Agreement to be executed on its respective behalf as of the date written below.

Dated: October 17, 2016

Swinerton Builders

By:  _____

Dated: October __, 2016

Tri State Inc., dba Journey Electrical Technologies

By: _____

Dated: October __, 2016

Golden Eagle Insurance Corporation

By: _____

Dated: October __, 2016

City of Manhattan Beach

By: _____

Attest:

City Clerk

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Dated: October __, 2016

Swinerton Builders

By: _____

Dated: October 10, 2016

Tri State Inc., dba Journey Electrical Technologies

By: *Arthur M. Cross* *Quality*
Defense
Counsel

Dated: October 10, 2016

Golden Eagle Insurance Corporation

By: *[Signature]*

Dated: October __, 2016

City of Manhattan Beach

By: _____

Attest:

City Clerk