

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (“Settlement Agreement”) is made and entered into this ____ day of January, 2020 (“Effective Date”), by and between The City of Venice, Florida (“Venice”), and DeJonge Excavating Contractors, Inc. (“DeJonge”). Venice and DeJonge shall collectively be referred to as the “Parties,” or individually as a “Party.”

RECITALS

WHEREAS, Venice has previously issued an Invitation to Bid numbered 3058-17 and titled the “Edmondson Road Multi-Use Trail Project Re-bid,” which was subsequently amended and clarified (together, the Edmondson Road Multi-Use Trail Project Re-bid, all amendments thereto, and all documents incorporated therein, shall be referred to as the “ITB”); and

WHEREAS, pursuant to the terms of the ITB, Venice requested that contractors provide bids to perform a defined scope of work (the “Work”), on a set of terms specified in the ITB; and

WHEREAS, DeJonge submitted a bid in response to the ITB, and as a result of such bid DeJonge was awarded a contract (the “Contract”) for the completion of work defined by the ITB; and

WHEREAS, DeJonge has completed performance of the Work, and has made a request of Venice for final payment; and

WHEREAS, a disagreement has arisen between the parties as to what final amount, if any, is due to DeJonge pursuant to the ITB and the Contract for the performance of the Work (the “Dispute”); and

WHEREAS, the Parties desire to settle and compromise the Dispute, on the terms and conditions herein provided.

AGREEMENT

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

1. **Settlement Amount.** Venice shall pay a total amount of Thirty-Two Thousand, Nine Hundred Sixty-Five Dollars and No Cents (\$32,965.00) to DeJonge (“Settlement Amount”) within Thirty (30) days of the efficacy of this Agreement per Paragraph 13 hereunder (which requires approval of a corresponding budget amendment). Each Party shall be solely responsible for its own expenses, costs, and attorneys’ fees relative to the Dispute and to the negotiation of this Settlement Agreement.
2. **Mutual Releases.**
 - a. DeJonge, on behalf of itself and its agents, employees, representatives, predecessors, insurers, successors, directors, officers, parent companies, shareholders, owners, subsidiaries, and assigns, does hereby fully release, acquit, and forever discharge Venice, along with its predecessors, successors, employees, agents, insurers and affiliates (the “Venice Released Parties”) from any and all actions, causes of action, obligations, costs, expenses, damages, compensation, attorneys’ fees, losses, liabilities, claims, liens, rights, suits and demands of every kind and nature whatsoever, in law or equity, whether known or unknown, foreseen or unforeseen, that DeJonge had, has or could have against the Venice Released Parties (the “DeJonge Claims”), which DeJonge Claims arise from or in any way relate to the Dispute. The Venice Released

Parties acknowledge that DeJonge preserves the ability to pursue a claim for any obligation which is created by this Settlement Agreement. For the sake of clarity, the Parties agree that upon payment of the Settlement Amount, DeJonge shall have no further ability to claim an entitlement or right to payment for any amount relating to the Contract or the ITB for the Work which has been performed thereunder as of the Effective Date.

- b. Venice, on behalf of itself and its agents, employees, representatives, predecessors, insurers, successors, directors, officers, parent companies, shareholders, owners, subsidiaries, and assigns, does hereby fully release, acquit and forever discharge DeJonge, along with its predecessors, successors, employees, agents, insurers, and affiliates (the “DeJonge Released Parties”) from any and all actions, causes of action, obligations, costs, expenses, damages, compensation, attorneys’ fees, losses, liabilities, claims, liens, rights, suits and demands of every kind and nature whatsoever, in law or in equity, whether known or unknown, foreseen or unforeseen, that Venice had, has or could have against the DeJonge Released Parties (the “Venice Claims”), which Venice Claims arise from or in any way relate to the Dispute, but expressly excluding any warranty, indemnity or other obligations under the Contract which survive the completion of work thereunder. The DeJonge Released Parties acknowledge that Venice preserves the ability to pursue a claim for any obligation which is created by this Settlement Agreement.

3. **No Admission.** Nothing said or done by the Parties, including settlement of the Dispute and execution of this Settlement Agreement, is or shall be argued or

construed to be an admission of fault, failure, culpability, liability, negligence or violation of any state, federal, municipal or industry law, rule, regulation, ordinance or statute, or a breach or default by either party under the terms of the ITB or the Contract. The Parties acknowledge that this Settlement Agreement is a compromise of disputed claims and agree that it will not be treated as an admission or evidence of liability for any purpose whatsoever.

4. **Binding Effect.** This Settlement Agreement shall be binding upon the Parties and their heirs, executors, administrators, successors and assigns, as applicable, and the Parties agree to execute whatever additional documents as may be necessary to effectuate and perform this Settlement Agreement.
5. **Construction.** The Parties have mutually negotiated this Settlement Agreement and agree that it shall not be construed against any Party based upon the assertion that one or more of them was the “drafter.”
6. **Modifications.** This Settlement Agreement may not be changed orally. Any modification to this Settlement Agreement shall be in writing signed by all Parties. This provision may not be waived orally or by conduct of the Parties.
7. **Entire Agreement.** This Settlement Agreement constitutes the entire agreement of the Parties concerning the Dispute and supersedes any other agreements, negotiations, representations or statements concerning the subject matter hereof. This Agreement is entered into without any reliance upon any representation not made a part hereof, and the Parties expressly waive the ability to bring any claim which relies upon any representation which is not made a part hereof.
8. **Survival.** The Parties recognize and agree that there are obligations owed by the

Parties, which survive this Settlement Agreement, including, but not limited to, obligations included in the Contract and/or the ITB. The Parties agree that this Settlement Agreement is intended only to resolve the Dispute, and not to extinguish any other obligations or claims between the Parties.

9. **Counterparts.** This Settlement Agreement may be executed in counterparts, and execution by a Party is proper upon receipt by all Parties of facsimile, electronic, or original signature of that Party.
10. **Disputes.** This Settlement Agreement shall be governed by and construed in accordance with the laws of the State of Florida. In any action relating to or arising out of this Settlement Agreement, the prevailing party shall be entitled to recover from the non-prevailing party its reasonable costs and attorney fees, at all levels, including fees relating to the determination of entitlement to, and the amount of, fees.
11. **Understanding and Agreement.** The Parties have read this Settlement Agreement, have had the terms herein and the consequences thereof explained to them by their own attorneys of choice or have had the opportunity to do so themselves, have relied upon their own judgment along with the advice of their own attorneys, understand this Settlement Agreement, and agree to its terms.
12. **Authority to Execute.** By signing this Settlement Agreement, the Parties represent to each other that they or their designated representative have authority to sign on behalf of that Party.
13. **Settlement Agreement Conditional.** The parties agree that the efficacy of this Settlement Agreement is conditioned upon approval of a corresponding budget

amendment by the Venice City Council, on or before February 29, 2020 (the "Deadline"). In the event that the Venice City Council does not approve the corresponding budget amendment on or before the Deadline, then the Settlement Agreement shall be of no force or effect, and the Parties shall have all rights and obligations vis-à-vis one another that they had as of the Effective Date.

IN WITNESS WHEREOF, the undersigned Parties have read this Settlement Agreement, enter into it voluntarily with full understanding of the Settlement Agreement and their respective rights and obligations set forth therein, and hereby execute it.

CITY OF VENICE, FLORIDA	DEJONGE EXCAVATING CONTRACTORS, INC.
By: _____ Ron Feinsod, Mayor	By: _____ <i>Eileen DeJonge</i> Eileen DeJonge (Print Name)
	Title: <u>President</u>
Dated: _____, 20__	Dated: <u>1/3/2020</u> , 20__