

## SETTLEMENT AND RELEASE AGREEMENT

THIS AGREEMENT is between the City of Portland (the "City"), on the one hand, and Rachel Browning ("Browning") and Cabell Group (Browning and Cabell Group are referred to collectively as the "Cabell Parties"), on the other. For purposes of this Agreement, the City is defined as the City of Portland (a municipal corporation of the State of Oregon) and its departments, agencies, elected officials, agents, officers and employees in their official capacities. The City and the Cabell Parties are referred to herein collectively as "the Parties."

### RECITALS:

WHEREAS, in or about September 2005, the City and Cabell Group entered into a contract (Contract No. 36268), pursuant to which Cabell Group agreed to perform certain work for the City;

WHEREAS, the September 2005 contract was subsequently amended and extended on several occasions (Contract No. 36268, as amended and extended, is referred to herein as the "Contract");

WHEREAS, in or about November 2006, the City requested that Cabell Group perform certain work (the "Work"), the cost of which totaled \$16,995.00;

WHEREAS, on or about November 22, 2006, the City paid Cabell Group \$16,995.00;

WHEREAS, a dispute has arisen as to whether the Work was performed, as the City had requested;

WHEREAS, the Parties wish to avoid protracted litigation and seek a speedy resolution of the dispute;

NOW THEREFORE, in consideration of promises and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency are hereby acknowledged, the Parties, intending to be legally bound, agree as follows:

1. **Payment by Browning to the City.** Subject to the terms stated herein, Browning agrees to pay to the City the sum of \$16,995.00 (the "Payment"), such payment to be made by check no later than January 31, 2013.
2. **Acknowledgement of Full Compensation.** The City acknowledges that, upon receipt of the Payment, all obligations, debts, and amounts owed to the City by the Cabell Parties shall be satisfied in full.

3. Additional Terms.

A. Full Releases.

- i) The City's Release and Covenant Not to Sue the Cabell Parties.  
Except as otherwise expressly stated to be a continuing obligation of a Party under this Agreement, the City hereby releases and forever discharges Browning and Cabell Group, its owners, employees, officers, directors, attorneys, successors and assigns of and from any and all rights of actions, claims, demands, wage claims, contract claims, tort claims, statutory claims, common law claims, debts, attorneys' fees, costs and other expenses, known and unknown, which the City ever had, now has, or hereinafter may have, of any variety whatsoever, arising out of or relating to the Contract and/or the Work. The City represents that it knows of no claim or potential claim against one or more of the Cabell Parties that has not been released by this paragraph.
- ii) The Cabell Parties' Releases and Covenants Not to Sue the City.  
Except as otherwise expressly stated to be a continuing obligation of a Party under this Agreement, for and in consideration of the City's release above, the Cabell Parties hereby release and forever discharge the City, of and from all rights of actions, claims, demands, contract claims, tort claims, statutory claims, common law claims, debts, attorney's fees, costs, and other expenses, known and unknown, which the Cabell Parties ever had, now have, or hereinafter may have, of any variety whatsoever arising out of or relating to the Contract and/or the Work. The Cabell Parties represent that each knows of no claim or potential claim against the City that has not been released by this paragraph.

B. Covenant Not to Bid: The Cabell Parties agree that they will never again seek to contract with or work for the City of Portland.

C. Neutral Interpretation. All Parties entering into this Agreement were represented or had the opportunity to be represented by separate attorneys and in the event any interpretation of this Agreement is necessary, it shall be interpreted in a neutral fashion without regard to who drafted it.

D. All Necessary Approvals Obtained: Jurisdiction/Governing Law. Each person signing this Agreement represents and warrants that it has obtained all approvals necessary for this Agreement to be binding and effective upon the Party for whom it is signing.

E. No Admission. The Parties agree that neither this Agreement nor any obligations under this Agreement constitutes an admission by the Parties of any violation

of any federal, state or local laws, rules, or regulations. This Agreement is entered into to fully and finally resolve all disputes between the Parties, without unnecessary expense and distraction.

F. Severability. If any term, clause or portion of this Agreement shall, for any reason, be held to be invalid or unenforceable or to be contrary to public policy or any law, then the remainder of this Agreement shall not be affected by such invalidity or unenforceability but shall remain in full force and effect, as if the invalid or unenforceable term or portion thereof had not existed within this Agreement.

G. Enforcement. This Agreement is fully integrated and contains the entire agreement of the Parties with respect to the subject matter hereof, superseding and replacing all prior negotiations and proposed agreements, written or oral. It shall be interpreted and enforced under the laws of the State of Oregon. The state and/or federal courts of Oregon shall have exclusive venue in any proceeding interpreting or enforcing the terms hereof.

H. Counterparts and Signatures. This Agreement may be executed by the Parties in separate counterparts, each of which when executed and delivered shall be an original, and all of which together shall constitute one and the same instrument. Signature pages may be by fax or scan and such signatures shall be deemed as valid originals.

WHEREFORE, the Parties have signed this Agreement effective as of January \_\_\_, 2013.

CITY OF PORTLAND

CABELL GROUP

By: \_\_\_\_\_

By: Rachel Browning, President

RACHEL BROWNING  
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