

**MUTUAL GENERAL RELEASE AND SETTLEMENT AGREEMENT**

**Effective Date:** \_\_\_\_\_, 2013.

**Parties:**

Nutter Corporation  
7211-A NE 43<sup>rd</sup> Ave.  
Vancouver, WA 98661-1311  
("Nutter")

Teufel Nursery, Inc.  
100 SW Miller Rd.  
Portland, OR 97225  
("Teufel")

Wolf Industries, Inc.  
10600 NE 189<sup>th</sup> St.  
Battle Ground, WA 98604  
("Wolf")

City of Portland, Oregon  
City Attorney's Office  
1221 SW 4<sup>th</sup> Ave, Suite 430  
Portland, OR 97204  
("City")

**Recitals:**

A. The City and Nutter entered into contract 30000277 South Waterfront Park Improvements ("Contract") for the development of Elizabeth Caruthers Park in the City's South Waterfront District ("Park").

B. Nutter engaged a number of subcontractors to fulfill the terms of the Contract that include but are not limited to Teufel Nursery, Inc. ("Teufel") and Wolf Industries, Inc. ("Wolf").

C. Nutter, Teufel and Wolf are collectively referred to as the "Released Parties."

D. The Park was constructed by Nutter and it was opened to the public by the City of Portland in the spring of 2010.

E. The City claims that some of the work of the Released Parties was not performed pursuant to the specifications of the Contract, including but not limited to work related to placing soil, planting vegetation, other landscaping, sidewalks, and to the boardwalk.

F. Disputes have arisen between the City of Portland and Nutter Corporation regarding work done by Nutter Corp. and its subcontractors pursuant to the Contract and warranty issues.

G. The Parties desire to resolve their disputes and differences and, through mediation, have reached an agreement resolving all claims.

NOW, THEREFORE, the parties mutually agree as follows:

1. Recitals. The above recitals are fully incorporated into this agreement.
2. Effective Date. This Agreement shall be effective upon its execution by Nutter, Teufel, and Wolf and upon its final approval by the Portland City Council.
3. Consideration. In consideration of the execution of this agreement by each and every Party and of the release granted by the City of Portland pursuant to the terms of this agreement, the Released Parties shall tender to the City of Portland \$150,000 within seven (7) days of notification of final approval of this Agreement by the Portland City Council as follows:
  - a. \$90,000 from Nutter or its agent to the City of Portland,
  - b. \$45,000 from Teufel or its agent to the City of Portland, and
  - c. \$15,000 from Wolf or its agent to the City of Portland.
4. Complete and Final Mutual Release. For the consideration set forth above, the Parties (the City of Portland, Nutter Corp., Teufel Nursery, Inc., and Wolf Industries, Inc.), except as specifically excepted herein, expressly release and forever discharge each other from all legal or equitable claims, demands, warranty claims, attorney fees, costs, actions or causes of action of any kind or nature, past or present, known or unknown, arising out of or relating in any way to any acts, events, omissions relating to construction, landscaping, repair, proposed repair or operation of the Park occurring prior to the parties' execution of this Release, including but not limited to all expenses, costs, and attorneys' fees, and for damages of every kind, nature, or basis, known as well as unknown, anticipated or unanticipated, arising from or relating to the construction, repair or operation of the Park, including without limitation damage to real and personal property, personal injury or death, statutory violations, fraud, non-disclosure, negligence, negligent misrepresentation, breach of contract, nuisance, trespass, and breach of express or implied warranties. The parties agree that they shall not file, cause to be filed, or otherwise voluntarily participate in the filing, investigation and/or prosecution of any charges, complaints, third party complaints, grievances, petitions, claims, causes of action, or accusatory pleadings in any court, administrative proceeding or other government agency relating to any matters released herein.
5. Rubber tile surfacing installation warranty exception. The 10-year warranty for installation of the rubber tile surfacing is excepted from this release and runs from June 10, 2010.

6. No Other Claims. The City has represented that, other than the claims involving the Released Parties, it is not aware of any other claims, existing or potential, against any other individuals or entities relating to the construction, repair or landscaping of the Park. The Released Parties have entered into this Agreement in reliance on this representation.
7. City Responsible for Park Condition. The City acknowledges it is solely responsible for the care, maintenance and repair of the Park from the date of execution of this agreement forward. Further, the City is solely responsible for assessing whether any of the work performed by the Released Parties should be redone, repaired, further inspected by appropriate specialists such as arborists or landscapers, construction specialists or engineers, and for determining whether any condition created by the work of the Released Parties creates a public safety risk, and, if so, to remedy that risk.
8. Release of Bond. For the consideration set forth above, the City of Portland grants a full and final release and satisfaction of Nutter's Performance Bond, No. 30000277 with Travelers Casualty and Surety Company of America.
9. Disclosure. Upon execution of this Agreement by the Parties and satisfaction of their performance obligations provided herein, the City agrees to disclose this Agreement to any person subject to a claim by the City relating to the construction, landscaping, repair or operation of the Park and to any person making a claim against the City, or the Released Parties, relating to construction, landscaping, repair or operation of the Park.
10. Substantial Completion/Abandonment. The Parties to this Agreement agree that the work of each of the Released Parties was substantially complete on June 10, 2010.
11. No Admission of Liability. The execution of this Agreement shall not be deemed an admission of liability by any party and shall not be construed as such. This Agreement is being executed for the sole purpose of amicably resolving the conflicting claims and disputes described herein.
12. Choice of Law. The parties agree that the laws of the State of Oregon shall control any interpretation or construction of this Agreement, or any claim or cause of action related thereto.
13. Choice of Forum. The parties agree that should any dispute arise regarding the terms, meaning or performance of this Agreement, Martha J. Hodgkinson shall be the sole and final arbiter of any such dispute. In the event that Martha J. Hodgkinson is unable to serve as arbiter, any proceeding to enforce or interpret this Agreement and Release, any provision thereof or any matter related thereto, shall be decided exclusively through Arbitration Service of Portland, Inc.
14. Entire Agreement. The parties agree that this document sets forth the entire agreement and understanding between the parties regarding the subject matter of this Agreement, and that there have been no other promises or inducements, oral or written, given by any party or representative thereof to the other to enter into this Agreement.
15. Benefit. This Agreement shall be binding upon and inure to the benefit of the parties hereto, their heirs, successors and assigns, and their respective representatives.

16. Multiple Counterparts. This Agreement may be executed by facsimile signature of the parties on separate signature pages, each of which shall be deemed an original for all purposes.

17. Attorney Fees. In the event of any action to enforce or interpret the terms of this Agreement pursuant to Paragraph 9 herein, no attorney fees shall be recoverable by the prevailing party.

18. Representation. THE PARTIES WARRANT THAT THEY HAVE READ THIS ENTIRE AGREEMENT, UNDERSTAND ALL OF ITS TERMS AND PROVISIONS, HAVE CONSULTED WITH THEIR RESPECTIVE COUNSEL OR HAD THE OPPORTUNITY TO SEEK THE ADVICE OF INDEPENDENT COUNSEL AND SIGN THE SAME VOLUNTARILY WITH FULL KNOWLEDGE OF ITS LEGAL SIGNIFICANCE AND WITH THE INTENT TO BE FULLY AND LEGALLY BOUND BY ITS TERMS.

The parties have executed this Agreement to be effective upon signing by all parties identified forthwith.

Date  
APPROVED AS TO FORM  
Signed: James H. Van Dyke  
CITY ATTORNEY

City of Portland Oregon:

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Date  
Signed: \_\_\_\_\_

Nutter Corporation:

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Date  
Signed: \_\_\_\_\_

Teufel Nursery, Inc.:

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Date  
Signed: \_\_\_\_\_

Wolf Industries, Inc.:

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_