

SETTLEMENT AGREEMENT AND RELEASE

THIS SETTLEMENT AGREEMENT AND RELEASE ("Agreement") is made this November 18, 2019, and entered into by and between the parties referred to as Johnson Controls Fire Protection LP, formerly known as SimplexGrinnell LP ("SimplexGrinnell"), and the City of Somerville ("City"). SimplexGrinnell and City shall sometimes be collectively referred to herein as "Parties" or individually as a "Party."

The Parties hereto contract with reference to the following facts and terms:

A. SimplexGrinnell and City entered into an agreement whereby SimplexGrinnell provided certain specified labor and materials, and related work, in connection with a project commonly referred to as City of Somerville Municipal Building, located at 1 Franey Road, Floor 2, Somerville, MA 02143 (the "Project").

B. SimplexGrinnell issued the following invoices to City for the Project:

- (1) Invoice Number 78634069 on May 23, 2016 for \$7,880.67;
- (2) Invoice Number 78845245 on August 22, 2016 for \$7,881.66;
- (3) Invoice Number 79043919 on November 21, 2016 for \$7,881.66;
- (4) Invoice Number 79232589 on February 20, 2017 for \$7,881.50;
- (5) Invoice Number 83373278 on February 7, 2017 for \$3,465.00
- (6) Invoice Number 83477847 on March 9, 2017 for \$175.30; and
- (7) Invoice Number 41079091 on August 31, 2017 for \$160.00.

D. SimplexGrinnell asserts that it is due in excess of \$35,325.79 pursuant to the above invoices, relating to the Projects. SimplexGrinnell asserts that additional amounts are due for work specified in the above invoices for lost profits and overhead, including interest and attorneys' fees incurred in attempting to collect amounts due, and Compensable Impacts as set forth in the Action.

E. City asserts that an amount less than \$35,325.79 is currently due for the above invoices.

F. A compromise and resolution agreement has been reached, between the Parties, and is set forth herein below. Pursuant to the compromise, City shall agree to pay a compromised settlement amount of \$3,117.96 ("Full Payment Amount") to satisfy the above listed invoices and all claims asserted in the action.

SETTLEMENT TERMS

The foregoing Recitals shall be incorporated into this Agreement, and it is further agreed by and between the Parties hereto as follows:

1. City agrees to pay the Full Payment amount of **\$3,117.96** to SimplexGrinnell on or before November 29, 2019. City understands that the above payments must be received by McGuinness & Associates on or before the above date to be timely.

2. City's payments will be made via overnight delivery of a check made payable to "The Joseph McGuinness IOLTA Trust Account" and delivered via Federal Express overnight to Joseph McGuinness & Associates, A Professional Law Corporation at 3858 W. Carson Street, Suite 301, Torrance, CA 90503. The payments must be received in the Client Trust Account by the dates set forth above to be considered timely.

3. This agreement shall be executed by all Parties hereto by November 19, 2019.

4. Time is of the essence with respect to any and all obligations and duties created by this Agreement. The Full Payment Amount and dates set forth in Paragraph One (1) of this Agreement are each material to this Agreement. Failure to adhere to the payment schedule set forth in Paragraph One (1) shall constitute a material breach of this Agreement. In the event that payment required by this Agreement is not received when due, City is in default of this Agreement. If City is in default under this Agreement, SimplexGrinnell may pursue the action to collect the entire claim amount, which is in excess of \$35,325.79, less any payment made under this Agreement and plus interest and attorney's fees.

5. Once the Full Payment Amount has been timely received by SimplexGrinnell and those funds are timely vested in SimplexGrinnell, then, except for the obligations expressly provided in this Agreement, SimplexGrinnell and City hereby release, acquit and forever discharge each other and their agents, heirs, successors, assigns, servants, employees, officers, directors, parent corporations, attorneys, insurers and predecessors from any and all actions, rights or claims, existing on this day which arise out of or relate to the above listed invoices or the claims set forth above.

6. Upon the Full Payment Amount being timely received by SimplexGrinnell and those funds being timely vested in SimplexGrinnell, SimplexGrinnell shall waive as against City all rights to attorney's fees incurred to date, court costs incurred to date, or other costs incurred to date in connection with pursuing amounts owed for the above listed invoices, including but not limited to those costs relating to or arising out of preparation, filing, service and, response.

7. Upon the Full Payment Amount being timely received by SimplexGrinnell and those funds being timely vested in SimplexGrinnell, City hereby waives as against SimplexGrinnell all rights to attorney's fees incurred to date, court costs incurred to date, or other costs incurred to date in connection with the amounts owed for the above listed invoices, including but not limited to those costs relating to or arising out of preparation, filing, service, and response.

8. It is further understood and agreed that this settlement contained herein is not to be construed as an admission of liability on the part of any Parties hereto or any of the other persons or entities hereby released, and that each Party and other person or entity hereby released denies any responsibility or liability to the other.

9. Each of the Parties further agrees that said Party has carefully read the foregoing and understands that this Agreement is a settlement agreement and release, and further that each Party has reviewed and discussed the same with their counsel and knows the contents herein and has discussed the legal effect hereof and signs the same of their own free act while of sound mind and while not being affected by alcohol, drugs, economic duress, menace, fraud, or undue influence whatsoever.

10. This Agreement embodies the entire understanding of an agreement between the Parties hereto and the terms of this release are contractual and not a mere recital and each Party hereby represents and warrants that said Party is not relying on any representations or promises other than those contained herein and that this Agreement and the releases as provided for herein can only be changed, altered, modified in any respect, by an instrument in writing and signed by the party against whom enforcement of any waiver, change, modification or discharge is sought.

11. Each Party hereto further agrees that in the event of any dispute, or litigation between any of the undersigned and any of the Parties named herein arising out of this Agreement or the settlement contemplated hereby, including the necessity of any such person to defend any action which has been covered hereby or to prosecute any action to enforce this

Agreement, the prevailing party shall recover all costs and expenses including reasonable attorneys' fees and any judgment or decision rendered may specifically include such costs, expenses and reasonable attorneys' fees.

12. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective agents, heirs, representatives, successors, assigns, servants, employees, officers, directors, attorneys, insurers and predecessors.

13. The Parties hereto represent that they have not heretofore assigned, transferred or granted or purport to assign, transfer or grant any of the claims, demands and causes of action disposed of by this Agreement.

14. All persons executing this Agreement on behalf of any entity hereby represent that they have proper authority to do so and to bind the entity to it.

15. Each Party has cooperated in the drafting and preparation of this Agreement. Hence, in any construction to be made of this Agreement, the same shall not be construed against any Party on the basis that the Party was the drafter.

16. In the event that any court holds any provision, term, covenant, or condition of this Agreement to be invalid, then any such invalidity shall not affect any other term, covenant, or condition and the remaining provisions of this Agreement shall be given full force and effect pursuant to the laws of the State of California, unless such invalid term, covenant, or condition is a material part of this Agreement.

17. This Agreement is prepared, negotiated and considered entered into in Los Angeles County, California and governed by, construed and enforced in accordance with the laws of the State of California and enforcement of said Agreement shall be venued in Los Angeles County, California.

18. A waiver by any Party of an existing or future default of any provision of this Agreement shall not be construed as a continuing waiver or a waiver of any subsequent default and any subsequent default of any provision herein may be enforced as if no waiver had ever been made or granted.

19. The Parties hereto agree to execute and deliver any and all other documents reasonably necessary to effectuate the terms and intent of this Agreement.

20. This Agreement may be executed in counterparts which together will constitute a binding agreement.

In consideration of the foregoing, the Parties hereto do execute this Agreement and agree to be bound by the terms contained in it.

Dated: _____

Dated: _____

By: _____
Johnson Controls Fire Protection,
LP, formerly known as
SimplexGrinnell LP

By: _____
On behalf of City of Somerville, MA

Name: _____

Name: _____

Its: _____

Its: _____