

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into by and between the City of Philadelphia (the “City”), by and through its Office of Inspector General (the “OIG”), and Pest-A-Side Exterminating Co., Inc. (“PAS”) (PAS and the City are collectively referred to as the “Parties”).

PREAMBLE

As a preamble to this Agreement, the Parties agree to the following:

A. PAS is organized under the laws of New Jersey, with its headquarters located at 56 Sanitarium Road, Bridgeton, New Jersey. PAS entered Contract Number 160266 with the City to perform monthly pest control services at various Philadelphia Parks and Recreation (“PPR”), Philadelphia Free Library (“Library”), and Department of Public Property (“DPP”) buildings and locations throughout the City for the period of June 1, 2016 through May 31, 2017 (the “Contract”). In addition to the Contract, during the period of June 1, 2016 through May 31, 2017, PAS provided pest control services on an as-needed basis and PAS billed the City separately for the as-needed services. Such services, whether or not pursuant to contract, are referred to as “Pest Control Services.”

B. The OIG is an office that was created by the Mayor of Philadelphia to enhance public confidence in the integrity of City government by investigating corruption, fraud, misconduct, waste and mismanagement involving City departments, City-related agencies, and those doing business with the City or City-related agencies.

C. Beginning in or about January 2017, the OIG investigated allegations that PAS failed to perform services required by the Contract and submitted slips or work orders purportedly signed by City employees with unidentifiable signatures. The OIG confirmed that (i) PAS did not provide Pest Control Services as required by the Contract; (ii) PAS subcontracted to an unlicensed and uncertified party/individual; (iii) PAS significantly over billed the City for the Pest Control Services.

In this Agreement, the term "Covered Conduct" refers to PAS's failure to perform Pest Control Services, improper use of a subcontractor, and overbilling.

D. The OIG believes that the City has certain civil and administrative claims against PAS for engaging in the Covered Conduct.

E. PAS expressly denies that it breached any contract or engaged in any wrongful conduct in connection with the Covered Conduct. PAS believes that it has certain civil and administrative claims against the City in connection with the Contract. PAS has cooperated fully with the OIG's investigation.

F. This Agreement is made in compromise of disputed claims. This Agreement is not an admission of facts or liability by PAS. This Agreement is not a concession by the City that its claims are not well founded. Neither this agreement, its execution, nor the performance of any obligation under it, including payment, nor the fact of any settlement, is intended to be, or shall be understood, as an admission of liability or wrongdoing, or other expression reflected on the merits of the dispute by PAS.

G. To avoid delay, uncertainty, risk, inconvenience, and potential expense of protracted litigation of the above claims, the Parties reach a full and final settlement pursuant to the Terms and Conditions below.

TERMS AND CONDITIONS

NOW, THEREFORE, in reliance on the representations contained herein, and in consideration of the mutual promises, covenants, and obligations set forth in this Agreement, and for good and valuable consideration as stated herein, the Parties, intending to be legally bound, agree as follows:

1. PAS releases the City from all claims in law or equity related to the Covered Conduct, the Pest Control Services, or the Contract.

2. PAS, its affiliates, successors, and assigns voluntarily agree to refrain from performing or seeking to perform as a contractor for any existing or future contracts awarded, administered, and funded in whole or in part by the City, whether competitively bid or negotiated (“City Contracts”) until July 1, 2019.

3. PAS, its affiliates, successors, and assigns voluntarily agree to refrain from performing or seeking to perform as a subcontractor on City Contracts until July 1, 2019.

4. After July 1, 2019, PAS, its affiliates, successors, or assigns may perform or seek to perform as a contractor or subcontractor on a City Contract only under the following conditions:

- a. PAS, its affiliates, successors, and assigns shall perform pest control services only with appropriately licensed and certified personnel.
- b. PAS, its affiliates, successors, and assigns shall submit invoices to the City only following thorough review by the owner of PAS, its affiliates, successors, and assigns for accuracy, completeness, and compliance with applicable contract specifications.

5. In consideration of the obligations of PAS outlined herein, and excepting only those obligations expressly stated in this Agreement, the City agrees to fully and finally release PAS and any and all of its subsidiary, affiliate, or parent companies, subcontractors, and their past and present directors, officers, and employees from any and all claims (including attorney fees, costs, and expenses of every kind and however denominated) related to the Covered Conduct, and the OIG’s investigation thereof, that the City has asserted or could assert now or in the future, against PAS, any and all of its subsidiary, affiliate, or parent companies, subcontractors and their past and present directors, officers, and employees; except that the City does not release any claims or potential claims related to the obligation of any person to make tax filings or pay tax liabilities, whether or not related to the Covered Conduct. Moreover, except as federal or state law may otherwise require or tax law may permit, the City will not seek and shall refrain from instituting, directing, or maintaining

any civil or administrative action, including any action seeking debarment from entering into contract with the city, resulting from the Covered Conduct. The OIG agrees that if required to do so in any debarment or similar proceeding brought by others, the OIG will confirm that PAS has at all times been fully cooperative with the OIG's investigation.

6. Excepting only those obligations expressly stated in this Agreement, PAS agrees to fully and finally release the City and each of the City's past and present officials, directors, officers, employees, servants, and agents from any claims (including attorney fees, costs, and expenses of every kind and however denominated) related to the Covered Conduct (including the investigation and resolution thereof) and/or Pest Control Services, that PAS has asserted or could assert now or in the future against the City and each such official, director, officer, employee, servant, and agent; except that PAS and such persons do not release tax claims.

7. PAS and the City each represent that they freely and voluntarily enter in to this Agreement without any degree of duress or compulsion whatsoever.

8. Nothing herein precludes the OIG from conducting future investigations of future conduct of PAS or its subcontractors unrelated to the Covered Conduct.

9. All questions concerning the construction, validity, enforcement and interpretation of this Agreement shall be governed by and construed and enforced in accordance with the laws of the Commonwealth of Pennsylvania, without regard to the principles of conflicts of laws. Each Party irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in Philadelphia, Pennsylvania, for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein. And irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court.

10. For purposes of construction, this Agreement shall be deemed to have been drafted by all Parties to this Agreement and shall not, therefore, be construed against any Party for that reason in any subsequent dispute.

11. This Agreement constitutes the complete agreement among the Parties with respect to the issues that the Agreement covers. This Agreement may not be amended except by express written consent of the Parties. Nothing in this Agreement shall be deemed to conflict with the terms of any other agreement between the City and PAS.

12. Each Party, and each individual executing this Agreement on behalf of a Party, represents and warrants that the individual is authorized by the Party to execute this Agreement in his or her official capacity.

13. If any provision of this Agreement or the application thereof to any person or circumstances shall be invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provision to other person or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

14. This Agreement is binding upon the successors, transferees, heirs, and assigns of PAS.

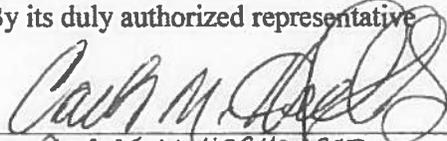
15. PAS consents to the City's disclosure to the public of the Agreement and of information about this Agreement, after it has been fully executed.

16. This Agreement is effective on the date of signature and delivery of the last signatory to the Agreement. This Agreement may be executed in two or more counterparts, all of which when taken together shall be considered on and the same agreement, it being understood that the Parties need not sign the same counterpart. Facsimile signatures on complete copies of the Agreement shall constitute acceptable, binding signatures for purposes of this Agreement.

IN WITNESS WHEREOF, the Parties, each intending to be legally bound, have caused this Agreement to be executed as of the Effective Date.

PEST-A-SIDE EXTERMINATING CO., INC.

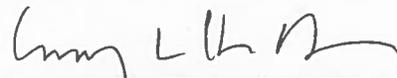
By its duly authorized representative



Date: 6-10-18

By: CARLOS M. HERNANDEZ
Title: PRESIDENT

CITY OF PHILADELPHIA
OFFICE OF INSPECTOR GENERAL



Date:

By: Amy Kurland
Inspector General

CITY OF PHILADELPHIA
LAW DEPARTMENT



Date:
6-14-18

By: ELEANOR N. EWING
Title: Chief Deputy City Solicitor,
Affirmative + General Litigation
Unit