

## SETTLEMENT AND RELEASE AGREEMENT

**31<sup>st</sup>** THIS SETTLEMENT AND RELEASE AGREEMENT (the "Agreement") is made this day of May, 2013, by and between The Lorain Port Authority ("Lorain") and Marous Brothers Construction, Inc. ("Marous")(collectively, the "Parties").

**WHEREAS**, this Agreement arises out of a claim by Marous for materials and services furnished to the project known as LOR- Diked diposal PID 86360, (the "Project"), by virtue of, *inter alia*, an agreement by and between Lorain and Marous;

**WHEREAS**, Lorain alleges Marous failed to provide certain materials in accordance with the plans and specifications, in particular, materials that were non-compliant with the Project's American Recovery and Reinvestment Act's ("ARRA") Buy American requirements;

**WHEREAS**, Marous claims that all materials were provided in accordance with the plans and specifications and that it is entitled to full payment for all materials and services provided;

**WHEREAS**, Lorain notified Marous' surety for the Project, Continental Insurance Company ("Continental"), as the surety, and Marous, as principal ("Bond") (Bond No. 929501766), of potential issues on the project;

**WHEREAS**, The parties engaged in Dispute Resolution Procedures set forth in the Agreement (the "Claims") known and identified *Marous Brothers Construction, Inc. v. Lorain Port Authority, Dispute No. 86360-01*;

**WHEREAS**, Lorain has agreed to completely resolve its claims against Marous and Continental, as well as any claims related to the Project, subject to the terms and conditions of this Agreement;

**WHEREAS**, Marous has agreed to completely resolve its claims against Lorain, as well as any claims related to the Project, subject to the terms and conditions of this Agreement;

**NOW, THEREFORE**, in consideration of the mutual promises and undertakings contained herein, the receipt and sufficiency of which are mutually acknowledged, the Parties hereto agree as follows:

1. **Settlement Amount.** Lorain shall cause Marous to be paid the sum of **Forty Thousand Dollars and 00/100 Dollars (\$40,000.00)** (the "settlement funds") within ten (10) days of the date of this Agreement. The settlement funds shall be made payable to Marous Brothers Construction, Inc. and mailed to counsel for Marous; to wit: Robert A. Simpson, Marous Brothers Construction, Inc. 1702 Joseph Lloyd Parkway, Willoughby, OH 44094.

2. **Mutual Release.** Subject to its receipt of and in consideration of the settlement funds set forth in Paragraph 1, Marous, along with its parents and subsidiaries, releases and forever discharges Lorain, including each of their respective officers, directors, employees, agents, attorneys, parents, subsidiaries, successors and assigns, from all loss, liability, claim, lien and demand arising

under the agreement between Marous and Lorain on the Project, including those alleged against Lorain in the Claims. Lorain, as well as its officers, board, directors, employees, agents, attorneys, parents, subsidiaries, successors and assigns, hereby releases and forever discharges Marous and Continental and their officers, directors, employees, agents, attorneys, parents, subsidiaries, successors and assigns from any back charges, liquidated damages, administrative costs or claims that it has or may have against Marous in connection with the issues raised or could have been raised in Dispute Resolution and Administrative Claim Process known and identified as *Marous Brothers Construction, Inc. v. Lorain Port Authority, Dispute No. 86360-01* but expressly excluding any warranty claims that may exist for work performed by Marous pursuant to the Parties' Contract.

3. **No Admission.** The Parties agree that this is a settlement of disputed and uncertain claims and that nothing in this Settlement Agreement shall be construed as an admission against interest or an admission of liability.

4. **Successors and Assigns.** Lorain and Marous agree that the Agreement shall be binding on and will inure to the benefit of the Parties hereto and their respective successors and assigns.

5. **Effective Date.** The Agreement shall become effective when executed by Lorain and Marous and may be executed in counterparts, any one of which shall be deemed to be an original instrument. Any proof of the Agreement shall require production of only one such counterpart duly executed by the party to be charged therewith.

6. **Entire Agreement.** The Parties hereto agree that the Agreement constitutes the entire agreement between the Parties relating to the subject matter of the Agreement and that there are no other agreements, understandings, representations or warranties made or given, except as expressly set forth herein. All prior agreements, understandings, letters and/or communications relating to the subject matter of the Agreement shall be null and void and shall be superseded by the Agreement, except as expressly set forth herein.

7. **Amendments/Modifications.** The modifications, amendment and/or waiver of the Agreement, or of any of the provisions of the Agreement, shall not become effective unless executed in writing by the party to be charged with such modification, amendment or waiver, in each case by a duly authorized representative.

8. **Interpretation.** Should any provision of the Agreement require interpretation or construction, the Parties hereto agree that the court, administrative body, or other entity interpreting or construing the Agreement shall not apply a presumption that the provisions herein shall be more strictly construed against one party by reason of the rule of construction that the provisions of a document shall be more strictly construed against the party who itself or through its representatives prepared same; it being agreed that the Parties and their respective attorneys have fully participated in the preparation of all provisions of the Agreement.

9. **Law/Jurisdiction.** The Agreement and all rights and obligations hereunder, including matters of construction, validity and performance shall be governed by the laws of the state of Ohio.

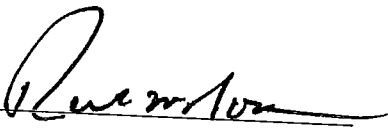
All parties submit themselves to the jurisdiction of the courts of the state of Ohio for all purposes with respect to the Agreement.

10. **Authority to Execute.** Each of the undersigned individuals represents, warrants and certifies that he/she is authorized to execute the Agreement in the capacity indicated.

11. **Signature/Facsimile.** Facsimile signatures shall be acceptable and deemed original signatures and shall be binding on the Parties upon signing.

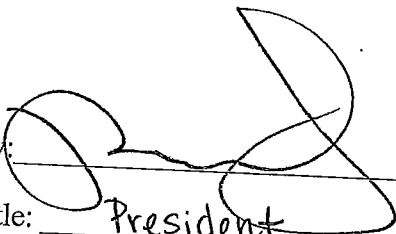
**IN WITNESS WHEREOF**, the parties hereto have signed and executed the Agreement as of the date first written above.

**Lorain Port Authority**

By:   
Title: Executive Director

**IN WITNESS WHEREOF**, the parties hereto have signed and executed the Agreement as of the date first written above.

**Marous Brothers Construction, Inc.**

By:   
Title: President