

EM SUBMISSION NO.: EME5012014

PRESENTED: 9-9-14

ADOPTED: 9-10-14

**BY THE EMERGENCY MANAGER:**

**RESOLUTION APPROVING THE LITIGATION SETTLEMENT IN THE MATTER OF  
ALBERT LEE ROBERTSON, JR. V CITY OF FLINT AND CONSUMERS ENERGY AND  
INFRA SOURCE CONSTRUCTION, CASE NO. 13-099866-NI**

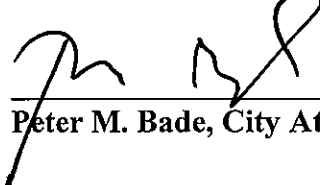
Albert Lee Robertson, Jr. filed suit against the City of Flint, Consumers Energy and Infracore Construction, alleging injuries in a motor vehicle accident caused by an unrepaired road break; and

Pursuant to paragraphs 1 and 2 of the Settlement and Release Agreement attached hereto and made a part hereof, Infracore and Consumers Energy Company shall pay \$25,000.00; and, the City of Flint shall pay \$5,000.00; and

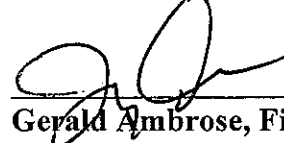
Although the City of Flint admits no liability, the Department of Law recommends settlement of this matter.

**IT IS RESOLVED** that the Emergency Manager hereby authorizes settlement in the litigation matter of *Albert Lee Robertson, Jr. v City of Flint, Consumers Energy and Infracore Construction*, Case No. 13-099866-NI, in the amount of \$5,000.00, to Albert Lee Robertson, Jr. and his attorney, Reifman Law Firm, PLLC, in satisfaction of any and all claims arising out of said incident. Payment shall be drawn from appropriated funds in the Litigation and Suits line item 677-266.200-956.300.

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Peter M. Bade, City Attorney

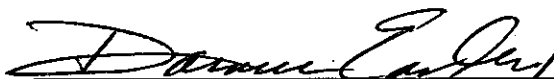
**APPROVED AS TO FINANCE:**

  
\_\_\_\_\_  
Gerald Ambrose, Finance Director

**EM DISPOSITION:**

ENACT ✓ FAIL \_\_\_\_\_

DATED 9-10-14

  
\_\_\_\_\_  
Darnell Earley, Emergency Manager

## **SETTLEMENT AND RELEASE AGREEMENT**

This Settlement and Release Agreement ("Agreement") is entered into as of the date executed below by and between Plaintiff, Albert Lee Robertson, Jr. ("Robertson"), Defendant, Infrasource Construction, LLC ("Infrasource"), Defendant/Cross-Plaintiff, Consumers Energy Company ("Consumers"), and Cross-Defendant, the City of Flint ("City"). Robertson, Infrasource, Consumers and the City may be referred to collectively as the "Parties."

### **RECITALS**

WHEREAS, on or about July 30, 2012, Robertson was allegedly injured in a motor vehicle accident at 2529 Seneca when he allegedly drove a vehicle into an unrepaired road break ("Subject Incident");

WHEREAS, on or about March 7, 2013, Robertson filed a lawsuit in the Genesee County Circuit Court, Case No. 13-099866-NI, against Consumers and the City, alleging that Consumers and the City were negligent in relation to the road break ("Underlying Action");

WHEREAS, on or about April 3, 2013, Consumers filed a cross-claim against the City of Flint, alleging, among other things, that the City was contractually obligated to indemnify Consumers for Consumers losses related to the Subject Incident ("Cross-Claim");

WHEREAS, the City has been dismissed from the Underlying Action, but Consumers' Cross-Claim against the City remains pending;

WHEREAS, on or about January 25, 2014, Robertson filed a First Amended Complaint in the Underlying Action adding Infrasource as a party defendant, asserting against Infrasource the same negligence claim related to the road break;

WHEREAS, on or around May 5, 2014, the City filed a motion for summary disposition as against Consumers' Cross-Claim, arguing that it was entitled to a dismissal because of governmental immunity, which motion was denied;

WHEREAS, on or around July 18, 2014, the City filed a claim of appeal with the Michigan Court of Appeals, Case No. 322747, seeking a review of the governmental immunity issue as related to Consumers' Cross-Claim ("Appeal");

WHEREAS, the Parties believe that it is in their mutual best interest to reach an amicable resolution with respect to the Underlying Action, Cross-Claim, and the Appeal; and

WHEREAS, this Agreement is a compromise of certain disputed claims and it is not intended to be, and shall not be, construed as an interpretation or admission of any term, definition, provision, condition, application or exclusion of any agreement or an expression of the Parties' interpretation or position with respect to any legal obligation or principle of contract or indemnification.

NOW, THEREFORE, in consideration of and in reliance upon the Recitals, promises, covenants, understandings, and obligations contained in this Agreement, and intending to be legally bound hereby, the Parties agree as follows:

1. **Payment of Settlement Amount to Robertson by Infrasource and Consumers.**

Within thirty (30) days following the execution of this Agreement, Infrasource and Consumers shall pay the full sum of twenty five thousand dollars and zero cents (\$25,000.00) in a check made payable to "Albert Lee Robertson, Jr. and the Reifman Law Firm, PLLC" and delivered to counsel of record for Robertson in the Underlying Lawsuit, which the Parties acknowledge to be good and valuable consideration with respect to the matters subject to this Agreement.

2. **Payment of Settlement Amount to Robertson by the City.** Within forty-five (45) days following the execution of this Agreement, the City shall pay the sum of five thousand dollars and zero cents (\$5,000.00) (the "City Payment") in a check made payable to "Albert Lee Robertson, Jr. and the Reifman Law Firm, PLLC" and delivered to counsel of record for Robertson in the Underlying Lawsuit, which the Parties acknowledge to be good and valuable consideration with respect to the matters subject to this Agreement.

3. **Dismissal.** Concurrently with the receipt of the Payment provided for in Paragraphs 1 and 2 of this Agreement, the Parties (through their undersigned counsel) shall take all steps necessary to dismiss with prejudice the Underlying Action, Cross-Claim, and Appeal, including executing stipulations and orders of dismissal with prejudice, and without costs, expenses or attorney's fees, to be filed in the forms attached hereto as Exhibit "A" and "B."

4. **Full and Final Release of All Claims of Robertson against Infrasource and Consumers in the Underlying Action.** As consideration for the payment to Robertson of Twenty Five Thousand Dollars (\$25,000.00), provided for in Paragraph 1 of this Agreement, the receipt of which Robertson hereby acknowledges, and for other good and valuable consideration, **ALBERT LEE ROBERTSON, JR.**, for himself and for his personal representatives, successors, heirs, and assigns (hereinafter referred to, collectively, as "Releasor"), hereby releases, acquits and forever discharges **INFRA SOURCE UNDERGROUND CONSTRUCTION, LLC**, including its past, present, and future directors, officers, employees, members, agents, representatives, trustees, insurers, attorneys, parent companies, divisions, affiliates, subsidiaries, predecessors, successors; and **CONSUMERS ENERGY COMPANY**, including its past, present, and future directors, officers, employees, shareholders, agents, representatives, trustees, insurers, attorneys, parent companies, divisions, affiliates, subsidiaries,

predecessors, successors (**INFRASOURCE AND CONSUMERS** are hereinafter collectively referred to as "Releasees"), of and from any and all claims, demands, damages, judgments, costs, debts or losses, of any nature whatsoever, whether known or unknown, contingent or non-contingent, liquidated or unliquidated, arising out of or based upon any fact, act, omission or circumstance which was asserted, or which could be asserted, in any legal action brought by or on Releasor's behalf based upon the Subject Incident. Robertson further agrees to defend and hold harmless the Releasees from any and all claims by any lien holder, assignee, creditor, bankruptcy trustee, or governmental agency (whether federal, state, or local) seeking to pursue any lien or claim against the Releasees. Robertson further agrees that he will be responsible for his own attorney's fees, costs and expenses incurred as part of the Underlying Action and will pay or satisfy any other liens, taxes or other charges related to the settlement amounts included in Paragraphs 1 and 2 of this Agreement out of such funds or other personal funds.

5. **Full and Final Release of All Claims of Consumers and Infrasource against the City in the Underlying Action.** As consideration for the contribution payment to Robertson in the amount of Five Thousand Dollars (\$5,000.00), provided for in Paragraph 2 of this Agreement, **CONSUMERS ENERGY COMPANY and INFRASOURCE UNDERGROUND CONTRUCTION, LLC** hereby release, acquit and forever discharge **THE CITY OF FLINT**, including its past, present, and future directors, officers, employees, agents, representatives, trustees, insurers, attorneys, parent companies, divisions, affiliates, subsidiaries, predecessors, successors of and from any and all claims, demands, damages, judgments, costs, debts or losses, of any nature whatsoever, whether known or unknown, contingent or non-contingent, liquidated or unliquidated, arising out of or based upon any fact, act, omission or circumstance which was asserted, or which could be asserted, in any legal action brought by or

on their behalf based upon the Subject Incident. Consumers and Infrasource further agree that neither of them will seek to recover any attorney's fees, costs or expenses incurred as part of the Underlying Action, the Cross-Claim or the Appeal from the City in addition to the settlement payment stated in Paragraph 2.

6. **Full and Final Release of All Claims of the City against Infrasource and Consumers in the Underlying Action.** As consideration for the payment to Robertson in the amount of Twenty Five Thousand Dollars (\$25,000.00), provided for in Paragraph 1 of this Agreement, **THE CITY OF FLINT**, by itself and for its representatives, successors, heirs, and assigns, hereby releases, acquits and forever discharges **CONSUMERS ENERGY COMPANY AND INFRASOURCE UNDERGROUND CONSTRUCTION, LLC**, including their past, present, and future directors, officers, employees, members, shareholders, agents, representatives, trustees, insurers, attorneys, parent companies, divisions, affiliates, subsidiaries, predecessors, successors of and from any and all claims arising out of or based upon any fact, act, omission or circumstance which was asserted, or which could be asserted, in any legal action brought by on either of their behalf based upon the Subject Incident. The City further agrees that it will be responsible for its own attorney's fees, costs and expenses incurred as part of the Underlying Action, Cross-Claim and Appeal.

7. **No Admission of Liability.** Infrasource, Consumers, and the City have denied and continue to deny any and all liability to Robertson and each other. The Parties understand and agree that this settlement is the compromise of a disputed claim, and that the payment described herein shall not to be construed as an admission of liability by Infrasource, Consumers, or the City.

8. **Warranty of Capacity to Execute Agreement.** Robertson represents and warrants that no other person or entity has or had any interest in the claims, demands, obligations, or causes of action alleged in the Underlying Action or referred to in this Agreement in relation to the Underlying Action, and that he has the sole right and exclusive authority to execute this Agreement on his behalf. Robertson also represents and warrants that he has not sold, assigned, transferred, conveyed or otherwise disposed of any claims, demands, obligations or causes of action alleged against Infrasource or Consumers in this Agreement.

9. **Governing Law.** The Parties agree that the interpretation and construction of this Agreement shall be governed by the laws of the State of Michigan.

10. **Enforceability.** If any provision in this Agreement is determined to be unlawful or unenforceable by a court of competent jurisdiction, the Parties agree that it will not affect the legality or enforceability of the remaining provisions, and the unlawful or unenforceable part shall be deemed to be excluded from this Agreement.

11. **Entire Agreement and Successor in Interest.** Robertson acknowledges and agrees that neither Infrasource, Consumers, or the City, nor anyone on their behalf, has made any promise, inducement, or agreement not expressed herein to induce him to execute this Agreement, and that this Agreement supersedes all prior negotiations or agreements regarding the matters set forth herein.

12. **Amendment.** The Parties acknowledge and agree that this Agreement may not be amended or modified except by a subsequent writing executed by the Parties.

13. **Effective Date.** This Agreement may be signed in one or more counterparts, each of which shall be deemed an original. Facsimile copies of the Agreement and the signatures hereto may be used with the same force and effect as the original. This Agreement shall be

deemed fully executed and effective when Robertson has executed at least one counterpart, even though no single counterpart bears all of the Parties' signatures.

14. **Taxes.** Robertson acknowledges and agrees that neither Infrasource, Consumers, or the City, nor anyone on their behalf, has made any representations as to any local, state, or federal tax consequences of the settlement payment described herein, and he understands that he shall bear his own tax consequences arising out of the settlement payment described herein.

15. **Medicare and Social Security Benefits.** In reaching agreement on the terms of this Release, Robertson acknowledges that his possible entitlement to Social Security disability benefits pursuant to 42 U.S.C. § 423, and receipt of Medicare or Medicaid benefits under 42 U.S.C § 1395y, as well as the entitlement of the Centers for Medicare and Medicaid Services ("CMS") to subrogation and intervention, pursuant to 42 U.S.C. § 1395y(b)(2) to recover any overpayment made by CMS. Robertson agrees that this Release is not intended to shift to CMS the responsibility for payment of medical expenses for the treatment of injury related conditions. Robertson agrees that this settlement is intended to provide a lump sum payment which will foreclose Infrasource, Consumers, and the City from responsibility for future payment of all injury related medical expenses. Specifically, Robertson acknowledges and agrees as follows:

**"I, Albert Lee Robertson, Jr., acknowledge and agree that any known Medicare Conditional Payments will be paid directly from the settlement funds to Medicare by me. The Medicare Conditional Payment is unknown at this time, but I agree that the settlement shall be reduced by the amount of the Medicare Conditional Payment agreed to between myself and CMS. I further agree that I will indemnify and hold harmless Consumers, Infrasource and the City and any of their carriers for any pre-settlement Medicare Conditional Payments which may be identified and reimbursement demanded of Consumers, Infrasource or the City, or any of their carriers after the settlement".**

I further understand that many common medical expenses are not payable or reimbursable under the Medicare program. These medical expenses, not covered by Medicare but necessary in the ongoing treatment of the my injuries, and without an admission of liability on the part of Consumers, Infrasource and the City, have been taken into consideration in the calculation and settlement of my future medical expenses. Funds for these non-Medicare covered



medical expenses have been included in the lump sum settlement amount and shall not be paid from any Medicare allocation amount.

I further acknowledge that any decision regarding entitlement to Social Security benefits or Medicare or Medicaid benefits, including the amount and duration of payments and offset reimbursement for prior payments is exclusively within the jurisdiction of the Social Security Administration, the United States Government, and the U.S. Federal Courts, and is determined by Federal law and regulations. As such, the United States Government is not bound by any of the terms of this Release.”

With the settlement funds listed in Paragraphs 1 and 2 above, the parties have reasonably relied upon their best judgment and investigation into potential future medical payments that may be required for additional care for personal injuries related to Robertson’s allegations in the Underlying Action. It is the Parties’ express understanding and intent that Consumers and Infrasource’s maximum liability to Robertson or any other individual or entity in connection with this Agreement and his claims in the Underlying Action is the \$25,000.00 payment listed in Paragraph 1 and that the City’s maximum liability to Robertson or any other individual or entity in connection with this Agreement and his claims in the Underlying Action is the \$5,000.00 payment listed in Paragraph 2. If it is later determined that additional amounts are owed to Medicare, Medicaid or any other governmental entity as a result of this settlement, Robertson and the Reifman Law Firm, PLLC agree that they will be solely responsible, jointly and severally, for any and all medical costs, bills or liens, past or present, in any way arising out of the Underlying Action, including any reimbursement or set aside owed to Medicare or Medicaid.

16. **Advice of Counsel.** Robertson represents and warrants that he has read this Agreement in its entirety, has consulted with his attorney regarding its contents and meaning, and fully understands it.

17. **No Duress.** Robertson represents and warrants that he has signed this Agreement voluntarily and of his own free will and that he is not under the influence of any prescription or non-prescription drug, medication, or substance that prevents him from making a competent and informed decision to execute this document.

18. **Confidentiality.** Robertson agrees that this Agreement and the terms of the Agreement are confidential. Robertson agrees that he will not discuss with or disclose to any person or entity, other than his attorneys, insurers, tax preparers, and immediate family, the existence or terms of the Agreement.

Signed, sealed and delivered this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
**Albert Lee Robertson, Jr.**

STATE OF MICHIGAN     )  
  ) SS  
COUNTY OF \_\_\_\_\_)

On the \_\_\_\_\_ day of \_\_\_\_\_, 2014, before me personally appeared **Albert Lee Robertson, Jr.**, to me known to be the person named herein and who executed the foregoing Agreement and acknowledged to me that he voluntarily executed the same.

\_\_\_\_\_  
Notary Public  
\_\_\_\_\_  
County, MI  
My Commission Expires: \_\_\_\_\_  
Acting in the County of \_\_\_\_\_

**INFRA SOURCE CONSTRUCTION, LLC**

By \_\_\_\_\_

Its: \_\_\_\_\_

**CONSUMERS ENERGY COMPANY**

By \_\_\_\_\_

Its: \_\_\_\_\_

**THE CITY OF FLINT, MICHIGAN:**

By  \_\_\_\_\_  
Darnell Earley, ICMA-CM, MPA

Its: \_\_\_\_\_ Emergency Manager

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
**Peter M. Bade, City Attorney**  
**City of Flint, Michigan**