

1 DIVISION OF LABOR STANDARDS ENFORCEMENT  
2 Department of Industrial Relations  
3 By Max D. Norris, Staff Counsel, State Bar # 284974  
4 MOLINA Center  
5 300 Oeangate, Suite 850  
6 Long Beach, California 90802-4339  
7 Telephone: (562) 590-6314  
8 Fax: (562) 499-6438

9 Attorney for the DIVISION OF  
10 LABOR STANDARDS ENFORCEMENT

11  
12 **BEFORE THE DIVISION OF LABOR STANDARDS ENFORCEMENT**  
13 **DEPARTMENT OF INDUSTRIAL RELATIONS**  
14 **STATE OF CALIFORNIA**

15 In the matter of the  
16 Debarment Proceeding Against,

Case No.: **LB 4484**

17 DON KELLY CONSTRUCTION, INC.;  
18 DON KELLY (Individual); and,  
19 LISA KELLY (Individual),

ORDER OF THE LABOR  
COMMISSIONER ON STIPULATION  
TO DEBARMENT

20 Respondents.

21 Whereas, Respondent stipulated to debarment as follows:

22 1. DON KELLY does not hold a California Contractor's license number.  
23 2. Respondent entered into the attached SETTLEMENT AGREEMENT AND  
24 RELEASE including a DEBARMENT STIPULATION (See Paragraph 5C.).

25 3. Based on the DEBARMENT STIPULATION, Respondent shall be  
26 ineligible for a period of three years, beginning March 25, 2014 to do either of the  
27 following:

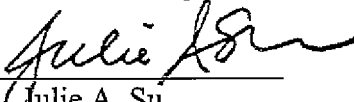
28 A) Bid on or be awarded a contract for a public works project; or

1 B) Perform work as a subcontractor on a public works project as defined  
2 as Labor Code sections 1720, 1720.2, and 1720.3.

3 IT IS HEREBY ORDERED.

4 DIVISION OF LABOR STANDARDS  
5 DEPARTMENT OF INDUSTRIAL RELATIONS  
6 STATE OF CALIFORNIA

7 Dated: 04-28-2014

8 By:   
9 Julie A. Su  
10 State Labor Commissioner  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**SETTLEMENT AGREEMENT AND RELEASE**

**PARTIES**

The parties to this Agreement, which was made as of the 25<sup>th</sup> day of March, 2014, consist of the DIVISION OF LABOR STANDARDS ENFORCEMENT, Department of Industrial Relations, State of California (hereafter "DLSE"), and DON KELLY CONSTRUCTION, INC., a Montana Corporation doing business in California (hereafter "DON KELLY"), hereinafter collectively referred to as "PARTIES."

**RECITALS**

1. On May 17, 2013, DLSE served a Determination of Civil Penalty – Labor Code Section 1777.7 (hereafter "DCP") in DLSE Case No. 44-32783-129, to DON KELLY and THE CITY OF OXNARD GENERAL SERVICES (hereafter "AWARDING BODY") regarding a public works project known as VENTURA ROAD UTILITY IMPROVEMENTS AND RESURFACING – PHASE II (hereafter "PROJECT"), awarded by AWARDING BODY to DON KELLY, as the general contractor.

2. DON KELLY is an active Montana Corporation registered with the Montana Secretary of State as entity number D094793. DON KELLY is an active Foreign Corporation registered with the California Secretary of State as entity number C2336718. DON KELLY is NOT a contractor licensed with the Contractors State Licensing Board (hereafter "CSLB") of the State of California. During all times mentioned herein, Mr. Don Kelly and Ms. Lisa Kelly are the only officers of DON KELLY, registered with the Montana Secretary of State. In entering this Agreement, DON KELLY expressly confirms that said persons retain their corporate offices with DON KELLY as stated herein.

**THE DETERMINATION OF CIVIL PENALTY**

3. The DCP assessed penalties in the amount of \$21,360.00; said amounts alleged to be due and owing by DON KELLY as a result of alleged violations of Labor Code section 1777.5 by DON KELLY during its work on the PROJECT.

4. On or about June 18, 2013, DON KELLY filed that certain Request for Review of the DCP with DLSE, which resulted in the DIRECTOR appointing John J. Korbol, as the DIRECTOR'S Hearing Officer to preside over a hearing on DON KELLY's Request for Review of the DCP. This matter is now or was pending before the DIRECTOR entitled *In the Matter of the Request for Review of: Don Kelly Constuction, Inc., a Foreign Corporation*, ODL Case No. 13-0315-PWH.

#### **SETTLEMENT AGREEMENT**

5. DLSE and DON KELLY agree to resolve all disputes between them concerning "DCP" identified in Paragraph 1 above, as follows:

- A. DON KELLY has or will cause the DIRECTOR to dismiss its respective Requests for Review of the DCP by withdrawing its Requests for Review, and will refrain from seeking to restore them to active status so long as this Settlement Agreement and Release is signed by the Parties via their representatives and concluded upon the terms stated herein;
- B. DON KELLY will pay to DLSE, the sum of **\$8,620.00** (hereafter "SETTLEMENT AMOUNT"), in one check made payable to: "DIVISION OF LABOR STANDARDS ENFORCEMENT," due to arrive at DLSE's Long Beach Office no later than the 25<sup>th</sup> day of April 2014;
- C. DON KELLY by its authorized corporate officer(s) and its corporate officials also stipulate as follows. (these terms are hereafter referred to as the terms of the "DEBARMENT STIPULATION"):
  - 1) DON KELLY does not hold a California Contractor's license number.
  - 2) DON KELLY is an active Montana Corporation, registered to do business in California as a Foreign Corporation.

- 3) Mr. Don Kelly holds the position of President within DON KELLY's corporate structure.
- 4) Ms. Lisa Kelly holds the position of Secretary/Treasurer within DON KELLY's corporate structure.
- 5) There are no other corporate officers besides Mr. and Mrs. Kelly within DON KELLY's corporate structure.
- 6) DON KELLY, Mr. Kelly and Mrs. Kelly each stipulate to debarment pursuant to Labor Code section 1777.1, subdivision (a) for a period of 3 years beginning on March 25, 2014, following the filing of the Determination and Order of the Labor Commissioner in this matter. During that 3 year period, DON KELLY, Mr. Kelly and Mrs. Kelly, and any firm, corporation, partnership, or association in which any of said persons has any interest as defined in Labor Code section 1777.1, subdivision (f), or any substantial interest as defined in California Code of Regulations, Title 8, section 16800, shall be ineligible to do either of the following:
  - (a) Bid on or be awarded a contract for a public works project; or
  - (b) Perform work as a subcontractor on a public works project.

D. In return for the successful completion of the foregoing, DLSE will release DON KELLY from further liability on the DCP.

6. THE PARTIES agree that in the event DON KELLY fails to make payment in a timely fashion of the total SETTLEMENT AMOUNT agreed to herein, or if DON KELLY or Mr. Kelly or Mrs. Kelly, or any firm, corporation, partnership, or association in which any of said persons have any interest as defined in Labor Code section 1777.1, subdivision (f), or any substantial interest as defined in California Code of Regulations, Title 8, section 16800, fail to abide by the terms of their debarment, the DCP referenced herein shall be deemed a final assessment no longer subject to judicial review as that term is used in Labor Code section 1742, and DLSE may exercise its right to have a clerk's judgment entered for the full amount(s) of the

assessment, less credit for any amount recovered on the DCP by DLSE as of the time of the application for entry of judgment.

7. DLSE agrees that should DON KELLY and/or its corporate officers default on the terms of this agreement, DLSE will give DON KELLY ten days written notice prior to applying for a clerk's judgment pursuant to paragraph 6.

8. THE PARTIES agree that DLSE will allocate the SETTLEMENT AMOUNT for its own accounting purposes as further set forth herein; and DON KELLY agrees and warrants that it will not make or encourage any attempt to hereafter retrieve any portion of the SETTLEMENT AMOUNT from DLSE nor from any of the workers identified in the audit summary attached hereto as Exhibit "A".

9. DLSE agrees that, conditioned upon DON KELLY's withdrawal of its Requests for Reviews; the Director's dismissal of said requests for reviews; DON KELLY's timely payment to DLSE of the SETTLEMENT AMOUNT as set forth in Paragraph 5(B) of this agreement; and the successful completion of the terms of the DEBARMENT STIPULATION, DLSE does hereby release DON KELLY from the following claims for money: Monetary penalties under Labor Code sections 1777.7 (including costs and attorney fees) resulting from any work performed by workers employed on the PROJECT by DON KELLY.

10. The PARTIES agree that signatures to this agreement may be effective upon electronic transmission whether by email, facsimile transmission, or as a PDF attachment to email; that all signatures need not be affixed to a single document to be effective as to the PARTY whose signature is affixed so long as each PARTY signs this Settlement Agreement and Release; that the signatures are valid even if they are not dated; and that where this Settlement Agreement and Release is signed by counsel and/or other agent for the PARTY, such counsel and/or agent warrants that he/she/they are expressly authorized by their client or principal to execute this document on their client's or principal's behalf.

///

**RELEASE**


11. NOW, THEREFORE, in consideration of DON KELLY's withdrawal of its Requests for Review in these matters and in further consideration of DON KELLY's timely payment to the DLSE of the SETTLEMENT AMOUNT, and effective only after said payment and the successful completion of the terms of the DEBARMENT STIPULATION, the undersigned hereby releases and forever discharges DON KELLY, its employees, officers, stockholders, successors and assigns, sureties, attorneys and agents from all CLAIMS arising out of DLSE Case Nos. 44-32783-129, and ODL Case Nos. 13-0315-PWH.

**SIGNATURES**

I certify that I have read this Settlement Agreement and Release and fully understand it, and in witness I have executed this Release on this 7<sup>th</sup> day of ~~March~~<sup>April</sup>, 2014, at Long Beach, California.

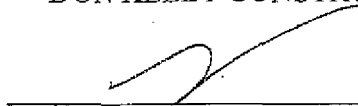
The undersigned represents and warrants that he has full authority to execute this Settlement Agreement and Release on behalf of the Division of Labor Standards Enforcement, Department of Industrial Relations, State of California, and that no legislative act or judicial act or approval is necessary to give effect to this Release.

DIVISION OF LABOR STANDARDS ENFORCEMENT  
Department of Industrial Relations State of California

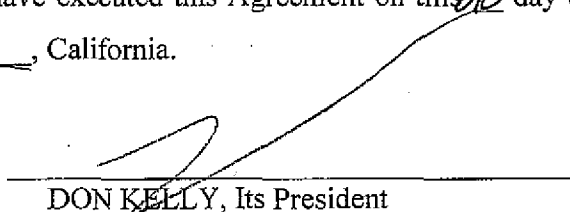
By:   
MAX D. NORRIS, Esq.  
Attorney for the Labor Commissioner

I hereby certify that I have read this Settlement Agreement and Release and fully understand it, and in witness I have executed this Agreement on this 18<sup>th</sup> day of March, 2014, at Long Beach, California.

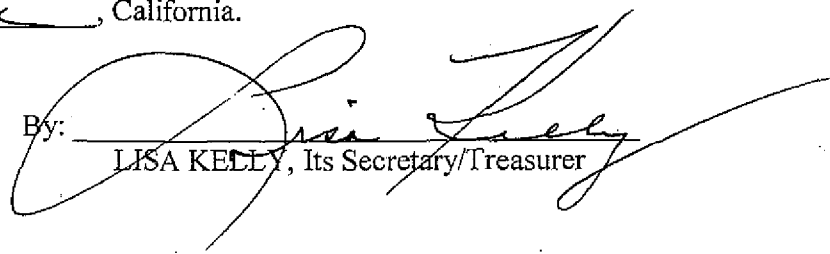
DON KELLY CONSTRUCTION, INC.

By:   
DON KELLY, Its President

I hereby certify that I have read this Settlement Agreement and Release and fully understand it, and on behalf of myself as an individual Officer of DON KELLY CONSTRUCTION, INC., I agree to be bound by the terms of the DEBARMENT STIPULATION. In witness thereof, I have executed this Agreement on this 18<sup>th</sup> day of March, 2014, at Long Beach, California.

By:   
DON KELLY, Its President

I hereby certify that I have read this Settlement Agreement and Release and fully understand it, and on behalf of myself as an individual Officer of DON KELLY CONSTRUCTION, INC., I agree to be bound by the terms of the DEBARMENT STIPULATION. In witness thereof, I have executed this Agreement on this 18<sup>th</sup> day of March, 2014, at Long Beach, California.

By:   
LISA KELLY, Its Secretary/Treasurer