

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Mutual Release ("Agreement") is entered into this 7th day of August, by and between the County of Fresno ("County") and Wood Bros., Inc. ("WBI"), sometimes referenced herein collectively as "the Parties," with reference to the following facts.

RECITALS

WHEREAS, on April 25, 2017, the Board of Supervisors awarded Contract No. 16-22-SW, for that certain public works project involving excavation and construction of the liner system for American Avenue Disposal Site ("AADS") Modules 7 and 8 ("the Project"), to WBI as prime contractor on the Project; and

WHEREAS, the specifications and contract documents for the Project ("Contract Documents") provided for a 140-day contract construction period; and

WHEREAS, the Contract Documents provided for assessment of liquidated damages of \$5,000 per day for each day by which the completion date exceeds the contract construction period; and

WHEREAS, the original 140-day contract construction period was extended, by Contract Change Order Nos. 1 through 3, by a total of 43 days (through February 26, 2018), due to inclement weather delays and unexpectedly high quantities of unsuitable materials found during excavation of the modules; and

WHEREAS, as a result of the foregoing extensions, the assessment of liquidated damages did not commence until February 27, 2018;

WHEREAS, on or about April 5, 2018, a dispute arose between the Parties regarding issues relating to the Project, including both the scope of work remaining to be completed by WBI under the Contract Documents and the assessment of liquidated damages thereunder; and

1 WHEREAS, as of April 5, 2018, the Project had not been accepted by the County Engineer
2 as complete, and the ongoing liquidated damages assessment had reached \$185,000 (37 days
3 at \$5,000 per day); and

4 WHEREAS, in an effort to expedite completion of the Project, the County's Department of
5 Public Works and Planning ("Department") issued a change order ("CCO No. 4," dated April 16,
6 2018) to suspend the accumulation of liquidated damages for a "window period" of 30 days, from
7 April 5, 2018 through May 4, 2018;

8 WHEREAS, CCO No. 4 provided that, if the County Engineer accepted the Project as
9 complete within the 30-day window period, then no additional liquidated damages would be
10 assessed for any portion of that 30-day period; however, if the Project were not accepted by the
11 County Engineer within the 30-day window period, then assessment of liquidated damages
12 would be reinstituted as of May 5, 2018 and would continue to accumulate from and after that
13 date; and

14 WHEREAS, CCO No. 4 further provided by its express terms that suspension of the
15 accumulation of liquidated damages during that 30-day window period was not intended to release,
16 waive, reduce or in any way affect the County's prior assessment of liquidated damages, accumulated
17 between the period of February 27, 2018 through April 4, 2018 in the amount of \$185,000 (37 days
18 at \$5,000 per day), an issue as to which each of the Parties reserved their respective rights as
19 expressly stated therein; and

20 WHEREAS, the Project was accepted by the County Engineer as complete within the 30-
21 day window period, on May 2, 2018; and

22 WHEREAS, the Parties now desire to resolve all outstanding disputes between them relating
23 to the Project, in accordance with the terms and conditions hereinafter set forth.

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1 NOW THEREFORE, it is agreed between the Parties hereto as follows:

2 **1. Assessment and Withholding of Liquidated Damages**

3 WBI shall pay the sum of \$100,000 in liquidated damages, which amount shall be withheld by
4 the County from the final payment due to WBI pursuant to the Contract Documents. The County's
5 claim of entitlement to liquidated damages in excess of said amount of \$100,000 is hereby expressly
6 waived. For purposes of clarification, the County by execution of this Agreement is waiving \$85,000
7 of the \$185,000 in liquidated damages that had accrued as of April 5, 2018, as well as any amount of
8 liquidated damages that would have accrued thereafter in the absence of CCO No. 4.
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10 **2. Exceptions to Applicability of Mutual Releases Provided for Herein**

11 The mutual releases herein provided for in Paragraphs 3 and 4 below expressly do not apply
12 with respect to either of the following:

- 13 A. The County's obligation to make the final payment to WBI in accordance with the Contract
14 Documents and this Agreement, consisting of all previously withheld retentions, and excluding
15 therefrom liquidated damages withheld by the County in the amount of \$100,000, in
16 accordance with the foregoing); and
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18 B. The rights and obligations of the respective Parties under the Guaranty of workmanship and
19 materials executed by WBI on March 8, 2017, which by its terms shall remain in effect through
20 and including May 2, 2019, which is twelve (12) months after the date on which the Project
21 was accepted by the County as complete.

22 **3. Mutual Release of Claims**

23 Subject to the express exception of the respective rights and obligations of the Parties that are
24 specified in Paragraph 2 above, each of the Parties hereby releases the other Party hereto and its
25 agents, employees, attorneys, sureties, affiliates, successors, heirs and assigns, from any and
26 all other claims, debts, costs, obligations, promises, acts, agreements, actions and causes of
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1 action, demands, damages, counterclaims, set offs, or liabilities (including attorneys' fees and
2 costs), relating to the Project.

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4 **4. Waiver of General Release**

5 Subject to the express exception of the respective rights and obligations of the Parties that are
6 specified in Paragraph 2 above, each of the Parties hereto, on its own behalf and on behalf of its
7 respective agents, employees, attorneys, sureties, affiliates, successors, heirs and assigns,
8 hereby expressly waives any and all rights it may have against the other Party hereto under
9 California Civil Code Section 1542, arising from the Contract Documents or otherwise relating to
10 the Project. Section 1542 of the Civil Code of the State of California provides as follows:

11 A general release does not extend to claims which the creditor does not know or
12 suspect to exist in his favor at the time of executing the release, which if known
13 by him must have materially affected his settlement with the debtor.
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16 Each of the Parties hereby waives and relinquishes all rights and benefits it has or may have
17 against the other Party hereto under Section 1542 of the California Civil Code, to the fullest
18 extent that it may lawfully waive such rights and benefits, as to the matters released herein.

19 **5. No Third Party Beneficiaries**

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21 The Parties hereby acknowledge and agree that no other person, firm, corporation, or
22 entity shall be deemed an intended third-party beneficiary of this Agreement. In addition, and
23 notwithstanding anything else to the contrary herein, WBI hereby expressly reserves its rights to
24 pursue legal action against one or more of its subcontractors on the Project for contribution or
25 reimbursement in connection with WBI's liability to the County for liquidated damages in the
26 agreed upon amount of \$100,000, as provided for herein.
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6. Amendment

Subject to applicable law, this Agreement may be amended, modified or supplemented only by a written agreement signed by the Parties.

7. Governing Law

This Agreement shall be governed by, and interpreted in accordance with, the laws of the State of California.

8. Severability

If any term of this Agreement is invalid, illegal or incapable of being enforced by virtue of any rule of law or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect.

9. Counterparts

This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all of which together shall be deemed one and the same document.

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1 IN WITNESS WHEREOF, the Parties have executed this Settlement Agreement and
2 Mutual Release as of the date first set forth above.

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4 COUNTY OF FRESNO

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6 By: Sal Quintero
7 Sal Quintero, Chairperson of the Board of
8 Supervisors of the County of Fresno

WOOD BROS., INC

By: [Signature]
Donald Wood, Secretary
(Authorized Signature)

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10 APPROVED AS TO LEGAL FORM

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12 By: [Signature]
13 Daniel C. Cederborg, County Counsel

APPROVED AS TO LEGAL FORM

Griswold, LaSalle, Cobb, Dowd & Gin, LLP

14
15 By: [Signature]
16 Michael R. Johnson

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18 ATTEST:
19 BERNICE E. SEIDEL
20 Clerk of the Board of Supervisors
21 County of Fresno, State of California

22 By: Susan Bishop
23 Deputy