

**SETTLEMENT AGREEMENT AND MUTUAL RELEASE REGARDING CONTRACT NO. 505 WITH
BROSAMER AND WALL, INC.**

This Settlement Agreement and Mutual Release Regarding Contract No. 505 with Brosamer and Wall, Inc. ("Agreement") is entered into by and between Brosamer & Wall, Inc. ("BWI") and the Contra Costa Transportation Authority ("Authority") effective as of April 17, 2024 ("Effective Date"). BWI and the Authority are sometimes herein below referred to collectively as the "Parties" and individually as a "Party."

RECITALS

Whereas, following a competitive bidding process, the Authority entered into a written contract with BWI on or about October 17, 2018 ("Contract") through which BWI agreed to serve as the primary contractor in the construction of a highway widening project known as the "Interstate 680/State Route 4 Interchange Improvements, Phase 3 (Contract No. 505), located in Contra Costa County (the "Project").

Whereas, on or about November 14, 2018, the Authority issued a Notice to Proceed, which officially commenced the construction period.

Whereas, on or about April 21, 2023, the Project was officially accepted by the Authority.

Whereas, BWI alleged that from commencement to final completion the Project faced a number of unforeseen issues and design changes that impacted BWI's field operations and the critical path of the Project, allegedly requiring significant changes to BWI's as-bid plan for the work. The Authority denies these allegations.

Whereas, after acceptance by the Authority, BWI submitted twenty-one (21) claims to the Authority for review in accordance with the procedures of the Parties' Contract, which claims related to unpaid base Contract work, unpaid extra work bills, cumulative impacts from work character changes, and an extension of time ("Claims").

Whereas, after a review, the Authority denied all Claims and alleged, among other things, that BWI is entitled to no additional pay for its work on the Project, BWI failed to follow the Claims procedures in the Parties' Contract, and that the Authority is entitled to liquidated damages due to inexcusable delay.

Whereas, on or about March 23, 2022, BWI submitted a Public Records Act request for public records with respect to the design, administration, and construction of the Project. In

response, the Authority has been diligently producing documents including electronically stored information responsive to the Public Records Act request.

Whereas, on or about August 1, 2023, BWI submitted a second Public Records Act request for public records with respect to the design, administration, and construction of the Project. The two BWI Public Records Act requests are collectively referred to as the "BWI PRA Requests."

Whereas, on or about August 11, 2023, Bay Cities Paving & Grading, Inc ("Bay Cities") submitted a Public Records Act request for public records with respect to the Project. In response, the Authority diligently produced documents including electronically stored information responsive to the Public Records Act request. Bay Cities' Public Records Act request is referred to as the "Bay Cities PRA Request." The BWI PRA Requests and Bay Cities PRA Request are collectively referred to as the "Project PRA Requests."

Whereas, the Authority understands that Bay Cities has asserted claims for extra work and/or delay damages against BWI related to the Project ("Bay Cities Claims"), but the Authority is not aware of the disposition of the Bay Cities Claims.

Whereas, no lawsuit has been filed by either Party concerning the Project, Contract, Claims, or Project PRA Requests.

Whereas, mindful of the expense and uncertainty of litigation, the Parties participated in a mediation with Kenneth C. Gibbs of JAMS on February 5, 2024, to resolve the Parties' disputes concerning the Project.

Whereas, as a result of the mediation, the Parties have agreed to compromise and settle their disputes related to the Project, on the terms of this Agreement.

NOW THEREFORE, in consideration of the mutual promises, covenants and other good and valuable consideration contained herein, it is hereby agreed by and between the Parties as follows:

AGREEMENT

1. **Settlement Sum and Payment to BWI.** In consideration of the releases set forth in this Agreement, the Authority shall pay to BWI the total sum of \$9,750,000 (the "Settlement Sum") within thirty (30) days of full execution of this Agreement. BWI will provide the Authority instructions for wiring the Settlement Sum promptly following full execution of this Agreement. The Authority's payment of the Settlement Sum set forth in this Paragraph 1 constitutes full and

complete compensation from the Authority to BWI and all of BWI's subcontractors of any tier, suppliers, or vendors on the Project, including but not limited to any claims by Bay Cities, for all labor, materials, services, equipment, and work of any nature furnished by them on the Project, and is a full and final settlement of all claims that BWI, and all of BWI's subcontractors of any tier, suppliers, or vendors on the Project have or may have against the Authority arising from, or relating to, the Contract, Project, Claims, or Project PRA Requests, including but not limited to those contained in the Bay Cities claims.

2. **Release.** In consideration of this Agreement and the Settlement Sum, the Parties hereby release each other, forever discharge and covenant not to sue each other (including, without limitation, their parent company, subsidiaries, affiliates, sureties and insurers, lenders, and each of their respective representatives, shareholders, directors, employees, former employees, officers, agents, sureties, insurers, and attorneys, and each of their respective successors and assigns), concerning any and all claims, rights, demands, damages, debts, liabilities, costs, expenses, indemnity, compensation and causes of action of every kind, nature or description, present or future, known or unknown, arising out of, from, related, or connected in any way to the Project, Contract, Claims, Project PRA Requests, and/or Bay Cities Claims, except as to the Release Exclusions provided by BWI in Section 3, and BWI expressly agrees and acknowledges that the Authority has fully satisfied, and no further action or production by the Authority is necessary regarding, the BWI PRA Requests (the "Released Matters").

3. **Release Exclusions.** The Parties intend any and all disputes, known or unknown, matured or contingent, between them regarding the Contract, Project, Claims, and/or Project PRA Requests to be fully, finally, and forever resolved, except as stated in this paragraph.

3.1 BWI and its subcontractors and vendors are not released by the Authority from any claims for latent defects, warranty obligations and/or guarantees set forth in the Contract. During the applicable warranty and/or guarantee periods, the Parties will proceed in accordance with the terms agreed to in the Contract. To the extent any part of a warranty and/or guarantee remains in force and effect as of the Effective Date of this Agreement, the Parties intend to preserve those warranty and/or guarantee rights, which will not be subject to release by the Authority under Sections 2 and 4 of this Agreement. Furthermore, to the extent any warranty and/or guarantee rights for materials are offered under the Contract, and to the extent those warranty and/or guarantee rights remain in force and effect as of the Effective Date of this Agreement, those warranty and/or guarantee rights are not subject to the release under Sections 2 and 4 of this Agreement and will expire pursuant to the terms of the Contract.

3.2 BWI and its subcontractors and vendors are not released by the Authority from any claims for indemnity or equitable indemnity arising from future third-party claims for personal injury or property damage in connection with the Contract, Project, or Claims. The Authority represents and warrants that it has no actual present knowledge of any latent defects in the work performed by the Authority on the Project or any current or potential third-party claims against the Authority regarding the Contract, Project, or Claims.

3.3 By signing below, BWI represents its payment and performance bond sureties approve of the Authority's payment of the Settlement Sum in Paragraph 1, agree the payment shall not relieve BWI's sureties of any obligations owed to the Authority, and all obligations existing under the bonds, if any, shall remain in full force and effect. To the extent BWI's sureties fail or refuse to abide by the terms of the payment and performance bonds, BWI agrees to fully defend and indemnify the Authority.

3.4 BWI agrees to defend, indemnify, and hold the Authority harmless from any and all claims, demands, liabilities, damages, losses, or expenses, including attorney's fees, by BWI's sureties or by any of BWI's subcontractors of any tier, suppliers, or vendors seeking compensation from the Authority for work, material, equipment or services provided to the Project.

4. **Waiver of Section 1542.** The Parties to this Agreement expressly, knowingly, and voluntarily waive any and all rights and benefits conferred upon them by the provisions of Section 1542 of the California Civil Code, and hereby release all actions, causes of action, claims, and liabilities, known or unknown, liquidated or unliquidated, suspected or unsuspected between BWI and the Authority arising out of the Project, Contract, Claims, and/or Project PRA Requests and as further defined as Released Matters, except as to the Release Exclusions provided in Section 3. The Parties acknowledge that they have received the advice of legal counsel concerning the scope of a Section 1542 waiver and are fully aware of the specific consequences of this waiver of Civil Code section 1542, which statute provides as follows:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

Moreover, the Parties acknowledge that they may hereafter discover facts in addition to or different from those they now know or believe to be true with respect to the Released Matters,

that it is their intention hereby fully, finally and forever to settle and resolve matters released herein, known and unknown, suspected or unsuspected, which existed, now exist or may exist, and that in furtherance of their mutual intention, their releases as given herein shall be and remain in effect as full and complete general releases, except as to the Release Exclusions provided in Section 3, notwithstanding the discovery of the existence of any such additional or different facts.

5. **No Admission of Liability.** The execution of this Agreement and the payment of the monies set forth in Paragraph 1 effect the settlement of the Released Matters that have been denied and contested between the Parties. Nothing contained herein shall be construed as an admission of any liability whatsoever by any Party hereto. All Parties shall be responsible for their own fees, costs and expenses.

6. **No Third-Party Beneficiaries.** This Agreement is made for the sole benefit of the Parties to this Agreement, and no other person or entity shall have any benefits, rights, or remedies under or by reason of this Agreement. The validity, meaning, and effect of this Agreement shall be determined in accordance with the laws of the State of California.

7. **Entire Agreement.** This Agreement contains the entire understanding of the Parties and shall supersede all previous communications, representations, or agreements, either written or oral, among the Parties concerning the subject matters addressed herein and shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns. No promise, inducement or agreement not herein expressed has been made to any Party. The terms of this Agreement are contractual, and not mere recitals.

8. **Responsibility for Expenses.** Each side shall bear its own costs and attorney's fees in connection with the presentation and negotiation of the Claims, the mediation, and the drafting of this Agreement.

9. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which will be deemed to constitute an original, but all of which together shall constitute one and the same legally enforceable Agreement. A digitally scanned signature constitutes an original and all evidentiary objections to same other than for authenticity of signature are waived.

10. **No Assignment of Claims.** Each of the Parties represents and warrants that it has not previously assigned or transferred, or purported to assign or transfer, to any person or entity any claim or cause of action released by it in this Agreement.

11. **Independent Counsel.** The Parties represent that they have carefully read this entire Agreement and that they know and understand its contents; that they have had the opportunity to receive independent legal advice from attorneys of their choice with respect to the preparation, review and advisability of executing this Agreement; and that they have freely and voluntarily executed this Agreement after independent investigation and without fraud, duress, or undue influence and with a full understanding of the legal and binding effect of this Agreement.

12. **Construction.** This Agreement shall be considered as drafted jointly by the Parties, and no uncertainty or ambiguity found in the terms hereof shall be construed for or against any Party based on an attribution of drafting to either Party.

13. **Governing Law.** All questions concerning the construction, validity and interpretation of this Agreement shall be governed by and construed in accordance with the laws of the State of California without regard to its principles of conflicts of laws. The Parties agree that the proper venue for enforcement is Contra Costa County.

14. **Legal Capacity.** Each of the Parties hereto represents and warrants that each of the signatories to this Agreement has full and complete legal capacity and authorization to execute and deliver this Agreement on its behalf. Moreover, each individual executing this Agreement on behalf of one of the Parties hereto represents and warrants that he or she is duly authorized to execute the Agreement on that Party's behalf.

15. **Entire Agreement.** Each Party acknowledges: (i) each Party individually declares and represents it is executing this Agreement in reliance solely on its own judgment, belief, and knowledge of the facts surrounding the transactions described in this Agreement; (ii) this Agreement is made without reliance upon any statement or representation not contained in this Agreement of any other Party, or any representative, agent or attorney of any other Party; and (iii) no promise, inducement or agreement not expressed in this Agreement has been made to any Party.

16. **Severability.** In the event that any portion of this Agreement is deemed illegal, invalid or unenforceable in any respect, then such invalidity, illegality or unenforceability will not affect any other provision of this Agreement and this Agreement shall be construed as though such illegal, invalid or unenforceable provision had never been contained herein, unless a court determines the primary purpose of this Agreement would be frustrated.

[Signatures on Next Page]

IN WITNESS WHEREOF, the Parties have entered into this Settlement Agreement and Mutual Release Regarding Contract No. 505 with Brosamer and Wall, Inc. as of the 17th day of April, 2024.

CONTRA COSTA TRANSPORTATION
AUTHORITY

BROSAMER & WALL, INC.

By: _____
Newell Arnerich
Chair

By: _____
Robert Brosamer
Principal

ATTEST:

By: _____
Tarienne Grover
Clerk of the Board

APPROVED AS TO FORM AND LEGALITY:

By: _____
Fennemore Wendel
Authority Counsel