

SETTLEMENT AND MUTUAL RELEASE AGREEMENT

This Settlement and Mutual Release Agreement (“Agreement”) is entered into by and between the Mountain View Whisman School District, a California public school district (“District”), and Galeb Paving, Inc., a California corporation (“GPI”). The parties to this Agreement are sometimes individually referred to as “Party” and collectively referred to as “Parties”.

RECITALS

This Agreement is entered into with reference to the following facts:

A. On September 8, 2017, the District and GPI executed a construction contract (“Contract”) for \$3,702,000 for GPI, as prime contractor, to furnish all tools, equipment, apparatus, facilities, labor, and materials necessary to perform and complete in a good and workmanlike manner the District’s Stevenson Elementary School Phase 2 – Increment 1: Sitework Project (“Project”);

B. During the course of the Project, GPI claimed additional compensation for delay, inefficiency, idle equipment, extended overhead, and other delay costs, which the District disputed (the “GPI Claims”);

C. GPI has completed work on the Project, and the Project has been accepted by the District;

D. On April 6, 2020, GPI filed a Complaint against the District in the Santa Clara County Superior Court, titled *Galeb Paving, Inc. v. Mountain View Whisman School District*, Case No. 20CV365977 (“Lawsuit”), asserting that the District was legally obligated to compensate GPI for the GPI Claims;

E. The District and GPI now agree to settle any and all claims between them, including the GPI Claims, the Lawsuit, and all other claims and disputes between them that could have or should have been asserted arising out of the Contract and the Project (collectively the “Settled and Released Claims”).

AGREEMENT

This Agreement fully incorporates the Recitals above as if fully reproduced below.

1. AGREEMENT SUBJECT TO DISTRICT BOARD APPROVAL

This Agreement is subject to the approval by the District’s Board of Education.

2. SETTLEMENT PAYMENT AND FURTHER OBLIGATIONS UNDER THIS AGREEMENT

Within thirty (30) days of District Board approval and the execution of this Agreement, the District shall pay GPI the sum of Six Hundred Sixty-Three Thousand Dollars (\$663,000.00)

("Settlement Check") as full and final settlement of all claims and disputes arising out of or related to or that which could have arisen out of or have been related to the Contact, the Project, the GPI Claims, the Settled and Released Claims, and the Lawsuit in consideration for the complete release and settlement of the Settled and Released Claims as described in this Agreement.

3. **DISMISSAL OF THE COMPLAINT**

Within five (5) days of the clearance of the Settlement Check from the bank on which it is drawn, GPI, if it has not already done so, shall cause the Lawsuit to be dismissed with prejudice.

4. **MUTUAL RELEASE**

Except as provided below in the section "Claims Not Released or Waived," the Parties, including their former and present affiliated entities, partners, trustees, beneficiaries, predecessors, successors, officers, directors, shareholders, and assigns, do hereby release and discharge each other, including each other's former and present affiliated entities, partners, trustees, beneficiaries, predecessors, successors, officers, directors, shareholders, assigns, insurance carriers, sureties, attorneys, agents, consultants, representatives, and related entities, from any and all claims, demands, actions, obligations, damages, liabilities, and causes of action of any and every kind whatsoever, whether known or unknown, anticipated or unanticipated, suspected or unsuspected, and/or claimed or unclaimed, including claims of indemnity, whether contractual or equitable, arising out of or in any way related to the Contract, the Project, and the Settled and Released Claims.

5. **MUTUAL WAIVER OF CIVIL CODE SECTION 1542**

Except as provided below in the section "Claims Not Released or Waived," the Parties recognize that they may not now fully know the number and magnitude of all claims that they now have or in the future may have against each other, but nevertheless, intend to assume the risk that they are releasing such unknown claims that arise out of or related to the Settled and Release Claims. The Parties agree that this is a full and final release of such claims, and as a further consideration and inducement for this settlement, agree to waive the provisions of California Civil Code Section 1542, which 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.

The Parties acknowledge that a material part of this Agreement is the deliberate extinguishing of any claims which currently are unknown so that there is no possibility of future claims beyond those identified in Paragraph 5 below (Claims Not Released or Waived) concerning the Settled and Released Claims.

6. CLAIMS NOT RELEASED OR WAIVED

Notwithstanding the releases set forth above, the Parties understand and agree that the following claims are specifically reserved and are not released, waived, or discharged, and do not apply in regard to the claims being released as part of this Agreement.

- a. **Latent Defects.** The Parties reserve and do not waive or release any existing rights or defenses they may have regarding claims for any latent defect in the work performed by GPI on the Project, as defined under Code of Civil Procedure Section 337.15. District warrants that, as of the date of this Agreement, it is unaware of any such claims.
- b. **Indemnity Concerning Third-Party Claims.** The Parties reserve and do not waive or release any existing rights they may have for indemnity with regard to future third-party claims for personal injury and/or property damage arising out of the Project. The Parties represent that they are unaware of any claims, demands, conditions or incidents, or actions currently existing that would be covered by the provisions of this Paragraph.
- c. **Express or Implied Warranties.** The Parties reserve and do not waive or release any existing rights or defenses they may have under any express or implied warranty, if any, relating to the Project, including, without limitation, corrective work. The Parties represent that they are unaware of any claims, demands, conditions or incidents, or actions currently existing that would be covered by the provisions of this Paragraph.
- d. **Agreement Obligations.** Any rights, duties, or obligations of the Parties under this Agreement.
- e. **Subcontractor/Laborer Claims.** Notwithstanding the releases described herein, GPI shall indemnify, defend, and hold harmless District from any claim, demand, damage, cost, loss, or liability arising from any claim, demand, damage, cost, loss or liability asserted by any lower-tier subcontractor, laborer, or supplier to GPI for payment on the Project.

6. WARRANTY OF CLAIM OWNERSHIP

The Parties each warrant and represent to the other that none of them has heretofore assigned or transferred or purported to assign or transfer to any person not a party hereto any released matter or any part apportioned thereof, and each agrees to indemnify and hold harmless the other from and against any claim based on, in connection with or arising out of any such assignment or transfer or purported or claimed assignment or transfer.

7. BINDING EFFECT

This Agreement shall be binding on and inure to the benefit of the successors and assigns of the parties hereto only. Nothing in this Agreement, express or implied, is intended to confer upon any person other than the parties hereto or their respective successors and assigns, any rights or benefits under or by reason of this Agreement. This Agreement shall have no precedential effect upon any pending or future dispute between the District and GPI or any third party not a party to this Agreement. This Agreement shall not be assignable by any Party hereto without the written prior consent of the other Party.

8. DISCLAIMER OF LIABILITY

The Parties acknowledge and agree that the payment and acceptance of any settlement sum and the execution of this Agreement are the result of compromise, are given solely by reason of the expense of litigation and are entered into in good faith and shall never for any purpose be considered an admission of fault, culpability, liability or any kind of responsibility whatsoever concerning any of the claims arising out of or relating to the Settled and Released Claims, and no past or present wrongdoing on the part of any of the Parties shall be implied by such payment or execution.

9. ENTIRE AGREEMENT

This Agreement represents and contains the entire Agreement and understanding among the Parties with respect to the subject matter of this Agreement and supersedes any and all prior oral and written agreements and understandings, and no representation, warranty, condition, understanding or agreement of any kind with respect to the subject matter hereof shall be relied upon by the Parties unless incorporated herein. This Agreement may not be amended or modified except by an agreement in writing signed by all parties.

10. FEES AND EXPENSES

Each of the Parties shall pay their own expenses, including legal fees and costs, incurred in the prosecution and defense of the Settled and Released Claims under this Agreement, and incurred by any of them in the negotiation, preparation, and execution of this Agreement.

11. ADVICE OF LEGAL COUNSEL

In entering into this Agreement, the Parties represent that they have relied upon the legal advice of their attorneys, who are the attorneys of their own choice in preparation of this Agreement. The Parties have executed this Agreement with full knowledge of its significance and with the express intention of effectuating its legal consequence.

12. CONSTRUCTION

- a. Because each Party and counsel for each Party has reviewed this Agreement, it is agreed that the rule that ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.
- b. In the event that one or more of the provisions or portions of this Agreement is determined to be illegal or unenforceable, the remainder of this Agreement shall not be affected thereby, and each remaining provision or portion thereof shall continue to be valid and effective and shall be enforceable to the fullest extent permitted by law.
- c. This Agreement is entered into in the State of California and shall be construed and interpreted in accordance with its laws. Venue for any litigation arising out of this Agreement shall be in the county in which the District's administrative offices are located.

13. COUNTERPARTS

This Agreement may be executed in any number of counterparts each of which shall be deemed to be an original and all of which together shall be deemed one and the same instrument.

14. EFFECT OF AGREEMENT

This Agreement may be pleaded as a full and complete defense to and may be used as a basis for, and injunction against, any action, suit or other proceeding that may be instituted, prosecuted, or attempted that relate to or arise out of the claims released under this Agreement.

15. FEES AND COSTS IN CASE OF BREACH

In the event of any breach of this Agreement, the other Party shall be entitled to recover from the breaching party, in addition to other relief awarded, all such damages, costs, reasonable attorney's fees, and expert's fees, incurred by such defense, defending against, or seeking to obtain an abatement of or injunction against such action or proceeding, or in establishing or maintaining the applicability or validity of this Agreement, or any provision thereof, or in prosecuting any claim or cross-claim based thereon. This Agreement shall be enforceable by motion to the court under Code of Civil Procedure section 664.6 et seq.

16. EXECUTION

This Agreement may be executed in counterparts by the Parties and shall be valid and binding on each Party as if fully executed in one copy. Electronic/PDF or Facsimile signatures

are sufficient to bind the Parties. The effective date of this Agreement shall be the latest date appearing opposite the signatures below.

17. DOCUMENTS IN FURTHERANCE OF AGREEMENT

The Parties agree to promptly execute and facilitate the processing of all documents reasonably necessary to effectuate this Agreement, including stop payment notice releases and Project close-out documents.

DATED: _____, 2023

MOUNTAIN VIEW WHISMAN SCHOOL DISTRICT

By: _____

Name: _____

Its: _____

DATED: 03/30, 2023

GALEB PAVING, INC.

By:  _____

Name: TOMO GALEB

Its: VICE PRESIDENT