

SETTLEMENT AGREEMENT AND MUTUAL RELEASE OF CLAIMS

The matter entitled *Bay Cities Paving & Grading, Inc., a California corporation v. City of Santa Rosa, a body politic, and Does 1-50*, Sonoma County Superior Court Case No. SCV265333 (“Action”), was mediated before Kenneth M. Malovos, Esq. on March 4, 2024. The Parties hereto have agreed to settle all claims arising out of the Action pursuant to the following terms and conditions as set forth in this Settlement Agreement and Mutual Release (“Agreement”).

1. **Parties.** Parties to this Agreement are Bay Cities Paving & Grading, Inc. (“BCP&G”), City of Santa Rosa (“COSR”), and GHD, Inc. (“GHD”). BCP&G, COSR, and GHD shall collectively be referred to as the Parties.

2. **Project.** “Project” shall mean and refer to the design and construction of the City of Santa Rosa (the “City”) Stony Point Road Reconstruction and Widening Phase 2 Project, located along Stony Point Road, between Barndance Lane and Sebastopol Road, in Santa Rosa, California.

3. **Mutual Release.** Receipt by BCP&G of all funds in Section 6 is a condition precedent to this mutual release taking effect. The Parties acknowledge and agree that the releases they are obtaining hereunder constitute a material inducement for them to enter into this Agreement. Upon the execution of this Agreement by all Parties hereto and subject to the terms and conditions of this Agreement, the Parties, for themselves, their respective heirs, successors, personal representatives, administrators, executors, assigns, receivers, partners, insurers, employees, agents, attorneys, subsidiaries, parent companies, shareholders (past, current and future), officers, directors, and accountants, hereby mutually release, remise, and discharge forever each other, and their respective heirs, successors, personal representatives, administrators, executors, assigns, receivers, partners, employees, agents, attorneys, subsidiaries, parent companies, shareholders (past, current and future), officers, directors and accountants, and each of them, and anyone chargeable on their behalf, of and from any and all, and all manner of, actions, causes of action, claims, cross-claims for indemnification and/or contribution, suits, arbitrations, settlements, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, controversies, agreements, promises, variances, trespasses, injuries, damages, costs, expenses, attorneys’ fees, judgments, executions, obligations, and demands whatsoever, in law or in equity, known or unknown, patent or latent, that the Parties now hold or have at any time heretofore owned or held or may at any time own or hold against any other Party by reason of acts, circumstances, facts, events or transactions arising from or relating to the Project, and the Action excepting therefrom claims relating to and/or arising from latent construction defects in the work performed by BCP&G.

4. **Enforceability.** This Agreement shall be enforceable by and among the Parties hereto pursuant to C.C.P. section 664.6.

5. **California Civil Code Section 1542 Waiver.** Receipt by BCP&G of all funds in Section 6 is a condition precedent to this waiver taking effect. The Parties acknowledge that they are aware of the provisions of California *Civil Code* Section 1542 and, specifically waive

the benefits of those provisions, with respect to the claims released under this Agreement, which provide 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.”

6. **Consideration.**

A. GHD shall pay BCP&G the sum of Three Million Seven Hundred Fifty Thousand dollars and no cents (\$3,750,000.00); and

City shall pay BCP&G the sum of Two Million Seven Hundred Fifty Thousand dollars and no cents (\$2,750,000.00) ;

B. BCP&G shall provide a fully executed dismissal with prejudice as to the entire Action to Counsel for the City to be held until written notification by BCP&G’s counsel that all payments as set forth above have been received by BCP&G. Upon said notification, the dismissal will be filed with the Court by City and a copy provided to all Parties;

C. The Parties agree to waive all costs of suit and attorneys’ fees, including those associated with the preparation of this Agreement; and

D. This Agreement is contingent upon the Santa Rosa City Council appropriating sufficient funds to pay the City’s portion of the settlement amount. The matter shall be placed on the agenda for a City Council meeting to be held no later than 30 days following the date the last Party executes this Agreement (“Effective Date”). No later than 30 days following the City Council’s adoption of a resolution appropriating the funds, City and GHD shall overnight payment of their respective portions of the settlement amount to BCP&G. If within 60 days of the Effective Date, the City Council fails to appropriate the funds necessary to pay the City’s portion of the settlement amount of this Agreement, this Agreement shall be null and void and no Party shall have any further obligation hereunder.

7. **No Admission of Liability.** No part of this Agreement, or this shall be alleged, taken, or construed as an admission of any liability, responsibility, fault or wrongdoing by any Party. The Parties agree that this is a compromise of disputed claims and a settlement of all claims asserted in the Action.

8. **Severability.** In the event that, at any time after the execution of this Agreement, any portion or provision of it is found to be illegal, invalid, unenforceable, non-binding, or

otherwise without legal force or effect, the remaining portion(s) will remain in force and be fully binding.

9. **No Assignment.** The Parties shall not assign any of the rights, obligations or responsibilities of this Agreement to any third party.

10. **Binding Nature of Agreement.** This Agreement is binding upon and shall inure to the benefit of all Parties to this Agreement, and their respective representatives, agents, employees, attorneys, officers, directors, subsidiaries, heirs, successors, assigns, insurers, and sureties.

11. **Governing Law.** This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of California. Venue for any proceeding to construe or enforce this Agreement shall be in the Superior Court of Sonoma County.

12. **Time Of The Essence.** Time is the essence of this Agreement and all parts hereof.

13. **Rule of Construction.** Each Party and counsel for each Party has reviewed and revised this Agreement, and the normal rule of construction to the effect that any ambiguities in this Agreement are to be resolved against the drafting Party shall not be employed in the interpretation of this Agreement.

14. **Performance of Obligations.** The obligations of each of the Parties under this Agreement are expressly conditioned upon the performance of the obligations of the other Parties under this Agreement.

15. **Attorneys' Fees and Costs.** Each party is to bear its own costs, expert expenses, and attorneys' fees; provided that, in any action to enforce the terms of this Agreement, the prevailing party shall be entitled to an award of reasonable attorneys' fees and costs.

16. **Authority to Enter Into Agreement.** The signatories below represent and warrant that they have been authorized to enter into this Agreement for the party that they purport to represent, and this Agreement shall serve as a binding Agreement among the Parties.


Dated: 3/25/24

BAY CITIES PAVING & GRADING, INC.

By:

Name:

Title:


Ben L. Rodriguez Jr.
President

Dated: _____

CITY OF SANTA ROSA


By: _____

Name: _____

Title: _____

Dated: March 26, 2024

GHD, INC.

By:  _____

Name: Chris Hunter

Title: CEO Americas

Dated: 3/25/24

CITY OF SANTA ROSA

By: 

Name: Teresa L. Stricker

Title: City Attorney

Dated: _____

GHD, INC.

By: _____

Name: _____

Title: _____