

SETTLEMENT AGREEMENT & RELEASE OF ALL CLAIMS

This Settlement Agreement and Release of All Claims (the “Agreement”) is entered into by and between Plaintiff, SIALIC CONTRACTORS CORPORATION dba SHAWNAN, a California corporation (“Shawnan”), and Defendant CITY OF CARSON, a municipal corporation (“City”) (Shawnan and City are collectively referred to herein as the “Parties”, and individually as a “Party”), to terminate fully and finally all disputes arising out of, or related to, the Dispute (defined hereinafter).

RECITALS

A. WHEREAS, because Shawnan was the lowest responsible bidder, on or about September 22, 2014, the City entered into a public works contract (“Contract”) with Shawnan for Project No. 1444 entitled “Avalon Blvd. Pavement Reconstruction from Dominguez St. to Victoria St.” (“Project”); and

B. WHEREAS, the amount of the Contract was not to exceed \$1,612,783.25, with a completion date for the Project of March 10, 2015; and

C. WHEREAS, due to soil conditions and the need for Mirafi fabric material as recommended by a third party soils lab for the Project, the City approved one (1) change order submitted by Shawnan (“Change Order No. 1”), which revised the amount of the Contract to \$1,641,228.05, and revised the completion date of the Project to April 2, 2015 (“Completion Date”); and

D. WHEREAS, additional quantities of Mirafi fabric material were installed in association with Change Order No. 1 and Shawnan seeks payment in the amount of \$4,747.68 for said work; and

E. WHEREAS, due to the discovery of petromat material while grinding on Avalon Blvd., Shawnan performed extra work relating to the removal of the petromat material and seeks payment in the amount of \$122,175.27 for said work; and

F. WHEREAS, due to the nature of petromat material, Shawnan incurred additional fees for recycling pavement grindings containing petromat and seeks payment in the amount of \$145,755.26 for said work; and

G. WHEREAS, prior to this Project, the City was not aware of the existence of petromat in Avalon Blvd.; and

H. WHEREAS, Shawnan replaced a traffic loop detector stub-out at Southbay Pavillion and Avalon Blvd. and seeks payment in the amount of \$1,800.00 for said work; and

I. WHEREAS, the City instructed Shawnan not to replace the traffic loop detector because the City’s contract with another company provided for replacement of the traffic loop detector at a lower cost to the City; and

J. WHEREAS, Shawnan substantially completed the Project on June 1, 2015, fifty-six (56) days after the Completion Date; and

K. WHEREAS, to date the City has paid Shawnan \$1,515,834.96 and the City is in possession of certain retention funds in the amount of \$79,780.78 for security purposes to ensure completion of the Project in accordance with plans and specifications; and

L. WHEREAS, Shawnan claims that due to delays caused by the City, Shawnan incurred additional costs for extended home office overhead in the amount of \$172,602.00; and

M. WHEREAS, conversely, the City claims that Shawnan failed to timely complete the Project by the Completion Date, and pursuant to the Contract the City is entitled to liquidated damages in the amount of \$24,000; and

N. WHEREAS, the City also claims that it overpaid for E-mix, a substitute leveling course, and seeks a setoff to Shawnan's claims for damages in the amount of \$59,671.20; and

O. WHEREAS, a dispute has arisen between Shawnan and the City regarding the authorization or lack thereof for Shawnan's performance of the aforementioned work in connection with the petromat and the traffic loop detector and the amount owed for said work, the City's failure to pay for the work performed pursuant to Change Order No. 1, the City's withholding of the retention, Shawnan's claim for overhead damages, the City's claim for liquidated damages, and the City's setoff claim for overpayment of E-Mix ("Dispute"); and

P. WHEREAS, as a result of the Dispute, on October 20, 2015, Shawnan filed a claim with the City pursuant to Government Code sections 905 and 910, *et seq.*, demanding payment in the amount of \$479,447.01 for the performance of the aforementioned work relating to Change Order No. 1, the petromat, and the traffic loop detector as well as the release of the retention and overhead damages for delays allegedly caused by the City; and

Q. WHEREAS, as a result of the Dispute, Shawnan filed a Complaint for Damages against City in Los Angeles County Superior Court, *Sialic Contractors Corporation dba Shawnan v. City of Carson, et al.*, Case No. TC028350 on January 15, 2016 (the "Action"); and

R. WHEREAS, the Parties voluntarily engaged in mediation regarding the Dispute; and

S. WHEREAS, at mediation, the Parties reached a settlement on the Dispute whereby the City agreed to pay Shawnan \$325,000.00 as the settlement amount; and

T. WHEREAS, the City will release the retention proceeds of \$79,780.78 to Shawnan because Public Works Director Maria Slaughter has determined that there are no issues with the quality of Shawnan's work completed pursuant to the Contract; and

U. WHEREAS, the Parties agree to memorialize their settlement and to resolve, fully and finally, the Dispute and Action by Shawnan and all remaining claims concerning the Contract through this Agreement.

AGREEMENT

The above Recitals are incorporated by reference as if set forth in full herein.

NOW, THEREFORE, for full and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and based upon the foregoing recitals and the terms, conditions, covenants, and agreements contained herein, all Parties hereto agree as follows:

1. **Release of Retention Proceeds.** Because there have been no issues with the quality of the work completed pursuant to the Contract, City shall release to Shawnan Seventy Nine Thousand Seven Hundred Eighty Dollars and Seventy-Eight Cents (\$79,780.78), which represents the five percent (5%) retention of the total amount paid for performance of the Contract based on actual quantities, plus interest accrued on said amount ("Retention Proceeds"). The Retention Proceeds shall be released not later than thirty-five (35) days after the recordation of the Notice of Completion of the Project.

2. **Settlement Payment.** Following the execution of this Agreement by the Parties and their respective counsel, the City shall pay Shawnan Three Hundred Twenty Five Thousand Dollars and No Cents (\$325,000.00) as the settlement amount ("Settlement Sum"), in full consideration and settlement of any and all claims by Shawnan. The Settlement Sum shall be paid within two (2) weeks after approval of this Agreement by the City Council or by March 10, 2017.

The Settlement Sum shall be in full consideration and settlement of any and all claims by the Parties. Said payment constitutes a full and complete settlement and compromise of the Action and of all disputed claims arising out of or related to the Dispute between the Parties. Payment will be made through a check made payable to "Sialic Contractors Corporation dba Shawnan".

3. **Dismissal of the Action.** Shawnan shall cause the Action to be dismissed in its entirety against City, with prejudice, within seven (7) calendar days after receipt of the Settlement Sum. Pursuant to this Agreement, Shawnan agrees to prepare and sign a Request for Dismissal with prejudice to be attached hereto as Exhibit "A", concurrently with the signing of this Agreement. Shawnan agrees to take all necessary and further steps to ensure that the Action is dismissed in its entirety, with prejudice, after the payment of the above Settlement Sum to Shawnan.

4. **Mutual Release.** For valuable consideration, the receipt and adequacy of which are hereby acknowledged, the City and Shawnan do hereby release and forever discharge each other and their "Releasees" hereunder, consisting of their respective officials, board members, employees and agents, and including, but not limited to, each of their associates, predecessors, successors, heirs, assignees, agents, directors, officers, employees, representatives, elected or appointed public officials, attorneys, and all persons acting by, through, under or in concert with them, or any of them, of and from any and all manner of action or actions, cause or causes of action, in law or in equity, suits, debts, liens, contracts, agreements, promises, liability, claims, demands, damages, loss, costs or expenses, of any nature whatsoever, known or unknown, fixed or contingent (hereinafter called "Claims"), which the Parties now have or may hereafter have against each other and/or Releasees, or any of them, constituting, arising out of, based upon, or

relating to the Action or the Dispute, as well as any matters, causes, or things whatsoever that were, have been, or could have been, alleged in the respective pleadings filed in the Action, except for any breach of this Agreement.

5. **Release of Unknown Claims.** The Parties intend and agree that the Release set forth above in Paragraph 4 of this Agreement is to be interpreted as broadly as possible, and is a release of ALL Claims and is intended to encompass all known and unknown, foreseen and unforeseen claims which the Parties may have as a result of the Dispute and the Action, except for any claims which may arise from the terms of this Agreement.

6. **Waiver of Civil Code Section 1542.** Further, the Parties expressly agree to waive and relinquish all rights and benefits they may respectively have against each other and the Releasees under Paragraph 4 of this Agreement based on Section 1542 of the Civil Code of the State of California. That section reads as follows:

§1542. [General release; extent] A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

After reading and understanding Civil Code section 1542, the City and Shawnan voluntarily waive Section 1542's application to this Agreement. The City and Shawnan understand and acknowledge that the significance and consequence of this waiver is that even if the City or Shawnan should eventually suffer additional damages arising out of the Dispute, the City and Shawnan will not be permitted to make any claim against the other party for those damages that relate to the Dispute. Furthermore, the City and Shawnan acknowledge that the City and Shawnan intend these consequences even as to claims for damages that may exist, and which, if known, would materially affect the City or Shawnan's decision to execute this Agreement, regardless of whether the City or Shawnan's lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause.

7. **Discovery of Different or Additional Facts.** The Parties acknowledge that they may hereafter discover facts different from or in addition to those that they now know or believe to be true with respect to the Claims that are the subject of this Agreement, and expressly agree to assume the risk of the possible discovery of additional or different facts, injuries, damages and/or claims. The Parties agree that this Agreement shall remain effective in all respects regardless of such additional or different facts, injuries, damages and/or claims.

8. **No Other Pending Actions.** Shawnan represents that it has not filed any complaints or charges (other than the Action referenced above) against the Releasees with any local, state or federal agency or court; and that if any such agency or court assumes jurisdiction of any complaint or charge against the City, and/or their respective predecessors, successors, heirs, or shareholders, officers, directors, agents, attorneys, City's elected and appointed public officials, subsidiaries, or corporations or organizations, whether previously or hereafter affiliated in any manner, on behalf of Shawnan, whenever filed, Shawnan will request such agency or court to withdraw and dismiss the matter forthwith.

9. **Non-Admission of Liability.** The Parties acknowledge and agree that this Agreement is a settlement of disputed claims. Neither the fact that the Parties have settled nor the terms of this Agreement shall be construed in any manner as an admission of any liability by any Party hereto, or any of its employees, or an affiliated person(s) or entity/ies, including the City's attorneys, all of whom have consistently taken the position that they have no liability whatsoever to the other Parties.

10. **No Assignment of Claims.** The Parties each warrant that they have made no assignment, and will make no assignment, of any claim, chose in action, right of action or any right of any kind whatsoever, embodied in any of the claims and allegations referred to herein, and that no other person or entity of any kind had or has any interest in any of the demands, obligations, actions, causes of action, debts, liabilities, rights, contracts, damages, attorneys' fees, costs, expenses, losses or claims referred to herein.

11. **Successors and Assigns.** This Agreement, and all the terms and provisions hereof, shall be binding upon and shall inure to the benefit of the Parties and their respective heirs, legal representatives, successors, officers, owners, members and assigns.

12. **Knowing and Voluntary.** This Agreement is an important legal document and in all respects has been voluntarily and knowingly executed by the Parties hereto. The Parties specifically represent that prior to signing this Agreement they have been provided a reasonable period of time within which to consider whether to accept this Agreement. The Parties further represent that they have each carefully read and fully understand all of the provisions of this Agreement, and that they are voluntarily, knowingly, and without coercion entering into this Agreement based upon their own judgment.

13. **Assistance of Counsel.** The Parties each specifically represent that they have consulted to their satisfaction with and received independent advice from their respective legal counsel prior to executing this Agreement concerning the terms and conditions of this Agreement.

14. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be considered an original but all of which shall constitute one agreement.

15. **Singular and Plural.** Whenever required by the context, as used in this Agreement the singular shall include the plural, and the masculine gender shall include the feminine and the neuter, and the feminine gender shall include the masculine and the neuter.

16. **Attorneys' Fees and Costs.** Each Party shall bear its own attorneys' fees and costs in connection with the Dispute, the Action, and the negotiation and drafting of this Agreement. Should any legal action be undertaken to enforce the terms of this Agreement, the prevailing Party in such action shall be entitled to reasonable attorneys' fees and costs pertaining to such action, in addition to any other relief to which that Party may be entitled.

17. **Severability.** Should any portion, word, clause, phrase, sentence or paragraph of this Agreement be declared void or unenforceable, such portion shall be considered independent and severable from the remainder, the validity of which shall remain unaffected.

18. **Headings.** Headings at the beginning of each numbered section of this Agreement are solely for the convenience of the Parties and are not a substantive part of this Agreement.

19. **Ambiguity.** The Parties acknowledge that this Agreement was jointly prepared by them, by and through their respective legal counsel, and any uncertainty or ambiguity existing herein shall not be interpreted against any of the Parties, but otherwise shall be interpreted according to the application of the rules on interpretation of contracts.

20. **Waiver.** Failure to insist on compliance with any term, covenant or condition contained in this Agreement shall not be deemed a waiver of that term, covenant or condition, nor shall any waiver or relinquishment of any right or power contained in this Agreement at any one time or more times be deemed a waiver or relinquishment of any right or power at any other time or times.

21. **Governing Law.** This Agreement is made and entered into in the State of California, and shall in all respects be interpreted, enforced and governed under the laws of said State without giving effect to conflicts of laws principles.

22. **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties who have executed it and supersedes any and all other agreements, understandings, negotiations, or discussions, either oral or in writing, express or implied between the Parties to this Agreement for the subject matter herein. The Parties to this Agreement each acknowledge that no representations, inducements, promises, agreements, or warranties, oral or otherwise, have been made by them, or anyone acting on their behalf, which are not embodied in this Agreement, that they have not executed this Agreement in reliance on any such representation, inducement, promise, agreement or warranty, and that no representation, inducement, promise, agreement or warranty not contained in this Agreement, including, but not limited to, any purported supplements, modifications, waivers, or terminations of this Agreement shall be valid or binding, unless executed in writing by all of the Parties to this Agreement.

23. **Modifications.** Any alteration, change, or modification of or to this Agreement shall be made by written instrument executed by each Party hereto in order to become effective.

24. **No Third Party Beneficiaries.** No person or entity shall be deemed to be a third party beneficiary hereof, and nothing in this Agreement (either express or implied) is intended to confer upon any person or entity that is not a party to this Agreement any rights, remedies, obligations or liabilities under or by reason of this Agreement.

25. **Authority to Sign.** The persons executing this Agreement on behalf of each Party hereto represent and warrant, with the intention that the other Party rely upon such representation and warranty, that (i) such Party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said Party and to bind that Party, including its members, agents and assigns, (iii) by so executing this Agreement, such Party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other agreement to which said Party is bound.

IN WITNESS WHEREOF, the undersigned have read, understand and agree to all of the above terms and conditions of this Agreement, consisting of a total of 7 pages, by executing it on the dates set forth below.

“PLAINTIFF”

SIALIC CONTRACTORS CORPORATION dba
SHAWNAN, a California Corporation

Dated: _____, 2016

By: _____
Authorized Representative for Sialic
Contractors Corporation dba Shawnan

“DEFENDANT”

CITY OF CARSON, a municipality

Dated: _____, 2016

By: _____
Kenneth C. Farfsing, City Manager
City of Carson Representative

APPROVED AS TO FORM:

Dated: _____, 2016

KRING & CHUNG, LLP

By: _____
Kyle D. Kring, Esq.
Attorney for Plaintiff
Sialic Contractors Corporation dba Shawnan

Dated: _____, 2016

ALESHIRE & WYNDER, LLP

By: _____
Sunny K. Soltani, Esq.
Attorney for Defendant
City of Carson