

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Mutual General Release (“Agreement”) is dated December 1, 2022 for reference purposes only and is entered into between the Perris Union High School District (“District”) and Rancho Pacific Electric, Inc. (“RPE”). The District and RPE are referred to herein collectively as the “Parties” or individually as a “Party.”

RECITALS

Following a competitive bid process, on or about March 8, 2019, the District and RPE entered into a Construction Services Agreement (“Contract”) in the amount of \$20,730,000 wherein RPE would perform the electrical scope of work, Bid Package Category No. 19, on the District’s Liberty High School Project (“Project”), a multi-prime project.

On or about March 18, 2019, the District issued a Notice to Proceed to RPE with a Project commencement date of March 18, 2019, a total Project duration of 886 consecutive calendar days.

Due to delays caused by the District’s steel contractor, KCB Towers, Inc., the COVID-19 pandemic, and weather, the District Project team extended the Project’s Contract duration. As a result of these delays and the ensuing extension to the Contract duration, RPE alleges incurred additional costs under the Contract.

RPE has submitted claims to the District seeking delay damages, including claims for unabsorbed home office overhead, extended direct field costs, material cost escalation, extended material storage costs, labor production inefficiency, and expert fees. In its most recent updated claim against the District, submitted on or about December 8, 2021, RPE sought monetary damages in the total amount of \$1,839,835.92 (“Claim”). The Claim and any and all liabilities, claims, demands, damages, and costs related to the Contract, the Project and/or this Agreement shall be collectively referred to herein as the “Dispute.”

The retention earned by RPE on the Project has been deposited into an escrow retention account. Upon final completion of RPE’s scope of work on the Project, and in accordance with applicable statutes related to the release of retention, the District will proceed to release any hold it has on the funds deposited into the escrow retention account. Nothing herein is intended to waive or relinquish RPE’s right to obtain all monies currently on deposit in the escrow retention account for this Project.

Except as otherwise expressly set forth herein, it is the desire and intent of the Parties to fully and finally settle all differences, disputes, claims and disagreements between them pertaining to the Dispute.

NOW THEREFORE, in consideration of the foregoing recitals, the mutual promises and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

TERMS AND CONDITIONS

Incorporation of Recitals. The recitals set forth above are not only recitals, but form an integral part of the Agreement, are true and correct and are incorporated hereby.

Payment to RPE. For and in consideration of the promises, agreements, and other considerations set forth herein, within 30 days following full execution of this Agreement by the Parties and approval of this Agreement by the District's Board of Trustees, the District shall pay to RPE the sum of Six Hundred Seventy Five Thousand Dollars and No Cents (\$675,000.00) ("Settlement Amount") in full and final payment to settle the Dispute.

Mutual Releases.

3.1 Releases. Except for the obligations arising under this Agreement, and subject to the express exclusions set forth in paragraph 3.2 of this Agreement, the Parties, and each of them, for themselves, and as applicable, their respective assigns, predecessors, successors, officers, directors, shareholders, employees, trustees, partners, governing bodies, Board members, principals, agents, subcontractors, parents, subsidiaries and representatives, hereby release, acquit and forever discharge each other, and as applicable, each other's respective agents, officers, directors, shareholders, employees, successors, assigns, partners, governing bodies, Board members, trustees, administrators, attorneys, insurers, sureties, representatives, and all other persons or entities acting by, through, under, or in concert with them, from every and all things, by reason of any matters or causes of things whatsoever, whether known or unknown, suspected or unsuspected, heretofore or now existing, or which might or may be claimed to exist in the past, present or future, including but not limited to all past, present or future actions, causes of action, liabilities, claims, disputes, debts, controversies, indebtedness, breaches of contract, breaches of duty, acts, promises, agreements, representations, damages, costs, expenses, attorneys' fees, penalties, interest and losses, and any demands of any type, nature, kind or description, whether tortious, contractual, statutory or otherwise and whether in law or in equity or otherwise, with respect to or arising out of the Contract, the Project and this Dispute. Said releases shall be effective upon execution of this Agreement.

3.2 Limitations on Releases. The provisions of paragraph 3.1 notwithstanding, RPE is not released from: (1) any and all liabilities, claims, demands, damages and costs for latent defects or deficiencies concerning the Project or the Contract; (2) any and all warranty obligations set forth in the Contract; and (3) the indemnity obligations of RPE under the Contract, including but not limited to the indemnity obligations provided by the General Provisions of the Contract. Similarly, the provisions of paragraph 3.1 notwithstanding, (a) RPE is not waiving or relinquishing any right it has to recover all funds on deposit in the escrow retention account for this Project, and (b) in the event RPE is hereafter named as a defendant in any arbitration or litigation filed by any third party concerning the Project, nothing in this Agreement shall prevent RPE from asserting as a set-off against the claims of such third party any and all damages RPE claims remain uncompensated under the settlement evidenced by this Agreement. As referenced in this Section 3.2, such claims shall only be allowable by RPE as against said third parties and not against the District.

Cooperation in Proceedings. RPE agrees to fully cooperate with and assist the District, its attorneys and consultants, as necessary and requested, in connection with any claim or proceeding, litigation, judicial, or arbitration, relating to the Project, including but not limited, any claims initiated by KCB Towers against the District or brought against KCB Towers by the District.

Waiver of Civil Code Section 1542. The Parties, and each of them, hereby acknowledge and represent that they are or have been informed of the content and meaning of 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, and each of them, in entering into this Agreement and in giving the releases contained and provided for herein, hereby waive any and all rights or benefits conferred under California Civil Code section 1542 with regard to the Dispute.

Discovery of Different or Additional Facts. The Parties, and each of them, acknowledge that they may hereinafter discover facts different from or in addition to those which they now know or believe to be true with respect to the matters which are the subject of this Agreement, and agree that this Agreement shall remain in effect in all respects, notwithstanding the discovery of such different or additional facts. It is the intent of the Parties to fully and finally forever release the claims related to the Dispute and, in furtherance of this intention, this Agreement shall be and remain in effect as a full and complete release of such claims related to the Dispute, notwithstanding the discovery or existence of different or additional facts relevant to those claims.

Warranties and Representations. The Parties, and each of them, hereby warrant and represent that as of the date of this Agreement, they have not heretofore assigned, pledged, hypothecated or otherwise transferred or purported to assign, pledge, hypothecate or otherwise transfer to any person or entity, not a Party to this Agreement, any claim or other matter herein released or discharged with regard to the Dispute. In the event of any such actual or purported assignment, pledge, hypothecation, or other transfer of any claim or other matter released or discharged herein, the Parties, and each of them, hereby agree to indemnify and hold harmless the other, its respective agents, officers, directors, shareholders, employees, successors, assigns, partners, governing bodies, trustees, administrators, attorneys, insurers, sureties and representatives, and each of them, from and against any and all liability, damage, loss, judgment or settlement (including, but not limited to any and all costs, expenses and attorneys' fees) arising out of or occasioned by or arising in connection with any such actual or purported assignment, pledge, hypothecation or other transfer.

Parties Bear Own Costs. Each Party shall be solely and exclusively responsible for the payment and discharge of any fees, including attorneys' fees and costs incurred or arising out of the Dispute or this Agreement.

No Admission of Liability. The Parties agree and acknowledge that this Agreement reflects a compromise and settlement of claims, disputes, and differences between them which are denied and contested with specific regard to the Dispute. The Parties agree that neither this Agreement nor the giving of consideration as provided herein shall be construed as an admission by either Party hereto of any liability of any kind to the other, and instead reflects a desire of the Parties to buy their peace.

Further Acts. Each of the Parties agrees to do such further acts and to execute and deliver such other and further documents or instruments as may be reasonably required in order to give full effect to the provisions of this Agreement.

District Board of Trustees Approval. This Agreement is only effective and enforceable upon the approval by the District's Board of Trustees.

Independent Judgment/Advice of Counsel. Each Party has had an opportunity to procure the advice of independent counsel of its own choosing, and each has read this Agreement in its entirety and is fully aware of its contents. Each of the Parties executes this Agreement acting upon its independent judgment and upon the advice of their respective counsel, without any representation, express or implied, of any nature, from each to the other, except as only specifically set forth herein.

Interpretation; Governing Law. This Agreement shall, in all respects, be interpreted, enforced, and governed by and under the laws of the State of California. This Agreement shall be construed as a whole in accordance with its fair meaning and not strictly for or against any Party hereto.

No Presumptions Arising from Drafting of Agreement. The Parties shall each be deemed to have drafted this Agreement, such that no ambiguity in the Agreement, if any, shall be construed against any Party. The language of this Agreement is a result of the negotiation between and among the Parties to the extent that no presumptions arise by virtue of the drafting of this Agreement.

Successors and Assigns. This Agreement is binding upon and shall inure to the benefit of the Parties, their respective agents, employees, representatives, shareholders, officers, directors, partners, divisions, corporations, subsidiaries, parents, affiliates, assigns, heirs, predecessors and successors, past, present and future, and all of their insurers, guarantors, sureties and reinsurers.

Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but such counterparts shall be deemed to constitute one and the same instrument. The Parties agree that telefaxed and .pdf signatures shall constitute original signatures.

Entire Agreement. This Agreement contains and embodies the entire agreement of the Parties with regard to the obligations under this Agreement and the matters released herein, and no representations, inducements or other agreements, oral or otherwise, not embodied herein, exist nor shall they be of any force or effect. This Agreement supersedes all prior agreements between the Parties and controls all rights and obligations between the Parties. This Agreement can only be modified or amended by a subsequent written agreement signed by the Parties hereto.

Authority to Execute. Each person executing this Agreement represents and warrants that he or she has full and complete authority to bind and commit each such signatory to this Agreement and to the provisions hereof and has obtained all consents and approvals necessary to execute and deliver this Agreement.

No Third Party Beneficiaries. This Agreement is by and between the Parties, and no third parties are intended to be expressly or by implication benefitted thereby.

Headings. Headings contained in this Agreement are for reference purposes only, and are in no way intended to describe, interpret, define or limit the scope, extent or intent of this Agreement or any provision hereof.

Variation of Pronouns. All pronouns and any variations thereof shall be deemed to refer to masculine, feminine, neuter, singular or plural, as the identity of the person or persons may require.

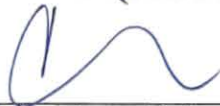
Severability. If any provision of this Agreement shall be determined to be invalid, void or illegal, such provision shall be construed and amended in a manner that would permit its enforcement, but in no event shall such provision affect, impair or invalidate any other provision hereof.

[SIGNATURES FOLLOW ON THE NEXT PAGE]

IN WITNESS WHEREOF, each of the Parties hereto has executed this Agreement as of the date set forth next to their signatures.


PERRIS UNION HIGH SCHOOL DISTRICT

DATED: November 30, 2022


By: 
Name: Candace Reines
Its: Deputy Superintendent

RANCHO PACIFIC ELECTRIC, INC.,

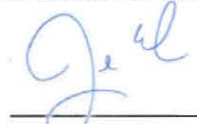
DATED: November 30, 2022

By: 
Name: Stephen Robinson, President
Its: _____

APPROVED AS TO FORM:
Pitre & Teunisse, Inc.

By: 
Name: Randall J. Pitre, Esq.
Counsel for Rancho Pacific Electric, Inc.
Date: November 30, 2022

APPROVED AS TO FORM:
Fagen Friedman & Fulfroft, LLP

By: 
Name: Jessica Ehrlich, Esq.
Counsel for Perris Union High School District
Date: December 2, 2022

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