

**SETTLEMENT AGREEMENT AND
ISSUE RELEASE**

I. PARTIES

This Settlement Agreement and Issue Release (“Agreement”) is made and entered into between the following parties:

A. THE CITY OF WILSONVILLE, its councilors, directors, assigns, agents, employees, predecessors, and successors (the “City”); and

B. OTAK, INC., its directors, assigns, agents, officers, members, employees, predecessors, successors, attorneys, and insurers (“Otak”).

C. The Parties identified in A and B above shall be collectively referred to as the “Settling Parties.”

II. FACTUAL RECITALS

A. The City is the owner of the land and improvements now commonly known as the 5th Street/Kinsman Road Extension Project (the “Project”). Beginning in 2017 and continuing thereafter, Otak provided design services and construction contract administration (Construction Administration Contract) for the Project.

B. As of the date of this Agreement, the Project is ongoing.

C. During the course of the Project, through the RFI process, the Parties discovered that the amount of steel reinforcement called for in the Project Bid Schedule prepared by Otak did not reflect the amount of steel reinforcement that Otak included in the construction design documents for the 5th Street and Kinsman Road Bridges.

D. The City claimed that Otak failed to meet the required standard of care in the preparation of the Project Bid Schedule, which required the City to incur additional steel costs for the required amount of structural steel reinforcement material.

E. Foregoing paragraphs C and D, collectively, shall be referred to as the “Steel Reinforcement Discrepancy,” which is the subject of this Agreement.

F. As provided below, the Settling Parties hereby desire to settle all claims relating to the Steel Reinforcement Discrepancy.

III. COMPROMISE SETTLEMENT & ISSUE RELEASE

A. In consideration of and specifically upon execution of this Agreement and satisfaction of the payment obligations stated in Section V below, the Settling Parties intend this Agreement to be a full, final, and complete settlement, adjustment, and compromise of

any and all claims related to the additional expense the City incurred due to the Steel Reinforcement Discrepancy.

B. This Agreement and subsection are not intended to, and do not release any claims whatsoever, other than the Steel Reinforcement Discrepancy.

IV. NO THIRD-PARTY BENEFICIARIES

This Agreement and the releases contained herein apply only to the Settling Parties and are not intended to release or otherwise impair or hinder any claims the City may have against other non-settling parties, including any additional subcontractors involved in the original design, development, and construction of the Project. This Agreement and the releases contained herein are also not intended to release or otherwise impair or hinder the claims reserved in Section III(B) above. There are no intended or incidental third-party beneficiaries to this Agreement.

V. PAYMENT

A. The Settling Parties and their respective insurers shall tender settlement funds by check(s) made payable to the City in the amount of fifty thousand dollars (**\$50,000**).

B. The City is authorized to negotiate the settlement payment referenced in Section V(A) above immediately after it has signed this Agreement and distributed copies of the signature pages to counsel (or another agreed contact person). It is expressly understood and agreed that this Agreement and the consideration therefor represent a final and complete compromise of the Steel Reinforcement Discrepancy as to the parties to this Agreement.

VI. ADDITIONAL TERMS

The Settling Parties agree to the following additional terms:

A. No Admission of Liability. Otak denies liability for any claims asserted by the City related to the Steel Reinforcement Discrepancy, and further states that it is making the payment described in Section V above solely in compromise and settlement of disputed claims related to the Steel Reinforcement Discrepancy, and such payment is not to be regarded as an admission of liability or fault. Except as otherwise stated above, the Settling Parties intend by their actions pursuant to this Agreement to, among others, avoid the expense, delay, and burden of further litigation related to the Steel Reinforcement Discrepancy.

B. Exclusion from Evidence. The Settling Parties agree that no aspect of the Steel Reinforcement Discrepancy shall be entered into evidence at any subsequent dispute resolution proceeding, whether mediation or otherwise.

C. Consolidated Dispute Resolution Process for Further Disputes. The Settling Parties agree that any additional or further claims by either Party against the other Party, in any way related to the Project, shall be addressed pursuant to a Consolidated Dispute Resolution Process, to commence after completion of the Project. As used herein,

“completion of the Project” shall mean the date upon which the City signs off on the Project as substantially complete or the Construction Administration Contract for the Project between the Settling Parties is terminated prior to completion of the Project due to an uncured default by either Settling Party. This shall take the form, initially, of a mediation, only after which may the Parties proceed with the dispute resolution provisions of their contracts, or otherwise. The Parties agree to reasonably cooperate in deferring such claims to the Consolidated Dispute Resolution Process. Notwithstanding the provisions of this Section, the Parties are not hereby obligated to waive any disputes they may have against each other where, under Oregon law, the timing of such dispute may not be adjusted by agreement between the Parties.

D. Authority of Signatories. The signatories to this Agreement each represent and warrant that they have full power and authority to enter into and execute this Agreement. Furthermore, the individuals executing this Agreement on behalf of a corporation or other business entity each represent and warrant that (i) the individual has full authority to execute this Agreement on behalf of the corporation or business entity for which they so signed; and (ii) the individual is acting within the course and scope of such authority in executing this Agreement.

E. Severability. Nothing contained herein shall be construed so as to require the commission of any act contrary to law, and wherever there is any conflict between any provisions contained herein and any present or future statute, law, ordinance, or regulation contrary to which the parties have no legal right to contract, the latter shall prevail; but the provision of this Agreement which is affected shall be curtailed and limited only to the extent necessary to bring it within the requirements of the law. To the extent the offending provision cannot be curtailed or limited, it shall be fully severable, and the remainder of this Agreement shall remain in full force.

F. Representation by Counsel. Each party to this Agreement is represented by counsel and has consulted with its counsel regarding the terms and legal meaning of this Agreement.

G. Waiver of Construction against Drafter. This Agreement was negotiated and approved by the Settling Parties. Any rule that would otherwise require an ambiguity in this Agreement to be construed against the drafting party is hereby expressly waived.

H. No Transfer of Claims. The Settling Parties represent and warrant that each has not previously assigned any substantive right (e.g., rights or claims) at issue under this Agreement.

I. Entire Agreement. This Agreement constitutes the entire agreement among the Settling Parties and all terms cited or referenced in this document are contractually binding, not mere recitals. This Agreement supersedes any prior oral or written agreements or communications on the subject matter addressed herein.

J. Counterparts. This Agreement may be executed in counterparts, with each counterpart constituting an original. The Settling Parties agree that photocopied, scanned,

or facsimile signatures on this Agreement or any exhibits or modifications thereto are as effective as original signatures.

K. Dispute Resolution. In the event a dispute arises between the Settling Parties in connection with the language of this Agreement or enforcement of any of its terms, the dispute shall be submitted to Dan Harris, who shall act as sole arbitrator. Any decision rendered by Mr. Harris shall be final and binding. In the event Mr. Harris is not available to arbitrate a dispute, then the Settling Parties may stipulate to a different arbitrator. If the Parties are unable to agree, the Parties agree to appointment of such arbitrator as may be determined by the Presiding Judge of Clackamas County.

L. Further Assurances. The Settling Parties agree to take such action and execute such further documents, including modifications to this Agreement, as may be reasonably necessary to effectuate the intent of this Agreement.

M. Authority to Settle. Each individual approving the form and content of this Agreement on behalf of a Settling Party represents and warrants that they have authority to bind their respective party to the terms and conditions in this Agreement, and agrees to be bound by the terms and conditions set forth herein.

N. Governing Law. This Agreement, and any disputes arising out of the language contained herein, shall be governed by the law of the State of Oregon.

O. Binding Effect. This Agreement shall bind and inure to the benefit of the Settling Parties and their former, current, and future respective members, shareholders, managers, predecessors, successors, heirs, survivors, legatees, executors, administrators, representatives, agents, insurers, attorneys, accountants, receivers, trustees, subrogees, transferees, and assigns.

CITY OF WILSONVILLE

OTAK, INC.

By: _____

By: 
James Hamann (Apr 11, 2022 15:00 PDT)

Bryan Cosgrove

Print Name: James Hamann

As Its: City Manager

As Its: CEO


DATED: _____

DATED: Apr 11, 2022

APPROVED AS TO FORM:

APPROVED AS TO FORM:

Barbara A. Jacobson, City Attorney
Wilsonville, Oregon



Julie Haddon, Attorney for Otak, Inc.