

SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement (“Settlement Agreement”) is made and entered into by and among the City of Morro Bay, a municipal corporation (“City”) and Anvil Builders, Inc., a California corporation (“Anvil”) and is effective as of March 26, 2024 (“Effective Date”). In this Settlement Agreement, City and Anvil are sometimes referred to collectively as the “Parties” and individually as a “Party.”

RECITALS

WHEREAS, City and Anvil entered into an agreement as of November 10, 2020, for construction services for Anvil to complete the work for the Water Reclamation Facility Lift Station and Offsite Pipelines Project, (the “Project”) which was approved by the City Council for a not to exceed amount of \$31,493,675 (the “Agreement”).

WHEREAS, the Parties amended the Agreement, eight previous times, being on October 12, 2021, January 11, 2022, March 22, 2022, June 14, 2022, August 23, 2022, November 22, 2022, February 28, 2023, and May 23, 2023, for a total not to exceed amount of \$36,384,606;

WHEREAS, the Agreement and all of the above-referenced amendments are hereinafter referred to collectively as the “Amended Agreement;”

WHEREAS, the Parties, in good faith, had disputes comprised of: 1) the amount for full and final payment of all remaining potential change orders (“PCOs”) through Project completion totaling up to approximately \$2,580,000; and 2) the monetary amount of retention to be held by City for a Project brine line effluent pipeline conveyance capacity defect under review currently for cause, and Anvil’s acceptance of responsibility to remedy to satisfaction of City if determined by City, in good faith, to be a construction defect in whole or in part; and, 3) placement of fifteen items on a punch list for the Project, all three disputed items as referenced in Amendment No. 9 to the Amended Agreement dated March 26, 2024 (“Amendment No. 9”), which are required to be resolved for the Project to be deemed to achieve final completion (collectively, the “Disputes);

WHEREAS, the Parties have engaged in good faith discussions to resolve the Disputes EXCEPT FOR the monetary amount of retention to be held by City for a Project brine line effluent pipeline conveyance capacity defect under review currently for cause, and Anvil’s acceptance of responsibility to remedy to satisfaction of City if determined by City, in good faith, to be a construction defect in whole or in part in an effort to avoid litigation regarding those matters (“Litigation”);

WHEREAS, the Parties desire to avoid the expense, inconvenience, and uncertainties of engaging in litigation and, therefore, in conjunction with and pursuant to Amendment No. 9, have agreed to forever settle, resolve and compromise their differences, existing and potentially existing between them, concerning the Disputes, without the admission of liability of or by any of them, and are entering into this Settlement Agreement to formally memorialize the terms of the settlement as set forth below; and

WHEREAS, the Parties declare each has read this Settlement Agreement and understands and knows the contents thereof and represents and warrants that each of the Parties executing this Settlement Agreement is empowered to do so and hereby binds the respective Party.

TERMS AND CONDITIONS

Now, in consideration of the foregoing recitals, which are incorporated herein, the mutual understandings contained in this Settlement Agreement, Amendment No. 9 and other good, valuable, and sufficient consideration, the Parties agree as follows:

1. SETTLEMENT TERMS

1.1 Settlement Agreement Signatures

All Parties shall execute this Settlement Agreement concurrently with Amendment No. 9.

1.2 Condition Precedent

Execution of Amendment No. 9 is a condition precedent to this Settlement Agreement. Once executed, the Parties agree this Settlement Agreement shall be an attachment to Amendment No. 9 and be effective as of the date Amendment No. 9 is effective. Completion of, and payment for, items set forth in Amendment No. 9 are material terms of this Settlement Agreement.

2. COOPERATION DURING AUDIT

The Parties recognize the Project was funded by outside funding sources and is therefore subject to Project closeout audits. Should the City receive an audit request, Anvil will provide reasonable assistance in responding to any auditor inquiries at no additional cost to the City.

3. FULL SETTLEMENT

The Parties acknowledge this Settlement Agreement and completion of, and payment for, Amendment No. 9 shall constitute full and final settlement of all claims Anvil has against the City, including, but not limited to, those related to compensation for any and all contract amounts, change order requests (including but not limited to the PCOs), contract balances, claims, backcharges, liquidated damages, retention amounts and credits related to the Disputes and the Project except for those matters expressly set forth in Section 2 of Amendment No. 9 and the monetary amount of retention to be held by City for a Project brine line effluent pipeline conveyance capacity defect under review currently for cause.

4. RELEASE

4.1 Release of Claims by City

Except as set forth in this Settlement Agreement and as reserved in Sections 5.2 & 5.3 below, City releases and discharges all claims of every kind whatsoever including, without limitation, liquidated damages, whether known or unknown, which City or any of its officials, officers, agents, representatives, employees (past or present), successors and/or assigns, asserts or could assert against Anvil, or any of its officials, officers, agents, shareholders, representatives,

sureties, insurers, employees, predecessors, successors and/or assigns, concerning the Disputes (the “City Releases”).

4.2 Release of Claims by Anvil

Except as set forth by this Settlement Agreement and as reserved in Sections 5.2 & 5.3, below, Anvil releases and discharges all claims of every kind whatsoever whether known or unknown, which Anvil or any of its officials, officers, agents, shareholders, representatives, employees, insurers, sureties, predecessors, successors and/or assigns, asserts or could assert against City or any of its officials, employees (past and present), consultants, agents, representatives, insurers, predecessors, successors and/or assigns, concerning the Disputes and the subject matter of Section 3 (the “Anvil Releases”).

5. RELEASED MATTERS

The City Releases and the Anvil Releases are collectively referred to herein as the “Released Matters.”

5.1 Civil Code Section 1542 Waiver.

A. With respect to the releases described in the Released Matters, the Parties expressly waive all rights under California Civil Code section 1542, which provides that a general release does not extend to unknown or unsuspected claims which, if known, would have materially affected the settlement. California Civil Code section 1542 provides:

“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.”

ANVIL

CITY

B. The Parties acknowledge that they may hereafter discover facts different from, or in addition to, those which they now believe to be true with respect to the Released Matters. The Parties agree that the foregoing releases shall be and remain effective in all respects notwithstanding such different or additional facts or any discovery thereof.

C. The Parties further acknowledge and agree that waivers of rights under Section 1542 of the California Civil Code have been separately bargained for and are essential and material terms of this Settlement Agreement, and, without such waivers, this Settlement Agreement would not have been entered into.

5.2. Exclusions.

A. The Parties agree that specifically excluded from the Released Matters and Civil Code 1542 Waiver are any demands, claims and causes of action for damages, costs, expenses,

attorneys' fees, expert fees, consultant fees, other fees, interest and compensation of any nature arising from or relating to any of the Parties' rights and remedies with respect to Anvil's performance of, or failure to perform Amendment No. 9 until a Notice of Completion is issued by the City, extant warranties, and patent or latent construction defects in the Project as defined by California Code of Civil Procedure sections 337.1 and 337.15.

B. The Parties agree that specifically excluded from the Released Matters and Civil Code 1542 Waiver are any and all claims based either on third party actions for personal injury or property damage arising out of construction of the Project, or on environmental liabilities such as, but not limited to, site contamination, toxics or hazardous materials, effluent and water quality, or air quality. The Parties acknowledge and agree they are presently unaware of any such pending claims.

C. The Parties agree that specifically excluded from the released Matters and Civil Code 1542 waiver are any and all claims based on the brine line effluent pipeline conveyance capacity issues including, without limitation, retention.

D. The Parties specifically acknowledge and agree that this Settlement Agreement and any Released Matters set forth herein shall not be construed as a release of Anvil's indemnity obligations under any indemnity agreement(s) under any bonds related to the Project, or as a release of any other liability related to or arising from Project bonds.

5.3 Other Matters Not Included in the Released Matters

The Parties specifically acknowledge and agree the Released Matters do not include any liability or obligation created by this Settlement Agreement.

6. GENERAL PROVISIONS.

6.1 Representation and Warranty. The Parties and signatories hereby each represent, covenant and warrant that they are authorized (individually or by their respective principals) to enter into and execute this Settlement Agreement and that they have not previously assigned any claims released or assigned in this Settlement Agreement, in whole or in part, or taken any other steps which would adversely affect the rights which are the subject of this Settlement Agreement. In the event that any of the above representations and/or warranties are breached or any of the representations and/or warranties contained in this subparagraph prove false, the breaching/misrepresenting Party hereby agrees to defend, indemnify and hold the other Parties harmless from all damages, loss, liability, costs and attorneys' fees resulting from said breach/misrepresentation.

6.2 No Reliance. Each Party acknowledges: (i) this Settlement Agreement and Amendment No. 9 are the resolution of a fully matured set of facts and each Party individually declares and represents it is executing this Settlement Agreement in reliance solely on its own judgment, belief, and knowledge of the facts surrounding the transactions described in this Settlement Agreement and Amendment No. 9; (ii) this Settlement Agreement and Amendment No. 9 are made without reliance upon any statement or representation not contained in this Settlement Agreement or Amendment No. 9 of any other Party, or any representative, agent or attorney of any other party; (iii) no promise, inducement or agreement not expressed in this Settlement Agreement

or Amendment No. 9 has been made to any Party as concerns this Settlement Agreement or Amendment No. 9; and (iv) the recitals, terms and conditions contained in this Settlement Agreement and Amendment No. 9 are contractual and not mere recitals.

6.3 Discovery. Each Party acknowledges that it may subsequently discover facts different from, or in addition to, those which it now believes to be true with respect to the Released Matters, and agree this Settlement Agreement and Amendment No. 9 shall be and remain effective in all respects notwithstanding such different or additional facts.

6.4 Additional Documents. The Parties agree to perform such further acts and to execute and deliver such further documents as may be reasonably necessary or appropriate to carry out the intent or provisions of this Settlement Agreement and Amendment No. 9.

6.5 Entire Agreement. This Settlement Agreement and Amendment No. 9 embody the entire understanding and agreement among the Parties pertaining to the matters described herein and supersedes and cancels all prior oral or written agreements among the Parties. No modification of this Settlement Agreement shall be valid unless agreed to in writing by the Parties.

6.6 Voluntary. This Settlement Agreement is executed voluntarily and without duress or undue influence on the part of or on behalf of the Parties, or of any other person, firm, or other entity.

6.7 Consultation with Legal Counsel. The Parties acknowledge that they have had the right to seek counsel in the preparation of this Settlement Agreement and Amendment No. 9 and have had the opportunity to have it fully explained to them by such counsel, and that they are fully aware of the contents of this Settlement Agreement and Amendment No. 9 and of their legal effect. Except as provided for in this Settlement Agreement and Amendment No. 9, none of the Parties have been influenced to any extent whatsoever in executing this Settlement Agreement by any representations, statements, or omissions pertaining to any of the foregoing matters by any Party or said Party's counsel.

6.8 Interpretation. None of the Parties hereto, nor their respective counsel, shall be deemed the drafters of this Settlement Agreement for purposes of construing the provisions thereof. The language in all parts of this Settlement Agreement shall in all cases be construed according to its fair meaning, and shall not be construed for or against either Party by reason of the authorship of this Agreement, headings used, or any other rule of construction which might otherwise apply.

6.9 Waiver. No provision of this Settlement Agreement may be waived unless in writing and signed by all Parties hereto. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.

6.10 Assignment. Each Party represents and warrants that it has not assigned or otherwise transferred any interest in any claims which are the subject matter hereof. Each Party agrees to indemnify and hold any other Party, and each of them, harmless from any liability, loss, claims, demands, damages, costs, and expenses for attorneys' fees incurred by any of them as a result of any person asserting such assignment or transfer.

6.11 Governing Law. This Settlement Agreement is entered into in the County of San Luis Obispo, State of California, and shall be interpreted pursuant to California law. If legal action is necessary to enforce any of the terms of this Settlement Agreement, such action shall be brought in accordance with the laws of the State of California and of the United States in the San Luis Obispo Superior Court for state claims and the United States District Court for the Central District of California, Western Division for federal claims.

6.12 No Promise or Warranty. No promise or warranty shall be binding on the Parties except as expressly contained in this Settlement Agreement or Amendment No. 9 with the exception of manufacturers' warranties, which shall remain in full force and effect beyond satisfaction of this Settlement Agreement.

6.13 Attorneys' Fees. The Parties agree to bear their own attorneys' fees and costs incurred in resolving the Disputes. In the event of any suit or proceeding arising from the enforcement or breach of this Settlement Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs in addition to any other permitted relief.

6.14 Admissibility. This Settlement Agreement and its terms shall not be used or introduced as evidence for any purpose other than to enforce the terms of the Settlement Agreement.

6.15 Settlement Agreement Binding on Assignees, Successors. This Settlement Agreement shall bind and inure to the benefit of the successors and assigns of the Parties, and to all affiliates, dba's, or any other associated entities.

6.16 Severability. In the event that any portion of this Settlement Agreement is deemed illegal, invalid or unenforceable in any respect, then such invalidity, illegality or unenforceability will not affect any other provision of this Settlement Agreement, and this Settlement Agreement shall be construed as though such illegal, invalid or unenforceable provision had never been contained herein, unless a court determines the primary purpose of this Settlement Agreement would be frustrated.

6.17 Counterparts. This Settlement Agreement may be executed in multiple counterparts, all of which shall constitute a binding Settlement Agreement. Facsimile and/or PDF signatures, when received, shall have the same force and effect as original signatures.

6.18 Rights and Remedies are Cumulative. Except with respect to rights and remedies expressly declared to be exclusive in this Settlement Agreement, the rights and remedies of the Parties are cumulative and the exercise by either Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other Party.

WHEREFORE, the undersigned having read the foregoing Settlement and Release Agreement, and fully understanding it and agreeing to its terms, hereby execute this Settlement Agreement and make it effective of the date and year first-above written.\

CITY OF MORRO BAY

By: _____

Print Name: _____

Title: _____

Date: _____

ANVIL BUILDERS, INC. (need two signatures in compliance with Corporations Code § 313¹)

By: _____

Print Name: _____

Title: _____

Date: _____

By: _____

Print Name: _____

Title: _____

Date: _____

¹ Corporations Code, section 313 requires two signatures. One must be by corporate chairperson of the board, the president or any vice president. The other must be by the corporate secretary, any assistant secretary, the chief financial officer or any assistant treasurer of such corporation.