

1 DIVISION OF LABOR STANDARDS ENFORCEMENT
2 Department of Industrial Relations
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8 Attorney for the DIVISION OF
9 LABOR STANDARDS ENFORCEMENT

10 **BEFORE THE DIVISION OF LABOR STANDARDS ENFORCEMENT**
11 **DEPARTMENT OF INDUSTRIAL RELATIONS**
12 **STATE OF CALIFORNIA**

13 In The Matter of the Debarment Proceeding
14 Against:

15 DAVE COOK CONCRETE CONSTRUCTION,
16 INC., and DAVID WILLIAM COOK,

17 Respondents.

CASE NO. LB6207

**ORDER OF THE LABOR
COMMISSIONER ON
STIPULATION TO DEBARMENT**

18 Whereas, Respondents stipulated to debarment as follows:

19 1. Respondent DAVE COOK CONCRETE CONSTRUCTION, INC. is the holder of
20 California Contractor's license number 461897.

21 2. Respondent DAVID WILLIAM COOK is an individual who is and was at all relevant
22 times the RMO/CEO/President of DAVE COOK CONCRETE CONSTRUCTION, INC..

23 3. Respondents entered into the attached SETTLEMENT AGREEMENT AND RELEASE
24 including a DEBARMENT STIPULATION, see Paragraph 5, subsection D.

25 4. Based on the DEBARMENT STIPULATION, Respondents DAVE COOK CONCRETE
26 CONSTRUCTION, INC. and DAVID WILLIAM COOK shall be ineligible for a period of three
27 years, beginning March 1, 2017 to do either of the following:

28 a) Bid on or be awarded a contract for a public works project; or


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b) Perform work as a subcontractor on a public works project as defined as Labor Code sections 1720, 1720.2, and 1720.3.

IT IS HEREBY ORDERED.

Dated: 4/4/2017

DIVISION OF LABOR STANDARDS ENFORCEMENT
California Department of Industrial Relations

By: 
JULIE A. SU
State Labor Commissioner

SETTLEMENT AGREEMENT AND RELEASE

PARTIES

The parties to this Agreement, which was made as of the 9th day of February 2017, consist of the DIVISION OF LABOR STANDARDS ENFORCEMENT, Department of Industrial Relations, State of California ("DLSE") and DAVE COOK CONCRETE CONSTRUCTION, INC., ("DCCC"); and DAVID WILLIAM COOK ("COOK") in his individual capacity, an individual who is listed with the CSLB as the RMO/CEO/President of DCCC; and is intended to bind any other officers or directors of DCCC in his or her position as officer or director of DCCC. DLSE, DCCC, COOK, and the officers or directors of DCCC are hereafter referred to individually as a "PARTY" or jointly as the "PARTIES" to this Agreement.

RECITALS

1. On June 29, 2016, DLSE served a Civil Wage and Penalty Assessment ("CWPA") in DLSE Case No. 40-36379-132 to DCCC and City of San Juan Capistrano ("AWARDING BODY"), claiming wages and training funds due and owing in the amount of \$20,629.30; combined penalties for violations of Labor Code sections 1775 and 1813 in the amount of \$24,225.00; penalties pursuant to Labor Code section 1777.7 in the amount of \$49,140.00; and potential liquidated damages in the amount of \$20,629.30; said amounts alleged to be due and owing by DCCC as a result of violations of the prevailing wage laws of the State of California involving workers employed by DCCC and violations of DCCC's duties and obligations pursuant to Labor Code 1777.7 relating to the employment of apprentices on a public works project known as CONCRETE SIDEWALK & CURB & GUTTER MAINTENANCE project ("PROJECT"), awarded by the AWARDING BODY to DCCC, as the general contractor. (Attached as **Exhibit 1**.)
2. To the extent that the AWARDING BODY has withheld any funds in response to the CWPA, the AWARDING BODY could possibly become duty bound to promptly transmit withheld funds to DLSE pursuant to Labor Code sections 1727 and/or 1742.

3. COOK is the RMO/CEO/President of DCCC, a contractor licensed by the Contractors State Licensing Board ("CSLB") under license number 461897. During all times mentioned herein, "DAVID WILLIAM COOK", was listed with the CSLB as the RMO/CEO/President of DCCC. As of the date of this Agreement, COOK is not associated with any other CSLB license. In entering this Agreement, COOK expressly confirms that the information in this paragraph is true and complete to the best of his knowledge. (Contractor's License Detail and Personnel List attached as **Exhibit 2**.)
4. DCCC filed a Request for Review of the CWPA, which is now pending In the Request for Review of Dave Cook Concrete Construction, Inc., OD Legal Case No. 16-0297-PWH with the Office of the Director, Department of Industrial Relations ("THE LITIGATION").

SETTLEMENT AGREEMENT

5. DLSE and DCCC agree to resolve all disputes between them concerning THE LITIGATION identified in Paragraph 4 and the CWPA identified in Paragraph 1 above as follows:

(A) DCCC will withdraw its Request for Review referenced in Paragraph 4 above and the CWPA will be deemed a "final order" no longer subject to review for purposes of Labor Code section 1742;

(B) DLSE agrees that DCCC will satisfy this "final order" by payment to DLSE of the sum of **\$30,000.00** ("SETTLEMENT AMOUNT") **due on or before March 1, 2017**. DCCC agrees to send a check for the full SETTLEMENT AMOUNT payable to "DIVISION OF LABOR STANDARDS ENFORCEMENT" to counsel for DLSE as follows:

Division of Labor Standards Enforcement
c/o Lance A. Grucela
7575 Metropolitan Drive, Suite 210
San Diego, CA 92108

(C) The SETTLEMENT AMOUNT consists of \$20,161.60 of wages, \$467.70 of training funds, \$5,225.44 of interest on wages, \$4,145.26 of penalties pursuant to Labor Code sections 1775, 1813 and 1777.7;

(D) DCCC and COOK, as an individual and in his capacity as the RMO/CEO/President of DCCC also stipulate as follows (these terms are hereafter referred to as the "DEBARMENT STIPULATION"):

- i) DCCC is the holder of California Contractor's license number 461897;
- ii) COOK, an individual, is the RMO/CEO/President of license number 461897;
- iii) DCCC and COOK, as an individual and in his capacity as RMO/CEO/President of DCCC stipulate to debarment pursuant to Labor Code section 1777.1(a) for a period of 3 years beginning on March 1, 2017, following the filing of the Determination and Order of the Labor Commissioner in this matter. During that 3 year period, DCCC; COOK, as an individual and in his capacity as Sole Owner of DCCC; any officer or director of DCCC; and any firm, corporation, partnership, or association in which any of said persons has any interest as defined in Labor Code section 1777.1, subdivision (f), or any substantial interest as defined in California Code of Regulations, Title 8, section 16800, shall be ineligible to do either of the following:
 - a) Bid on or be awarded a contract for a public works project; or,
 - b) Perform work as a subcontractor on a public works project.
- iv) In return for the successful completion of the foregoing DEBARMENT STIPULATION and the timely payment of the SETTLEMENT AMOUNT, DLSE will release DCCC and COOK from further liability on the CWPA identified in Paragraph 1 above.

(E) The PARTIES agree that time is of the essence, that timely payment is a material part of this agreement.

6. The PARTIES agree that in the event that DCCC, COOK, as an individual and in his capacity as Sole Owner of DCCC, any officer or director of DCCC, or any firm, corporation, partnership, or association in which any of said persons has any interest as defined in Labor Code section 1777.1, subdivision (f), or any substantial interest as defined in California Code of Regulations, Title 8, section 16800, fail to abide by the terms of the DEBARMENT STIPULATION, DLSE will enter judgment for the full amount of the CWPA against DCCC, less any credit for payments made towards the SETTLEMENT AMOUNT.
7. The PARTIES further agree that signatures to this agreement may be effective upon electronic transmission whether by email, facsimile transmission, or as a PDF attachment to email; that all signatures need not be affixed to a single document to be effective as to the PARTY whose signature is affixed so long as each PARTY signs this Settlement Agreement and Release; and that where this Settlement Agreement and Release is signed by counsel for the PARTY, such counsel warrants that they are expressly authorized by their client to execute this document on their client's behalf.
8. **The PARTIES agree and understand that this Agreement does not contemplate or address responsibility for payment of taxes on the SETTLEMENT AMOUNT.**

RELEASE

9. DLSE agrees that, conditioned upon the timely payment of the SETTLEMENT AMOUNT to DLSE according to paragraph 5(B) and the successful completion of the terms of the DEBARMENT STIPULATION in paragraph 5(D), and in further consideration for DCCC's withdrawal of its Request for Review, and the execution of this Settlement Agreement by an authorized agent or officer of DCCC and COOK, DLSE will release DCCC from any liability relating to THE LITIGATION and the CWPA including without limitation, claims for money on: Unpaid prevailing wages, interest under Labor Code section

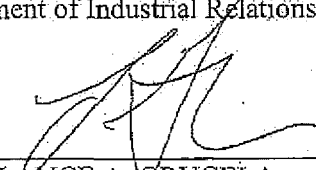
1741, liquidated damages under Labor Code section 1742.1, and monetary penalties under Labor Code sections 1775, 1776, 1777.7 and 1813 (including costs and attorney fees) resulting from any claims of work performed by workers employed on the PROJECT by DCCC.

SIGNATURES

I certify that I have read this Settlement Agreement and Release and fully understand it, and in witness I have executed this Release on this 9th day of February, 2017, at San Diego, California. The undersigned represents and warrants that he has full authority to execute this Settlement Agreement and Release on behalf of the Division of Labor Standards Enforcement, Department of Industrial Relations, State of California, and that no legislative act or judicial act or approval is necessary to give effect to this Release.

DIVISION OF LABOR STANDARDS ENFORCEMENT
Department of Industrial Relations State of California

By: _____


LANCE A. GRUCELA
Attorney for the Labor Commissioner

I hereby certify that I have read this Settlement Agreement and Release and fully understand it, warrant that I have full authority to execute this Settlement Agreement and Release, and in witness I have executed this Release on this 24 day of February, 2017, at Capistrano Beach, California.

DAVE COOK CONCRETE CONSTRUCTION, INC.

By: _____


DAVID WILLIAM COOK
Its RMO/CEO/President