

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the Attorney General



In the Matter of
T&A Construction LLC

SETTLEMENT AGREEMENT

The Attorney General for the District of Columbia, on behalf of the District of Columbia (“District”), and T&A Construction LLC (“T&A Construction”) (collectively, the “Parties”) hereby enter into this Settlement Agreement (“Agreement”), and agree as follows:

I. THE PARTIES

1. The District of Columbia, a municipal corporation empowered to sue and be sued, is the local government for the territory constituting the seat of the government of the United States. D.C. Code § 1-102. The Attorney General for the District of Columbia is the chief legal officer for the District of Columbia. Pursuant to D.C. Code § 32-1306, the Attorney General for the District of Columbia is authorized to bring civil actions seeking back wages, liquidated damages, civil penalties, costs, attorneys’ fees, and equitable relief for violations of the District’s Workplace Fraud Act (“WFA”), D.C. Code § 32-1331.01 *et seq.*, Minimum Wage Revision Act (“MWRA”), D.C. Code § 32-1001, *et seq.*, and Sick and Safe Leave Act (“SSLA”), D.C. Code § 32-531.01 *et seq.*

2. T&A Construction LLC is a Virginia corporation, licensed and authorized to provide subcontracting services relating to drywall installation in the District of Columbia and neighboring states.

3. The District alleges that from 2018 to 2021, T&A Construction entered into agreements with subcontractors, who in turn supplied T&A Construction with construction workers (hereinafter referred to as “Subcontracted Workers” or “Eligible Employees”), for projects in the District of Columbia.

4. The District alleges that from 2018 to 2021, the Subcontracted Workers were misclassified as independent contractors when they should have been classified as employees, and that this misclassification violated the WFA, MWRA, and SSLA.

5. The District alleges the violations of the District’s wage-and-hour laws as to workers supplied by T&A Construction’s subcontractors occurred at the following worksites in the District of Columbia (hereinafter referred to as the “Covered Projects”): (a) 2000 L Street NW, Washington, D.C. 20036; (b) One M Street SE, Washington, D.C. 20003; (c) 1515 New York Avenue NE, Washington, D.C. 20002; and (d) 655 15th Street NW, Washington, D.C. 20005.

6. The District alleges that T&A Construction exercised extensive supervision and control over the Subcontracted Workers on the Covered Projects worksites and, as a result, is liable for the misclassification violations of the WFA, MWRA, and SSLA as a joint employer of the misclassified workers. In the alternative, the District alleges that T&A Construction is strictly liable for subcontractors’ misclassification violations pursuant to D.C. Code § 32-1303(5).

7. T&A Construction denies the allegations in Paragraphs 3-6.

8. To avoid delay, uncertainty, inconvenience, and the expense of any protracted litigation or further investigation, subpoenas or other actions, the Parties have reached a full and final Settlement Agreement as set forth below.

9. The “Effective Date” of this Agreement shall be the last date upon which any party executes this Agreement.

II. PAYMENT TERMS

10. T&A Construction agrees to pay, in the manner set forth below, a total of two hundred and twenty-five thousand dollars (\$225,000) (the “Total Settlement Amount”). The Total Settlement Amount consists of (a) a “Worker Share” equaling one hundred thousand dollars (\$100,000) to be paid to Eligible Employees, and (b) a “Penalty Share” equaling one hundred twenty-five thousand dollars (\$125,000) to be paid to the District. The Total Settlement Amount shall be paid out in the following manner:

a. Worker Share.

- i. *Payment of funds.* Within 60 days of the Effective Date of this Agreement, T&A Construction will pay one hundred thousand dollars (\$100,000) to the District for distribution to the Eligible Employees.
- ii. *Creation of Claims Ledger.* Within 60 days of the Effective Date of this Agreement, T&A Construction will prepare and submit to the District a ledger (the “Claims Ledger”) in Excel spreadsheet format that identifies all subcontractors it used on the Covered Projects, including (a) full name of the subcontractor; (b) name of the corporate representative(s), and (c) the most recent contact information for the subcontractor, including phone numbers, email addresses, and mailing addresses.
- iii. *Distribution of Funds.* The District will distribute the Worker Share to Eligible Employees pursuant to any reasonable claims process that it establishes.
- iv. *Payment of Undistributed Funds to the District.* 365 days after the Effective Date of this Agreement, any remaining undistributed funds may be used by the District for any lawful purpose, including but not limited to payment in restitution to current and former workers who performed work for T&A Construction or payment applied to the District’s restitution fund; defrayal of the costs of the inquiry leading hereto; defrayal of the costs of administration or distribution; payment to the litigation support fund; or for other uses permitted by District law, at the sole discretion of the Attorney General for the District of Columbia. T&A Construction agrees to cooperate with the District in obtaining any modification to the language of this paragraph needed to facilitate the administration of the District’s payment under this paragraph.

- v. *Records of Payment.* Upon request, the District will provide T&A Construction with a ledger identifying the amounts the District paid to Eligible Employees.

b. Penalty Share.

- i. T&A Construction shall make the Penalty Share payment to the District in two installments: a payment of fifty thousand dollars (\$50,000) within 180 days of the Effective Date of this Agreement, and a payment of seventy-five thousand dollars (\$75,000) within 360 days of the Effective Date of this Agreement.
- ii. Payments made pursuant to the Penalty Share may be used for any lawful purpose, including, but not limited to, deposit to the District's litigation support fund; defrayal of the costs of the inquiry leading hereto; defrayal of the costs of administration or distribution; or for other uses permitted by District law, at the sole discretion of the Attorney General for the District of Columbia. T&A Construction agrees to cooperate with the District in obtaining any modification to the language of this paragraph needed to facilitate the administration of the District's payment under this paragraph.

11. Payments made by T&A Construction pursuant to this Agreement shall be in the form of a check made payable to the "D.C. Treasurer" and mailed with tracking information requested, sent by overnight courier with tracking information requested, or hand delivered to Conny Tello, Staff Assistant, Public Advocacy Division, Office of the Attorney General for the District of Columbia, 400 Sixth Street, N.W., 10th Floor, Washington, D.C. 20001. Alternatively, T&A Construction may wire its payments pursuant to such written instructions as the District may provide.

III. INJUNCTIVE TERMS

12. **Certified Payroll.** T&A Construction will require all current or future subcontractors retained for projects in the District to submit monthly certified payroll reports to T&A Construction that certify that the subcontractor is in compliance with the WFA, MWRA, and SSLA. T&A Construction shall utilize a certified payroll form that requires the subcontractor to certify (a) identifying information pertaining to the subcontractor and project, (b) the names of

their workers, (c) their classification as employees or independent contractors, (d) their hours worked each day, (e) their rate of pay, (f) their gross earnings, (g) their tax deductions, (h) their net earnings, and (i) a sworn certification that the subcontractor is in compliance with the WFA, MWRA, and SSLA. Certified payroll records may be modeled on U.S. Department of Labor Form WH-347. Additionally, T&A Construction will require all subcontractors retained for projects in the District to annually submit certifications with accompanying records to T&A Construction indicating their compliance with the SSLA. T&A Construction shall maintain this requirement from the Effective Date through 2024 for all its subcontractors on projects in the District, and the above-referenced certified payroll records will be maintained for a period of at least three (3) years.

13. **Auditing.** For each subcontractor retained by T&A Construction to perform work on a construction project in the District, T&A Construction will also complete and include in the Annual Report referenced below in Section 14, at least one (1) random audit for the subcontractor for each District-located project on which the subcontractor is retained during the time period in which the subcontractor is completing the work. The audit shall compare the subcontractor's certified payroll records with a randomized sample of the subcontractor's worker payment and/or pay stub records to verify the subcontractor's compliance with the WFA, MWRA, and SSLA.

14. **Reporting.** For (a) the period from the Effective Date until December 31, 2023 and (b) calendar year 2024, T&A Construction shall submit an Annual Report to the District that certifies it is in compliance with its obligations under this Agreement. T&A Construction shall submit each Annual Report to the District by February 28 of the following year, pursuant to Paragraph 24.

15. **Corrective Action.** If T&A Construction has knowledge, through an audit or other source, that a subcontractor is in violation of the WFA, MWRA, or SSLA, T&A Construction shall

take reasonable actions within fourteen (14) days to ensure that the subcontractor comes into compliance and pays any applicable restitution to any affected worker to remedy the violation.

16. **Penalties in Future Actions.** In any future action for a violation of the WFA, MWRA, or SSLA, by T&A Construction within two (2) years of the Effective Date and arising from claims accruing after the Effective Date, penalties shall be calculated according to the framework of D.C. Code § 32-1331.07(e).

17. **Notice of Settlement to T&A Construction Management.** T&A Construction shall deliver a copy of this Agreement to each of its current and future principals, officers, directors, and managers who have managerial authority with respect to the subject matter of this Agreement.

18. **Use of Subcontractors.** The Company shall not contract with any subcontractor to perform future work in the District (including any officers or owners of the subcontractor) with whom the Company contracted in the District for the Covered Projects from 2018 to 2021, unless either (1) such a subcontractor has produced documents and information to the District showing that its workers were not misclassified, or (2) such a subcontractor enters into a separate settlement with the District that includes injunctive relief ensuring it will no longer engage in misclassification.

IV. RELEASE

19. Upon payment by T&A Construction of the Total Settlement Amount, the District releases T&A Construction from any and all civil claims that the Attorney General could have brought under the WFA, MWRA, or SSLA, arising out of work performed by T&A Construction on the Covered Projects through the Effective Date. The foregoing release shall not affect the District's right to take appropriate enforcement action against T&A Construction with respect to

the payment terms and injunctive terms set out in Sections II and III of this Agreement, nor shall it, or anything in this Agreement, affect the District's right to bring any enforcement action for conduct arising out of work performed on projects in the District other than the Covered Projects, or any conduct that post-dates the Effective Date of this Agreement.

V. ADDITIONAL TERMS

20. **No concession that claims were not well-founded.** The District's agreement to enter into this Agreement does not constitute, and shall not be construed as, a concession that its allegations were not well-founded.

21. **No admission of wrongdoing or liability.** T&A Construction's agreement to enter into this Agreement does not constitute, and shall not be construed as, an admission of any wrongdoing or liability.

22. **Full and complete terms.** This Agreement represents the full and complete terms of the settlement entered into by the Parties. In any action undertaken by the Parties, neither prior versions of this Agreement nor prior versions of any of its terms may be introduced for any purpose whatsoever.

23. This Agreement shall be considered effective and fully executed on the Effective Date. This Agreement may be executed in counterparts, and a facsimile or .pdf signature shall be deemed to be, and shall have the same force and effect, as an original signature. Copies of signature pages transmitted electronically shall have the same effect as originals of those signature pages.

24. All notices and reports sent pursuant to this Agreement shall be provided to the following addresses via first class and electronic mail, unless a different address is specified in writing by the party changing such address:

James Graham Lake
Chief, Workers' Rights and Antifraud Section
Office of the Attorney General
400 6th Street, N.W., 10th Floor
Washington, D.C. 20001
Graham.Lake@dc.gov

Counsel for the District of Columbia

Zach Miller
McClanahan Powers, PLLC
3160 Fairview Park Drive, Suite 410
Falls Church, VA 22042
zmillier@mcplegal.com

Counsel for T&A Construction LLC

25. If any clause, provision, or section of this Agreement shall, for any reason, be held illegal, invalid, or unenforceable, such illegality, invalidity, or unenforceability shall not affect any other clause, provision, or section of this Agreement and this Agreement shall be construed and enforced as if such illegal, invalid, or unenforceable clause, section, or other provision had not been contained herein.

26. Nothing in this Agreement shall be construed as relieving T&A Construction of the obligation to comply with all state and federal laws, regulations, or rules, nor shall any of the provisions of this Agreement be deemed to be permission to engage in any acts or practices prohibited by such laws, regulations, or rules.

27. Nothing in this Agreement may be deemed as creating rights in individual or entity third parties.

28. Any failure by any party to this Agreement to insist upon the strict performance by any other party of any of the provisions of this Agreement shall not be deemed a waiver of any of the provisions of this Agreement, and such party, notwithstanding such failure, shall have the right

thereafter to insist upon the specific performance of any and all of the provisions of this Agreement.

29. This Agreement, its interpretation and any enforcement of its provisions shall be governed by the laws of the District of Columbia.

BRIAN L. SCHWALB

Attorney General for the District of Columbia

James Graham Lake
James Graham Lake
Chief, Workers' Rights and Antifraud Section
Office of the Attorney General
400 6th St., NW, 10th Floor
Washington, D.C. 20001

Date: 9/12/23

Counsel for the District of Columbia

Adalberto Castro / President

Date: 8/31/23

T&A Construction LLC's Signatory