

SETTLEMENT AGREEMENT

This Settlement Agreement (Agreement) is entered into among the United States of America, acting through the United States Department of Justice and on behalf of the United States Environmental Protection Agency ("EPA"), the United States Department of Transportation ("DOT"), and the United States Department of Education ("Dept. Ed.") (collectively, the "United States") and WALLACE CONSTRUCTION CORP. ("Wallace Construction"), ROSCITI CONSTRUCTION COMPANY LLC ("Rosciti Construction"), CHRISTINA ROSCITI, KIM WALLACE, ANTHONY ROSCITI, Sr., and HENRY ROSCITI, Sr. (hereafter collectively referred to as "the Parties").

RECITALS

A. Wallace Construction is a Rhode Island domestic corporation with a principal place of business at 20 Cottage Street, Warwick, RI 02886 (formerly of 206 King Phillip Street, Providence, RI 02919). Rosciti Construction is a Limited Liability Corporation formed in the State of Rhode Island, with a principal place of business at 123 King Phillip Street, Johnston, RI 02919. At all times material to this agreement, Christina Rosciti and Kim Wallace were officers, directors, owners, or employees of Wallace Construction and Anthony Rosciti, Sr. and Henry Rosciti, Sr. were officers, directors, owners or employees of Rosciti Construction. At times material to this Agreement, Rosciti Construction performed work as prime contractor on certain contracts with minority, women-owned, or small business set-aside requirements funded in whole or in part by agencies of the United States government; and with respect thereto, Wallace Construction worked as a subcontractor.

B. The United States contends that it has certain civil claims against Wallace Construction, Rosciti Construction, Christina Rosciti, Kim Wallace, Anthony Rosciti, Sr. and

Henry Rosciti, Sr., or some or all of them, arising from the submission of false claims for payment made for work performed by Wallace Construction during the period from August 3, 2009 through the effective date of this Agreement. Specifically, the United States alleges that Wallace Construction, Rosciti Construction, Christina Rosciti, Kim Wallace, Anthony Rosciti, Sr. and Henry Rosciti, Sr. knowingly submitted or caused to be submitted false claims for payment in connection with one or more contracts funded in whole or in part by the United States Environmental Protection Agency, the United States Department of Education, and the United States Department of Transportation (the “Federal Payors”), specifically the following:

DATE	CONTRACT OR BID NUMBER	CONTRACT NAME	PRIME CONTRACTOR	SUBCONTRACTOR	FEDERAL FUNDING SOURCE
8/3/09	Memorial Plat	Johnston Memorial Plat Sewer Improv. - Town of Johnston	Rosciti Construction	Wallace Corp.	EPA
3/2/10	PWSB 2010-2012 DWSRF-09-25 ARRA	Providence Water Supply Board Water Main	Rosciti Construction	Wallace Corp.	EPA
3/2/10	PWSB 2010-2012 DWSRF-09-25 ARRA	Providence Water Supply Board Water Main	John Doe Corp. No.1	Wallace Corp.	EPA
11/3/10	304:54C	Branch Avenue Interceptor Narragansett Bay	John Doe Corp. No.2	Wallace Corp.	EPA
3/23/11	Bid No. 7448088	ARRA - Water Main at RI College	John Doe Corp. No.1	Wallace Corp.	DEPT. ED.
7/21/11	MR-6 DWSRF 11-03	Pawtucket Water Supply Board	Rosciti Construction	Wallace Corp.	EPA
10/13/11	Contract # 719 Phase II/Sewer Rehab	Town of Bristol	John Doe Corp. No.2	Wallace Corp.	EPA
7/20/10	2010-CH-040	ADA Project	John Doe Corp. No.3	Wallace Corp.	DOT
5/20/09	2009-CH-058	Exeter Construction	Rosciti Construction	Wallace Corp.	DOT

(the “Subject Contracts”). The United States alleges that, in bidding for, and subsequently submitting requests for reimbursement under some or all of the Subject Contracts, Wallace Construction, Christina Rosciti, Kim Wallace, Rosciti Construction, Anthony Rosciti, Sr. and/or Henry Rosciti, or some or all of them, made material false statements that Wallace was a legitimate minority-owned or disadvantaged business enterprise (“DBE”), when in fact, during the time period covered by the Subject Contracts, it was not, and that this status was material to the Federal Payors’ funding or payment of claims under the Subject Contracts. In the alternative, the United States alleges that Wallace Construction, Christina Rosciti, Kim Wallace, Rosciti Construction, Anthony Rosciti, Sr. and/or Henry Rosciti, Sr., or some or all of them, made false statements as to Wallace Construction’s DBE or minority-owned status in support of the payment of claims to, or with funds provided by, the Federal Payors in connection with the Subject Contracts. The conduct described in this paragraph is referred to below as the “Covered Conduct.”

C. This Agreement is neither an admission of liability by Wallace Construction, Christina Rosciti, Kim Wallace, Rosciti Construction, Anthony Rosciti, Sr. or Henry Rosciti, Sr. nor a concession by the United States that its claims are not well founded.

D. To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the above claims, and in consideration of the mutual promises and obligations of this Settlement Agreement, the Parties agree and covenant as follows:

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY BLANK]

TERMS AND CONDITIONS

1. Wallace Construction, Rosciti Construction, Christina Rosciti, Kim Wallace, Anthony Rosciti, Sr. and Henry Rosciti, Sr. shall pay to the United States the sum of ONE MILLION DOLLARS (\$1,000,000.00), together with interest thereon at the rate of 1% per annum from February 2, 2016 and continuing up to and including the date before payment is made under this agreement (the "Settlement Amount") by electronic funds transfer pursuant to written instructions to be provided by the Office of the United States Attorney for the District Of Rhode Island. Payment of the Settlement Amount shall be made no later than thirty (30) business days after the Effective Date of this Agreement.

2. Subject to the exceptions in Paragraph 4 (concerning excluded claims) below, and conditioned upon Wallace Construction, Rosciti Construction, Christina Rosciti, Kim Wallace, Anthony Rosciti, Sr. and Henry Rosciti, Sr.'s full payment of the Settlement Amount, the United States releases Wallace Construction, Christina Rosciti, Kim Wallace, Anthony Rosciti, Sr. and Henry Rosciti, Sr. from any civil or administrative monetary claim the United States has for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; the Contract Disputes Act, 41 U.S.C. §§ 7101 - 7109 or the common law theories of breach of contract, payment by mistake, unjust enrichment, and fraud.

3. Notwithstanding the release given in paragraph 2 of this Agreement, or any other term of this Agreement, the following claims of the United States are specifically reserved and are not released:

- a. Any liability arising under Title 26, U.S. Code (Internal Revenue Code);
- b. Any criminal liability;

- c. Except as explicitly stated in this Agreement or any separate administrative agreements, any administrative liability, including the suspension and debarment rights of any federal agency;
- d. Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;
- e. Any liability based upon obligations created by this Agreement;
- f. Any liability of individuals not party to this Agreement;
- g. To the extent applicable, any liability for express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services;
- h. To the extent applicable, any liability for failure to deliver goods or services due; and
- i. To the extent applicable, any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct.

4. Wallace Construction, Rosciti Construction, Christina Rosciti, Kim Wallace, Anthony Rosciti, Sr. and Henry Rosciti, Sr. waive and shall not assert any defenses they may have to any criminal prosecution or administrative action relating to the Covered Conduct that may be based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the Constitution, this Agreement bars a remedy sought in such criminal prosecution or administrative action. Nothing in this paragraph or any other provision of this

Agreement constitutes an agreement by the United States concerning the characterization of the Settlement Amount for purposes of the Internal Revenue laws, Title 26 of the United States Code.

5. Wallace Construction, Rosciti Construction, Christina Rosciti, Kim Wallace, Anthony Rosciti, Sr. and Henry Rosciti, Sr. fully and finally release the United States, its agencies, officers, agents, employees, and servants, from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that they have asserted, could have asserted, or may assert in the future against the United States, its agencies, officers, agents, employees, and servants, related to the Covered Conduct and the United States' investigation and prosecution thereof.

6. a. Unallowable Costs Defined: All costs (as defined in the Federal Acquisition Regulation, 48 C.F.R. § 31.205-47) incurred by or on behalf of Wallace Construction, Rosciti Construction, Christina Rosciti, Kim Wallace, Anthony Rosciti, Sr. and Henry Rosciti, Sr. and their present or former officers, directors, employees, shareholders, and agents in connection with:

- (1) the matters covered by this Agreement;
- (2) the United States' audit(s) and civil and any criminal investigation(s) of the matters covered by this Agreement;
- (3) Wallace Construction, Christina Rosciti, Kim Wallace, Rosciti Construction, Anthony Rosciti, Sr. and/or Henry Rosciti Sr.'s investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and civil and any criminal investigation(s) in connection with the matters covered by this Agreement (including attorney's fees);

- (4) the negotiation and performance of this Agreement;
- (5) the payment that Wallace Construction, Rosciti Construction, Christina Rosciti, Kim Wallace, Anthony Rosciti, Sr. and Henry Rosciti, Sr. makes to the United States pursuant to this Agreement, are unallowable costs for government contracting purposes (hereinafter referred to as “Unallowable Costs”).

b. Future Treatment of Unallowable Costs: To the extent applicable, Unallowable Costs will be separately determined and accounted for by Wallace Construction, Christina Rosciti, Kim Wallace, Anthony Rosciti, Sr. and Henry Rosciti, Sr. and they shall not charge such Unallowable Costs directly or indirectly to any contract with the United States.

c. Treatment of Unallowable Costs Previously Submitted for Payment: To the extent applicable within 90 days of the Effective Date of this Agreement, Wallace Construction, Christina Rosciti, Kim Wallace, Anthony Rosciti, Sr. and Henry Rosciti, Sr., respectively, shall identify and repay, by adjustment to future claims for payment or otherwise, any Unallowable Costs included in payments previously sought by them or any of their subsidiaries or affiliates from the United States. Wallace Construction, Christina Rosciti, Kim Wallace, Anthony Rosciti, Sr. and Henry Rosciti, Sr. each agree that the United States, at a minimum, shall be entitled to recoup from them any overpayment attributable to them, severally, plus applicable interest and penalties as a result of the inclusion of such Unallowable Costs on previously-submitted requests for payment. The United States, including the Department of Justice and/or the affected agencies, reserves its rights to audit, examine, or re-examine Wallace Construction, Christina Rosciti, Kim Wallace, Anthony Rosciti, Sr. and Henry Rosciti Sr.’s books and records and to disagree with any calculations submitted by them or any of their subsidiaries or affiliates regarding any

Unallowable Costs included in payments previously sought by them, or the effect of any such Unallowable Costs on the amount of such payments.

7. This Agreement is intended to be for the benefit of the Parties only.

8. Each Party shall bear his, her or its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

9. Each party and signatory to this Agreement represents that he, she or it freely and voluntarily enters in to this Agreement without any degree of duress or compulsion, that they have reviewed and understand it, and that they have had the opportunity to consult with counsel regarding it.

10. This Agreement is governed by the laws of the United States. The exclusive jurisdiction and venue for any dispute relating to this Agreement is the United States District Court for the District of Rhode Island. For purposes of construing this Agreement, this Agreement shall be deemed to have been drafted by all Parties to this Agreement and shall not, therefore, be construed against any Party for that reason in any subsequent dispute.

11. This Agreement constitutes the complete agreement between the Parties. This Agreement may not be amended except by written consent of the Parties.

12. The undersigned represent and warrant that they are fully authorized to execute this Agreement individually (with respect to individuals covered by this agreement) and/or on behalf of the entities indicated below, as specified.

13. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Agreement.

14. This Agreement is binding on the Parties' successors, transferees, heirs, and assigns (as those terms are applicable to the individual and corporate signatories to this agreement, respectively).

15. All Parties consent to the United States' disclosure of this Agreement, and information about this Agreement, to the public.

16. This Agreement is effective on the date of signature of the last signatory to the Agreement (Effective Date of this Agreement). Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

FOR THE UNITED STATES OF AMERICA

PETER F. NERONHA
United States Attorney

Office of the United States Attorney
50 Kennedy Plaza, 8th Floor
Providence, RI 02903

DATED: 12/15/2016

BY: 

Zachary A. Cunha (Bar No. 7855)
Assistant U.S. Attorney
(401) 708-5000
Zachary.Cunha@usdoj.gov

FOR ROSCITI CONSTRUCTION COMPANY, LLC
AND FOR HENRY ROSCITI, SR. IN HIS INDIVIDUAL CAPACITY


By: Henry D. Rosciti
Henry Rosciti, Sr.
Member/Manager, Rosciti Construction Company, LLC

12/15/12
DATE


By: Jeffrey B. Pine
Jeffrey B. Pine, Esq.
Lynch & Pine
1 Park Row, 5th Floor
Providence, RI 02903
*Counsel to Rosciti Construction LLC &
Henry Rosciti, Sr.*

12/15/12
DATE

FOR ROSCITI CONSTRUCTION COMPANY, LLC
AND FOR ANTHONY ROSCITI, SR.. IN HIS INDIVIDUAL CAPACITY

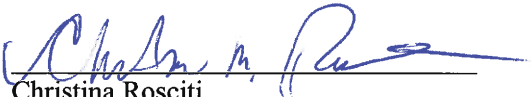
By: 
Anthony Rosciti, Sr.
Member/Manager, Rosciti Construction Company, LLC

12/15/16
DATE

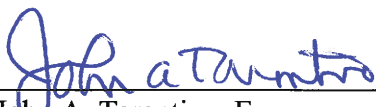
By: 
Anthony M. Traini, Esq.
56 Pine Street – Suite 200
Providence, RI 02903-2819
Counsel to Anthony Rosciti, Sr.

12/15/16
DATE

FOR WALLACE CONSTRUCTION CO.
AND FOR CHRISTINA ROSCITI IN HER INDIVIDUAL CAPACITY

By: 
Christina Rosciti
President, Wallace Construction Company, LLC

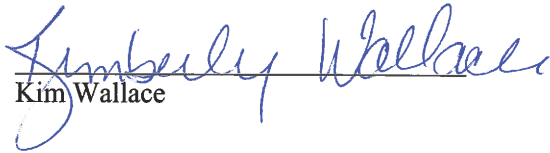
12/15/16
DATE

By: 
John A. Tarantino, Esq.
Patricia K. Rocha, Esq.
Adler, Pollock & Sheehan, P.C.
One Citizens Plaza, 8th Floor
Providence, Rhode Island 02903
*Counsel to Wallace Construction Corp.
& Christina Rosciti*

12/15/16
DATE

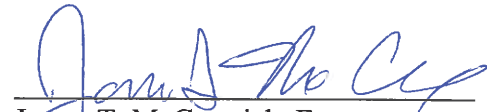
FOR KIM WALLACE

By:


Kim Wallace

12/15/2016
DATE

By:


James T. McCormick, Esq.
McKenna & McCormick
128 Dorrance Street, Suite 330
Providence, Rhode Island 02903
Counsel to Kim Wallace

12/15/2016
DATE