

SETTLEMENT AGREEMENT AND MUTUAL GENERAL RELEASE

This Settlement Agreement (the "Agreement") is entered into by and between Standard Pipe Services, LLC ("SPS") and the Township of Montclair ("Montclair") (collectively as the "Parties").

RECITALS

WHEREAS, Montclair, as owner, awarded a contract ("Contract") to SPS, as general contractor, to perform the project known as 2020 CDBG Maple Avenue Sanitary Sewer Rehabilitation, File No. SCE-R05097.Y20, Bid #19-19 (the "Project"), pursuant to resolution 20-064.

WHEREAS, on or about August 27, 2020, SPS and Montclair executed an Amendment to the Contract ("Amendment") pursuant to which the Parties agreed, among other things, to modify the scope of SPS' work on the Project.

WHEREAS, on or about December 23, 2020, Aegis Security Insurance Company, as surety, issued a Maintenance Bond No. B10035821 ("Maintenance Bond") on behalf of SPS, as principal, for the benefit of Montclair, as obligee, in the penal sum of \$14,465.

WHEREAS, on or about May 19, 2021, SPS filed suit ("Lawsuit") against Montclair in the Superior Court of New Jersey, Essex County, in the matter entitled Standard Pipe Services, LLC v. the Township of Montclair, docket number ESX-L-3959-21, seeking to recover additional costs it was caused to incur on the Project.

WHEREAS, on or about November 23, 2021, Montclair filed an Amended Answer with Counterclaim against SPS, seeking to recover delay damages and additional costs it was caused to incur on the Project as a result of SPS's alleged breach of the Project contract.

WHEREAS, the Parties wish to resolve all disputes between them to the extent same involve or stem from the Project, including the Lawsuit, as set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which the Parties acknowledge, and intending to be legally bound, the Parties agree as follows:

1. Incorporation of RECITALS

The paragraphs set forth in the Recitals section above are incorporated herein as if set forth at length.

2. Settlement

a. Settlement Payment

The Township shall make payment of sixty thousand dollars (\$60,000) ("Settlement")

Payment”) to SPS within thirty (30) days of the Township of Montclair Council’s approval of the Agreement by delivering a check made payable to “Standard Pipe Services, LLC,” to Louis A. Modugno, Esq., Trif & Modugno LLC, 89 Headquarters Plaza, North Tower, Suite 1201, Morristown, New Jersey 07960.

b. Agreement Not to Bid

SPS voluntarily agrees that it shall not bid or otherwise respond to a solicitation procured by Montclair for a period of five (5) years, commencing on the date the Parties execute this Agreement. SPS knowingly and voluntarily enters into this provision and waives any claim that this provision conflicts with N.J.S.A. 40A:11-4.

3. Maintenance Bond

This Agreement shall not alter, impair or effect the terms of the Maintenance Bond.

4. Mutual Release

a. SPS Waiver and Release of Montclair. In consideration for the commitments made by the Parties herein, SPS hereby unconditionally and irrevocably waives and deems satisfied, and releases and discharges Montclair and its successors and assigns, parent companies, subsidiaries, employees, agents, officers, directors, shareholders, insurers, attorneys, trustees, administrators (collectively, the “Montclair Released Parties”) from any and all claims, agreements, causes of action, damages, liabilities, expenses, fees and costs, including, without limitation, attorneys’ fees for any remedy whatsoever, whether direct or indirect, whether known or unknown, knowable, or not knowable, whether suspected or not suspected, and whether in law, equity or otherwise, that SPS ever had, now has or hereinafter can or may have against the Montclair Released Parties based on any act, omission or other thing whatsoever arising from the Project that has taken place (or, as relates to an omission or the like, that SPS may assert should have taken place) from the beginning of time to the Effective Date, except for and specifically excluding: (i) any claims arising out of the enforcement or breach of this Agreement, if any; (ii) claim for indemnification, contribution or liability on account of claims by third-parties for damage caused by Montclair; and (iii) any retainage and balance due SPS under the Contract.

b. Montclair Waiver and Release of SPS. In consideration for the commitments made by the Parties herein, Montclair hereby unconditionally and irrevocably waives and deems satisfied, and releases and discharges SPS and its successors and assigns, parent companies, subsidiaries, employees, agents, officers, directors, shareholders, insurers, attorneys, trustees, administrators (collectively, the “SPS Released Parties”) from any and all claims, agreements, causes of action, damages, liabilities, expenses, fees and costs, including, without limitation, attorneys’ fees for any remedy whatsoever, whether direct or indirect, whether known or unknown, knowable, or not knowable, whether suspected or not suspected, and whether in law, equity or otherwise, that Montclair ever had, now has or hereinafter can or may have against the SPS Released Parties based on any act, omission or other thing whatsoever arising from the Project that has taken place (or, as relates to an omission or the like, that Montclair may assert should have taken place) from the beginning of time to the Effective Date, except for and specifically excluding: (i) any claims arising out of the enforcement or breach of this Agreement,

if any; and/or (ii) claim for indemnification, contribution or liability on account of claims by third-parties for damage caused by SPS.

5. **Dismissal of Lawsuit**

Within ten (10) days of receipt of the Settlement Payment, the Parties shall file with the Court a Stipulation of Dismissal dismissing the Lawsuit with prejudice.

6. **No Admission of Liability**

Neither this Agreement, nor any information provided by the Parties to each other in the course of negotiating this Agreement, including the fact of the occurrence of the discussions and/or negotiations themselves arising from or relating to this Agreement, shall be used as an admission of, concession of, or as evidence of the validity of any alleged claim of liability, or as an admission of or evidence of any alleged fault by any Party in any civil, criminal, or administrative proceeding in any court, administrative agency, arbitration or other tribunal.

7. **Beneficiaries**

This Agreement shall inure to the benefit of, and be binding upon, any successor or assign of any Party.

8. **Acknowledgments and Representations**

The Parties expressly represent, warrant and acknowledge that: (a) each has read this Agreement and has fully informed itself of its terms, conditions and effect; (b) in entering in to this Agreement, each has had the benefit of the advice of counsel upon which it has relied; (c) each executes this Agreement voluntarily and without coercion; and (d) each fully understands all of its terms and conditions.

9. **Further Assurances**

The Parties shall do and perform, or cause to be done and performed, all such further acts and things, and shall execute and deliver all such other agreements, certificates, instruments and documents, as the other party may reasonably request in order to carry out the intent and accomplish the purposes of this Agreement and the consummation of the transactions contemplated hereby.

10. **Integration, Amendment, Severability and Survival**

a. This Agreement contains the entire agreement of the Parties with respect to the subject matter hereof.

b. This Agreement may not be modified except in a writing signed by all the Parties. No waiver of any breach hereof shall be deemed a waiver of any subsequently occurring or subsequently discovered breach.

c. If any of the provisions, terms or clauses of this Agreement are declared illegal, unenforceable, or ineffective in a legal forum, those provisions, terms and clauses shall be deemed severable, such that all other provisions, terms and clauses of this Agreement shall remain valid and binding upon all Parties of this Agreement.

11. Applicable Law

The Parties understand and agree that this Agreement shall be construed under and governed by the laws of the State of New Jersey, exclusive of its choice of law rules.

12. Miscellaneous

a. This Agreement may be signed in counterparts or any number of duplicate originals, of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

b. A signature transmitted via facsimile or electronic mail shall be deemed an original for all uses and purposes, except this shall not be construed as relieving any party from an obligation of executing and forwarding the original signature page if so requested.

c. This Agreement shall be deemed to have been drafted by each of the Parties to the Agreement.

d. This Agreement is binding upon and inures to the benefit of the Parties and their successors, assigns, agents, directors, officers, employees, representatives, attorneys, affiliates, heirs, and all persons acting by, through, under or in concert with them.

e. As applicable, each of the Parties has executed this Agreement or caused the Agreement to be executed on its behalf by its duly authorized officer or representative.

f. The effective date of this Agreement shall be the date upon which it is executed by all Parties.

[THE SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, in intending to be legally bound hereby:

WITNESS:

Date:

2/7/2022

BY:

STANDARD PIPE SERVICES, LLC

WITNESS:

Date:

2/8/22

BY:

TOWNSHIP OF MONTCLAIR