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September 30, 2016

VIA HAND DELIVERY

Superior Court of New Jersey
Civil Intake
Ocean County Courthouse
118 Washington Street
Toms River, NJ 08754

Re: Berkeley Township Sewerage Authority v. State of New
Jersey, Department of Transportation and James
Mesinger, et. al.
Docket No.: OCN-L-1728-16

Dear Sir or Madam:

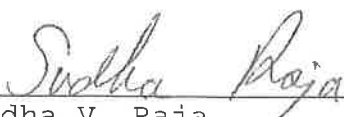
On behalf of defendant/third party plaintiff State of
New Jersey, Department of Transportation ("NJDOT") and defendant
James Mesinger, enclosed please find an original and two copies
of the NJDOT's (1) answer, affirmative defenses, counter claim,
cross-claim, third-party complaint, and answer to all cross-
claims, (2) stipulation extending time to answer, (3) case
information statement, (4) certification of good cause to change
track assignment ,and (5) certification of service for the
above-referenced filings.

Please stamp one of the copies as filed and return it
to me in the self-addressed envelope provided.

Sincerely yours,

CHRISTOPHER S. PORRINO
ATTORNEY GENERAL OF NEW JERSEY

By:


Sudha V. Raja
Deputy Attorney General



September 30, 2016

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Encl.

cc: Dina M. Vicari, Esq. (VIA OVERNIGHT MAIL and E-MAIL) ✓
Michael S. McCarter, Esq. (VIA OVERNIGHT MAIL & E-MAIL)
Kevin R. Dochney, Esq. (VIA OVERNIGHT MAIL & E-MAIL)

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Attorneys for Defendant/ Third
Department of Transportation

By: Sudha V. Raja - ID No.: 024022000
Brad M. Reiter - Id. No.: 123182014
Deputy Attorneys General
(609) 292-8036

BERKELEY TOWNSHIP SEWERAGE
AUTHORITY,

Plaintiff,

$$V_{\bullet}$$

STATE OF NEW JERSEY, DEPARTMENT
OF TRANSPORTATION; JAMES
MESINGER; UNION PAVING AND
CONSTRUCTION COMPANY, INC.;
MCCORMICK AND TAYLOR DESIGN
ENGINEERS, INC.; C.J. HESSE
INC.

Defendants;

AND

STATE OF NEW JERSEY, DEPARTMENT
OF TRANSPORTATION;

Defendant/Third-Party
Plaintiff,

 $V_{\odot}$

GREENMAN-PEDERSON, INC.; UNION
PAVING AND CONSTRUCTION
COMPANY, INC.; MCCORMICK AND
TAYLOR DESIGN ENGINEERS, INC.

Third-Party Defendants.

The State of New Jersey, Department of Transportation (the "NJDOT") and James Mesinger, by way of answer to the complaint of the plaintiff Berkeley Township Sewerage Authority (the "plaintiff") says:

PARTIES

1. The NJDOT admits its principal office is located at 1035 Parkway Avenue, Trenton, New Jersey 08625 and that it was the owner of a construction project in Seaside Park, NJ. The project is known as the "Route 35, Restoration, Berkeley Twp. to Toms River Twp. (MP 0-4), Sandy Restoration, Contract No. 000950319, Grading, Paving, Drainage, and Sign Structures, Berkeley Township, Seaside Park Borough, Seaside Heights Borough and Toms River Township, Ocean County, Federal Project NO. ER-7044(103)" (the "Project"). The NJDOT and James Mesinger deny the remaining allegations of this paragraph.

2. The NJDOT and James Mesinger lack sufficient information to either admit or deny the allegations of these paragraphs and leave the plaintiff to its proofs.

3. The NJDOT and James Mesinger lack sufficient information to either admit or deny the allegations of these paragraphs and leave the plaintiff to its proofs.

4. The NJDOT and James Mesinger admit that James Mesinger served as Resident Engineer on the Project but only since 2014. The NJDOT and James Mesinger neither admit nor deny the

remaining allegations of these paragraphs and leave the plaintiff to its proofs.

5. The NJDOT denies it hired C.J. Hesse, Inc. for the Project and lacks sufficient information to either admit or deny the remaining allegations of this paragraph and leaves the plaintiff to its proofs.

INTRODUCTION

1. The NJDOT and James Mesinger admit the allegations of this paragraph.¹

2. The NJDOT and James Mesinger deny the allegations of this paragraph.

3. The NJDOT admits that an agreement, dated July 23, 2013, was executed between the parties.

4. The agreement between the parties speaks for itself and the NJDOT and James Mesinger deny the allegations of this paragraph to the extent that the allegations contradict and/or are inconsistent with the entire agreement.

5. The NJDOT and James Mesinger lack sufficient information to either admit or deny the allegations of this paragraph and leave the plaintiff to its proofs.

6. The agreement between the parties speaks for itself and the NJDOT and James Mesinger deny the allegations of this

¹ The paragraph numbering in the plaintiffs' complaint restarts at 1.

paragraph to the extent that the allegations contradict and/or are inconsistent with the entire agreement.

7. The NJDOT and James Mesinger deny the allegations of this paragraph to the extent they pertain to the NJDOT and/or its employees.

8. The NJDOT admits that it received a Notice of Claim for Damages. The NJDOT and James Mesinger neither admit nor deny the remaining allegations of this paragraph and leave the plaintiff to its proofs.

9. The NJDOT and James Mesinger admit that three meetings took place between the NJDOT and the plaintiff but deny the remaining allegations of this paragraph.

10. The NJDOT and James Mesinger admit that a meeting took place in December, 2015 and that the plaintiff provided a CCTV report. The NJDOT and James Mesinger deny the remaining allegations of this paragraph.

11. through 14. The NJDOT and James Mesinger lack sufficient information to either admit or deny the allegations of these paragraphs and leave the plaintiff to its proofs.

15. The NJDOT and James Mesinger lack sufficient information to either admit or deny the allegations of this paragraph as it pertains to the NJDOT and/or its employees.

COUNT I

BREACH OF CONTRACT

1. The NJDOT admits that it entered into an agreement with the plaintiff. However, the agreement speaks for itself and the NJDOT and James Mesinger deny the allegations of this paragraph to the extent that the allegations contradict and/or are inconsistent with the entire agreement.²

2. The NJDOT and James Mesinger deny the allegations of this paragraph to the extent they pertain to the NJDOT and/or its employees.

3. The NJDOT and James Mesinger deny the allegations of this paragraph to the extent they pertain to the NJDOT and/or its employees.

4. The NJDOT and James Mesinger lack sufficient information to either admit or deny the allegations of this paragraph and leave the plaintiff to its proofs.

5. The NJDOT and James Mesinger deny the allegations of this paragraph to the extent they pertain to the NJDOT and/or its employees.

WHEREFORE, the NJDOT and James Mesinger demand judgment in favor of the NJDOT and James Mesinger, and against the

² The paragraph numbering in the plaintiffs' complaint restarts at 1.

plaintiff, dismissing the plaintiff's complaint with prejudice, plus costs.

COUNT II

Breach of Express Warranties

1. The NJDOT and James Mesinger repeat their answers to the allegations set forth in Parties, Introduction, and Count I of the plaintiff's complaint as if more fully set forth at length herein.³

2. The agreement between the parties speaks for itself and the NJDOT and James Mesinger deny the allegations of this paragraph to the extent that the allegations contradict and/or are inconsistent with the entire agreement.

3. The NJDOT and James Mesinger deny the allegations of this paragraph to the extent they pertain to the NJDOT and/or its employees.

WHEREFORE, the NJDOT and James Mesinger demand judgment in favor of the NJDOT and James Mesinger, and against the plaintiff, dismissing the plaintiff's complaint with prejudice, plus costs.

³ The paragraph numbering in the plaintiffs' complaint restarts at 1.

COUNT III

Breach of Implied Warranties

1. The NJDOT and James Mesinger repeat their answers to the allegations set forth in Parties, Introduction, and Counts I-II of the plaintiff's complaint as if more fully set forth at length herein.⁴

2. through 4. These paragraphs set forth legal conclusions and questions of law to which no response is required.

5. The NJDOT and James Mesinger deny the allegations of these paragraphs to the extent they pertain to the NJDOT and/or its employees.

6. The NJDOT and James Mesinger deny the allegations of this paragraph.

WHEREFORE, the NJDOT and James Mesinger demand judgment in favor of the NJDOT and James Mesinger, and against the plaintiff, dismissing the plaintiff's complaint with prejudice, plus costs.

COUNT IV

Negligence

1. The NJDOT and James Mesinger repeat their answers to the allegations set forth in Parties, Introduction, and Counts I-

⁴ The paragraph numbering in the plaintiffs' complaint restarts at 1.

III of the plaintiff's complaint as if more fully set forth at length herein.⁵

2. This paragraph sets forth legal conclusions and questions of law to which no response is required.

3. through 4. The NJDOT and James Mesinger deny the allegations of these paragraphs to the extent they pertain to the NJDOT and/or its employees.

5. This paragraph sets forth legal conclusions and questions of law to which no response is required.

6. through 7. The NJDOT and James Mesinger deny the allegations of these paragraphs to the extent they pertain to the NJDOT and/or its employees.

8. This paragraph sets forth legal conclusions and questions of law to which no response is required.

9. The NJDOT and James Mesinger deny the allegations of this paragraph to the extent they pertain to the NJDOT and/or its employees.

WHEREFORE, the NJDOT and James Mesinger demand judgment in favor of the NJDOT and James Mesinger, and against the plaintiff, dismissing the plaintiff's complaint with prejudice, plus costs.

⁵ The paragraph numbering in the plaintiffs' complaint restarts at 1.

COUNT V

Res Ipsa Loquitor

1. The NJDOT and James Mesinger repeat their answers to the allegations set forth in Parties, Introduction, and Counts I-IV of the plaintiff's complaint as if more fully set forth at length herein.⁶

2. The NJDOT and James Mesinger deny the allegations of these paragraphs to the extent they pertain to the NJDOT and/or its employees.

3. This paragraph sets forth legal conclusions and questions of law to which no response is required.

4. The NJDOT and James Mesinger lack sufficient information to either admit or deny the allegations of these paragraphs and leave the plaintiff to its proofs.

WHEREFORE, the NJDOT and James Mesinger demand judgment in favor of the NJDOT and James Mesinger, and against the plaintiff, dismissing the plaintiff's complaint with prejudice, plus costs.

COUNT VI

Remediation of Costs

1. The NJDOT and James Mesinger repeat their answers to the allegations set forth in Parties, Introduction, and Counts I-V

⁶ The paragraph numbering in the plaintiffs' complaint restarts at 1.

of the plaintiff's complaint as if more fully set forth at length herein.⁷

2. through 3. The NJDOT and James Mesinger lack sufficient information to either admit or deny the allegations of these paragraphs and leave the plaintiff to its proofs.

WHEREFORE, the NJDOT and James Mesinger demand judgment in favor of the NJDOT and James Mesinger, and against the plaintiff, dismissing the plaintiff's complaint with prejudice, plus costs.

AFFIRMATIVE DEFENSES

1. The complaint fails to state a claim upon which relief may be granted.

2. The plaintiff's claims are barred by the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 et seq., and the NJDOT is entitled to all protections, immunities, exemptions and limitations enumerated therein.

3. The plaintiff's claims are barred as the plaintiff has failed to file a Notice of Claim as required by the New Jersey Contractual Liability Act, N.J.S.A. 59:13-5.

4. The plaintiff may not recover against the NJDOT and/or James Mesinger for attorney fees, costs of suit, or

⁷ The paragraph numbering in the plaintiffs' complaint restarts at 1.

prejudgment interest by virtue of the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 et seq.

5. The plaintiff may not recover against the NJDOT and/or James Mesinger based on theories of equitable estoppel, promissory estoppel, unjust enrichment, or breach of implied-in-fact contract, and/or breach of implied warranty, by virtue of the New Jersey Contractual Liability Act, N.J.S.A. 59:13-3.

6. The plaintiff's claims are barred by the requirements of the New Jersey Tort Claims Act, N.J.S.A. 59:1-1 et seq. The NJDOT is a public entity within the contemplation of the Act and is entitled to all the protections, immunities, exemptions and limitations enumerated therein.

7. Recovery is barred by the provisions of the New Jersey Tort Claims Act, N.J.S.A. 59:1-1 et seq., including, but not limited to: N.J.S.A. 59:2-3 (discretionary judgment and activity); N.J.S.A. 59:2-5 (issuance or denial of approval); N.J.S.A. 59:2-6 (failure to inspect properly); N.J.S.A. 59:4-6 (plan and design); N.J.S.A. 59:9-2 (limitation and reduction affecting judgment); N.J.S.A. 59:2-10 (public entity non-liability for certain employee conduct); N.J.S.A. 59:3-6 (issuance and denial of approval).

8. The plaintiff's claims are barred as the plaintiff has failed to file a Notice of Claim as required by the New Jersey Tort Claims Act, N.J.S.A. 59:8-1 et seq.

9. The plaintiff's claims are barred by the time limitations of the New Jersey Tort Claims Act, N.J.S.A. 59:8-8.

10. The plaintiff's claims are barred by the time limitations of the New Jersey Contractual Liability Act, N.J.S.A. 59:13-5.

11. The plaintiff's claims are barred as the NJDOT and James Mesinger did not negligently, willfully, or intentionally cause damage, or violate any duty owed to the plaintiff.

12. The plaintiff's claims are barred by waiver of its right to enter claims against the State.

13. The plaintiff's claims are barred by the doctrine of estoppel.

14. The plaintiff is barred from recovery by the applicable statute of limitations.

15. The NJDOT and James Mesinger discharged each and every obligation that was owed to the plaintiff and otherwise the answering defendants owed no duty.

16. The alleged injuries were not the proximate result of the acts or omissions of the answering defendants.

17. The plaintiff is barred from recovery by its own negligence, said negligence being comparatively greater than the negligence of the answering defendants.

18. The NJDOT and James Mesinger are not liable due to the fact that the alleged damages were the result of superseding

and/or intervening acts of others over whom the answering defendants had no control.

19. The plaintiff is barred from recovery by failure of consideration.

20. The plaintiff is barred from recovery by the statute of frauds.

21. The plaintiff is barred from recovery by the doctrine of laches.

22. The plaintiff is barred from recovery by the doctrine of avoidable consequences.

23. The plaintiff is barred from recovery by the collateral estoppel doctrine.

24. The plaintiff is barred from recovery by the entire controversy doctrine.

25. The plaintiff is barred from recovery by the promissory estoppel doctrine.

26. The plaintiff is barred from recovery by the res judicata doctrine.

27. The plaintiff is barred from recovery by the doctrine of unclean hands.

28. The NJDOT and James Mesinger have the right to move to dismiss the complaint due to insufficiency of process.

29. The plaintiff's recovery is diminished or barred by the failure of the allegedly injured plaintiff to mitigate damages.

30. The alleged damages were the result of the negligence of third parties over whom the answering defendants had neither control nor the duty to control or warn.

31. The conduct complained of was in good faith, privileged and with reasonable cause and justification.

32. The NJDOT and James Mesinger have discharged each and every obligation that they owed to the plaintiff and otherwise the answering defendants did not owe any duty to the plaintiff.

33. The plaintiff's complaint is barred by mistake.

34. The plaintiff's complaint is barred by waiver.

35. The plaintiff knew of its rights and voluntarily and deliberately intended to relinquish them.

36. The NJDOT and James Mesinger hereby claim the benefit of each and every affirmative defense alleged by any party to this matter now or in the future.

37. The plaintiff assumed the risk of its damages.

38. The plaintiff's claims are or may be barred by the plaintiff's failure to timely serve an Affidavit of Merit pursuant to the Affidavit of Merit Statute, N.J.S.A. 2A:53A-27, et seq.

39. The plaintiff's claims are barred pursuant to the New Jersey Tort Claims Act, N.J.S.A. 59:9-3.1.

40. The plaintiff, by contract, has waived and/or released any right to pursue its claims against the NJDOT and James Mesinger.

41. Duress.

42. The plaintiff's claims are barred because the NJDOT has compensated the plaintiff for the services provided.

43. The NJDOT and James Mesinger did not extend any warranties, express or implied, to the plaintiff.

44. Any warranties, express or implied, extended to the plaintiff, have been fully satisfied by the answering defendants.

45. The plaintiff has assumed the risk of its injuries.

46. The plaintiff is not entitled to any additional monies pursuant to the contract as they have been paid more than they are entitled to receive under the contract and the NJDOT is entitled to be reimbursed for the overpaid amount.

47. Pursuant to the New Jersey Contractual Liability Act, N.J.S.A. 59:13-4, contract claims against the State shall be heard by a judge sitting without a jury.

DEMAND FOR PRODUCTION OF DOCUMENTS PURSUANT TO R. 4:18-2

Pursuant to R. 4:18-2, the answering defendants request that the plaintiff produce within five days a copy of any and all documents mentioned in the complaint.

CROSS-CLAIM AGAINST UNION PAVING AND CONSTRUCTION COMPANY

First Count

1. The NJDOT entered into a contract ("Union Paving Contract") with the defendant, Union Paving and Construction

Company ("Union Paving"), which includes, *inter alia*, the 2007 NJDOT Standard Specifications for Road and Bridge Construction ("NJDOT 2007 Standard Specifications"), the Special Provisions ("Special Provisions"), and project plans for the project known as Route 35, Restoration, Berkeley Twp. to Toms River Twp. (MP 0-4), Sandy Restoration, Contract No. 000950319, Grading, Paving, Drainage, And Sign Structures, Berkeley Township, Seaside Park Borough, Seaside Heights Borough And Toms River, Township Ocean County, Federal Project NO. ER-7044(103) (the "Project").

2. Section 107.11 of the Standard Specifications obligates Union Paving to indemnify and defend the NJDOT under certain circumstances.

3. The plaintiff's claims against the NJDOT arise out of the work performed by Union Paving pursuant to the Union Paving Contract. While the NJDOT denies liability as to the plaintiff's claims, because the allegations arise out of the work of Union Paving, Union Paving shall defend the NJDOT pursuant to the Union Paving Contract.

4. The plaintiff's claims against the NJDOT arise out of the work performed by Union Paving pursuant to the Contract. While the NJDOT denies liability as to the plaintiff's claims, if judgment is entered in favor of the plaintiff against the NJDOT, it is hereby asserted that Union Paving shall indemnify the NJDOT pursuant to the Union Paving Contract.

WHEREFORE, the NJDOT demands such damages from Union Paving as may be assessed in favor of the plaintiff and against the NJDOT, as well as costs and expenses of defending against the plaintiff's claims, such that to the end the NJDOT shall be defended and indemnified in accord with the intent of the Contract.

SECOND COUNT

5. The NJDOT incorporates by reference herein all prior allegations set forth in paragraphs 1 through 4 of this cross-claim with the same force and effect as if it were fully set forth at length herein.

6. Union Paving is contractually responsible to the NJDOT for performing its duties and obligations set forth in the Union Paving Contract.

7. Union Paving is contractually responsible to comply with all of the standards and requirements set forth in the Union Paving Contract.

8. Union Paving breached the Union Paving Contract to the extent that Union Paving's work under the Union Paving Contract caused the plaintiff's alleged damages.

9. As a direct and proximate result of the breach or breaches of the Union Paving Contract by Union Paving and/or its subcontractors and/or persons directly or indirectly employed by

them on the Project, the NJDOT has suffered damages, including, but not limited to, the damages alleged by the plaintiff.

WHEREFORE, the NJDOT demands judgment against Union Paving and in favor of the NJDOT for all damages incurred and all damages to be incurred on account of Union Paving's breach, plus interest, together with attorney's fees, costs of suit, and such other and further relief as the court deems proper.

THIRD COUNT

10. The NJDOT incorporates by reference herein all prior allegations set forth in paragraphs 1 through 9 of this cross-claim with the same force and effect as if it were fully set forth at length herein.

11. While denying liability to the plaintiff for the claims alleged, if judgment is entered in favor of the plaintiff and against the NJDOT and James Mesinger, it is further asserted that the plaintiff's claims arose through the direct and primary actions and/or negligence of Union Paving and that the NJDOT and James Mesinger would be entitled to indemnification pursuant to applicable law.

WHEREFORE, the NJDOT and James Mesinger demand judgment seeking indemnification from Union Paving for all such sums as may be found due against them in favor of the plaintiff together with counsel fees and costs of suit.

FOURTH COUNT

12. The NJDOT and James Mesinger incorporate by reference herein all prior allegations set forth in paragraphs 1 through 11 of this cross-claim with the same force and effect as if it were fully set forth at length herein.

13. The NJDOT and James Mesinger demand contribution from Union Paving pursuant to applicable law.

WHEREFORE, the NJDOT and James Mesinger demand judgment seeking contribution from Union Paving for all such sums as may be found due against them in favor of the plaintiff together with counsel fees and costs of suit.

CROSS-CLAIM AGAINST MCCORMICK AND TAYLOR DESIGN ENGINEERS, INC.

First Count

1. The NJDOT entered into an agreement with the defendant, McCormick and Taylor Design Engineers, Inc. ("M&T"), for design services in connection with the Project (the "M&T Agreement").

2. The M&T Agreement provides for M&T to indemnify and defend the NJDOT.

3. While denying liability as to the plaintiff's claims, if judgment is entered in favor of the plaintiff against the NJDOT, it is hereby asserted that pursuant to the M&T

Agreement, the NJDOT is entitled to be indemnified for any losses it may suffer therefrom.

WHEREFORE, the NJDOT demands such damages from M&T as may be assessed in favor of the plaintiff and against the NJDOT as well as costs and expenses of defending against the plaintiff's claims such that to the end the NJDOT shall be indemnified and defended in accord with the intent of the M&T Agreement.

SECOND COUNT

4. The NJDOT incorporates by reference herein all prior allegations set forth in paragraphs 1 through 3 of this cross-claim with the same force and effect as if it were fully set forth at length herein.

5. While denying liability to the plaintiff for the claims alleged, if judgment is entered in favor of the plaintiff and against the NJDOT and James Mesinger, it is further asserted that the plaintiff's claims arose through the direct and primary actions and/or negligence of M&T and that the NJDOT and James Mesinger would be entitled to indemnification pursuant to applicable law.

WHEREFORE, the NJDOT and James Mesinger demand judgment seeking indemnification from M&T for all such sums as may be found due against them in favor of the plaintiff together with counsel fees and costs of suit.

THIRD COUNT

6. The NJDOT and James Mesinger incorporate by reference herein all prior allegations set forth in paragraphs 1 through 5 of this cross-claim with the same force and effect as if it were fully set forth at length herein.

7. The NJDOT and James Mesinger demand contribution from M&T pursuant to applicable law.

WHEREFORE, the NJDOT and James Mesinger demand judgment seeking contribution from M&T for all such sums as may be found due against them in favor of the plaintiff together with counsel fees and costs of suit.

THIRD PARTY COMPLAINT AGAINST GREENMAN-PEDERSON, INC.

The NJDOT, by way of third party complaint against the Greenman-Pederson, Inc. ("GPI") located at 100 Corporate Drive, Lebanon, NJ 08833, says:

FIRST COUNT

1. The plaintiff has instituted suit against the NJDOT, pursuant to a complaint, a copy of which is attached hereto as Exhibit A.

2. The NJDOT is filing the within answer to the plaintiff's complaint.

3. The NJDOT entered into an Agreement with GPI ("the GPI Agreement") regarding the Project, by which GPI was to provide construction inspection services for the Project.

4. The GPI Agreement, among other things, provides for GPI to indemnify and defend the NJDOT.

5. While denying liability as to the plaintiff's claims, if judgment is entered in favor of the plaintiff against the NJDOT, it is hereby asserted that pursuant to the GPI Agreement, the NJDOT is entitled to be indemnified for any losses it may suffer therefrom.

WHEREFORE, the NJDOT demands such damages from GPI as may be assessed in favor of the plaintiff and against the NJDOT as well as costs and expenses of defending against the plaintiff's claims such that to the end the NJDOT shall be indemnified and defended in accord with the intent of the GPI Agreement.

SECOND COUNT

6. The NJDOT incorporates by reference herein all prior allegations set forth in paragraphs 1 through 5 of this third party complaint with the same force and effect as if it were fully set forth at length herein.

7. While denying liability to the plaintiff for the claims alleged, if judgment is entered in favor of the plaintiff and against the NJDOT, it is further asserted that the plaintiff's claims arose through the direct and primary actions and/or

negligence of GPI and that the NJDOT would be entitled to indemnification pursuant to applicable law.

WHEREFORE, the NJDOT demands judgment seeking indemnification from GPI for all such sums as may be found due against it in favor of the plaintiff together with counsel fees and costs of suit.

THIRD COUNT

8. The NJDOT incorporates by reference herein all prior allegations set forth in paragraphs 1 through 7 of this third party complaint with the same force and effect as if it were fully set forth at length herein.

9. The NJDOT demands contribution from GPI pursuant to applicable law.

WHEREFORE, the NJDOT demands judgment seeking contribution from GPI for all such sums as may be found due against it in favor of the plaintiff together with counsel fees and costs of suit.

ANSWER TO ALL CROSS-CLAIMS

The NJDOT and James Mesinger hereby deny any and all cross-claims asserted against them now and in the future and incorporate by reference the affirmative defenses already asserted in the pleadings filed by the NJDOT and James Mesinger in this action.

DESIGNATION OF COUNSEL

Pursuant to R. 4:25-4, Sudha V. Raja, Deputy Attorney General, is hereby designated as trial counsel for the NJDOT in this matter.

CHRISTOPHER S. PORRINO
ATTORNEY GENERAL OF NEW JERSEY

By: Sudha Raja
Sudha V. Raja
Deputy Attorney General

DATED: September 30, 2016

Exhibit A

v.

NEW JERSEY DEPARTMENT OF
TRANSPORTATION, JAMES
MESINGER, UNION PAVING AND
CONSTRUCTION COMPANY, INC.,
McCORMICK AND TAYLOR
DESIGN ENGINEERS, INC. C.J.
HESSE, INC., JOHN DOES 1-100 (a
fictitious name for persons presently
unknown) and XYZ, INC. 1-100 (a
fictitious name for a business entity
presently unknown)

Defendants.

: SUPERIOR COURT OF NEW JERSEY
: LAW DIVISION / OCEAN COUNTY

DOCKET NO.:

Civil Action

**COMPLAINT, JURY DEMAND,
NOTICE OF OTHER ACTIONS,
DESIGNATION OF TRIAL
COUNSEL, CERTIFICATION
PURSUANT TO R. 4:5-1.**

Berkeley Township Sewerage Authority, is a municipal entity located within Berkeley Township, Ocean County, New Jersey, having its principal place of business located at 255 Atlantic City Boulevard, Bayville, New Jersey, hereinafter referred to as "Plaintiff", brings this action against Defendants, New Jersey Department of

Transportation, hereinafter referred to as "NJDOT", James Mesinger, Union Paving and Construction Company, Inc., hereinafter referred to as "UPC", McCormick and Taylor Design Engineers, Inc., C.J. Hesse, Inc., JOHN DOES 1-100 (fictitious names for person unknown) and XYZ, INC. 1-100 (a fictitious name for a business entity presently unknown) (collectively, "Defendants") by and through its attorneys, and allege as follows based on: (a) personal knowledge; (b) the investigation of counsel; and (c) information and belief:

PARTIES

1. Upon information and belief and at all times relevant hereto the Defendant, New Jersey Department of Transportation, who had and continues to have its principal place of business at 1036 Parkway Avenue, PO Box 600, Trenton, New Jersey, is and was the project supervisor and coordinator for a certain utility construction project located on the Boulevard in Seaside Park, New Jersey which is formerly known as the "Rt. 35 Restoration, Berkeley Twp. Of Toms River, MP-04" (hereinafter referred to as "Route 35 Restoration Project."

2. Upon information and belief and at all times relevant hereto the Defendant, Union and Paving and Construction Company, Inc., who had and continues to have its principal offices located at 1140 Globe Avenue, Mountainside, New Jersey 07092, is and was the project contractor for the aforesaid Route 35 Restoration Project.

3. Upon information and belief and at all times relevant hereto the Defendant, McCormick and Taylor Design Engineers, Inc. who had and continues to have its principal offices located at 700 East Gate Drive Suite 201, Mt. Laurel, New Jersey 08054, is and was the project engineer for the aforesaid Route 35 Restoration Project.

4. Upon information and belief and at all times relevant hereto the Defendant, James Mesinger, who had and continues to have its principal offices located at 1036 Parkway Avenue, PO Box 600, Trenton, New Jersey, is and was the NJDOT Resident Engineer of the aforesaid Route 35 Restoration Project.

5. Upon information and belief and at all times relevant hereto the Defendant, C.J. Hesse, Inc. who had and continues to have its principal offices located at 25 First Avenue, Suite 200, Atlantic Highlands, New Jersey, is and was the paving and asphalt company hired by the NJDOT for the aforesaid Route 35 Restoration Project.

INTRODUCTION

1. At all times relevant hereto, the Plaintiff is the owner of sewerage lines located within the South Seaside Park portion of Bayville, New Jersey, and encompasses numerous streets within which the Plaintiff provides sewerage service to the community.

2. At all times hereto the defendants were charged with the control, maintenance and repair of the sewerage pipes and delivery system located within the South Seaside Park portion of Bayville, New Jersey, and which encompasses numerous streets within which the Plaintiff provides sewerage service to the community.

3. On or about July 23, 2013 the NJDOT forwarded a "UTILITY AGREEMENT MODIFICATION Construction Authorization for Utility Owner" to the Plaintiff.

4. The Agreement identifies the scope of work to be performed at the Route 35 Restoration Project which specifically states that "[t]he State shall undertake the relocation and/or adjustment of their existing Sewer facilities as required to accommodate the construction of the project" which is formally known as the "New Jersey Department of Transportation, Utility Agreement Plan, Rt. 35 Restoration, Berkeley Twp. to Toms River (MP 0.0-4.0), Berkeley Township Toms River Township, Boroughs of Seaside Heights, Ocean County, Sewer Facilities, Berkeley Township Sewerage Authority, UECA-3-35restmp04-950319 attached for UAM-1-3-35restmp04-950319, scale as indicated, date April 2013, hereinafter referred to as "Agreement."

5. This work performed is located within the South Seaside Park portion of Bayville, New Jersey, and encompasses several streets within which the Plaintiff provides sewerage service to the community.

6. The Agreement identifies certain express warranties as well as the standard of work to be completed by the defendants and includes the following:

3. That the facilities constructed for the utility by the State and paid for by the State, under the terms of this Agreement shall upon completion and acceptance become the sole property of the utility and the utility shall be responsible for the operation, repair and maintenance thereof.

4. *The facilities removed or disrupted, as called for herein, shall be replaced in such a manner that will result in services being restored to the status and degree of use as existed prior to said changes and the facilities constructed by the State's contractor shall be installed to the utility's satisfaction and the utility shall reach understandings with the State's Resident Engineer regarding inspection of material uses in the installation.*

8. *Utility facilities constructed by the State's contractor will be installed to the Utility's satisfaction and the Utility shall reach an understanding with the State's Resident Engineer for the inspection of material to be used for utility facilities before said material is installed.*

(Exhibit "A").

7. This action arises from the Defendants' breach of contract, negligence, breach of express warranties, breach of implied warranties, and failure to remediate certain repairs pursuant to the contract between the parties. As a result of Defendants actions and omissions, Plaintiffs have suffered and will continue to suffer damages.

8. Plaintiffs, through their attorneys, filed the appropriate Notices of Claim with the public entity, known as "OCC" pursuant to the appropriate notice provision of the New Jersey Torts Claim Act, N.J.S.A. 59:1-1, *et seq.*, on or about June 27, 2014. The Tort Claims Notice was to inform the Defendants of potential defects and deficiencies that were caused by the Defendants failure to notify the Plaintiff of particular installations within the system and permit inspections of materials and workmanship of various portions of the project. At the time of the filing of the Tort Claim Notice the Plaintiff had no knowledge

of the latent defects and the full extent of the damages that were caused as a result of Defendants' acts, omissions and otherwise breach of contract.

9. Plaintiffs, through their attorney's, appropriately provided the Defendants with more than six (6) months to investigate the claims alleged in Notice. Since the filing of the Notice, Plaintiff arranged three meetings which were attended by some or all of the defendants to resolve /mediate the issues and items of concern. During those meetings the Defendants provided verbal commitments that the numerous requests of Plaintiff would be accommodated and that the repairs requested by Plaintiff would be carried out in accordance with the Agreement and with the approval of the Plaintiff. However, those items have not been completed to date.

10. At the recent meeting in December, 2015, the Plaintiff provided the Defendants with a CCTV report, containing data and pictures which outlined newly discovered, latent defects and damage. The damage was only recently discovered when Plaintiff took it upon itself to inspect the inside of various sewerage pipes.

11. In May of 2015, the Plaintiff received the Ocean County Municipal Authority Quarterly Flow Report for the first quarter of 2016. This report indicated, for the first time, that there is over 1,000,000.00 extra gallons of flow each month as compared to the same portions of the system in the past years.

12. Prior to receipt of the CCTV and Flow Report, the Plaintiff was unaware of and certainly unable to determine the latent defects that were within the system and more importantly the additional 1 million gallons of flow.

13. As a result of the 2016 First Quarter Flow report, the Plaintiff scheduled a second CCTV of the same and additional areas of the system which were also included within the Agreement in order to scope, video and document the condition of the carious sewerage lines. The CCTV report will be forthcoming from the Plaintiff's Engineer.

14. More than six (6) months has elapsed since the filing of the Notice of Claim and no disposition of this case has been made. Since the filing of the Notice, the Defendants have indicated that many deficiencies were repaired, however; the work this was performed without the Plaintiff's supervision, inspection and acceptance as required in the Agreement. This is significant because as demonstrated in the first CCTV and Flow Report the defendants' alleged repairs, were defective and they continue to cause Plaintiff's damage.

15. At all times mentioned in this complaint, defendants were acting by and through its agents, servants and employees, who were acting in the course and scope of their employment or agency with/ by/ and through the defendant(s).

COUNT I

BREACH OF CONTRACT

1. Plaintiffs entered into an Agreement with the Defendants to provide certain relocation and/or adjustment to the Plaintiff's sewer facilities in order to accommodate the construction of the roadway project. (Exhibit "A").

2. The Defendant breached their respective duties which were owed to the Plaintiff in accordance with the Agreement.

3. The Defendants have failed to remedy, repair, rectify and cure the defects and deficiencies in their workmanship despite repeated requests of Plaintiff and further despite their obligations under the Agreement.

4. At all times relevant hereto Plaintiff substantially performed all of its obligations under the Agreement.

5. The Defendant's breach of this Agreement and their failure to perform in a workmanlike manner have directly and proximately caused the Plaintiff to suffer damages and will continue to cause the Plaintiff to suffer damages to an extent not fully known, now and into the future as they are discovered through the various latent defects.

WHEREFORE, Plaintiffs, respectfully requests judgment against Defendants, jointly, severally and in the alternative for:

- (a) Compensatory damages;
- (b) Consequential and Incidental damages;
- (c) Injunctive relief preventing the release of any performance or maintenance bonds;

- (d) Specific Performance;
- (e) Attorney's attorneys' fees and costs; and
- (f) Awarding such other relief as this Court may deem just and proper.

COUNT II

Breach of Express Warranties

1. Plaintiff incorporates the facts and allegation set forth above as though more fully set forth herein.
2. The Agreement contains express warranties that the defendants work shall be performed to Plaintiff's satisfaction including use of materials acceptable to the Plaintiff.
3. By virtue of the Defendants failure to perform to Plaintiff's satisfaction including use of materials acceptable to the Plaintiff as promised in the Agreement and their otherwise dereliction of their contractual obligations and duties, the Plaintiff has suffered and will continue to suffer damages including, but not limited to, the cost of the increased flow, cost of replacing and repairing the latent defects found in the system and the underlying consequential damage. In addition, Plaintiff has suffered damages to an extent not fully known.

WHEREFORE, Plaintiffs, respectfully requests judgment against Defendants, jointly, severally and in the alternative for:

- (a) Compensatory damages;
- (b) Consequential and Incidental damages;
- (c) Injunctive relief preventing the release of any performance or maintenance bonds;
- (d) Specific Performance;
- (e) Attorney's attorneys' fees and costs; and
- (f) Awarding such other relief as this Court may deem just and proper.

COUNT III

Breach of Implied Warranties

1. Plaintiff incorporate the above referenced facts and allegation as though more fully set forth herein.
2. Contained within every contract for the improvement to real property is the implied warranty of good faith and fair dealing.
3. Contained within every contract for the improvement to real property is the implied obligation to perform in a reasonably good and workmanlike manner.
4. Implied covenants and terms of contract are as effective components of agreements as those which are expressed.
5. The defendants have breached the implied warranty as their services and performance were not of good quality and workmanship and were not free from faults and defects.

6. As a direct and proximate result of the breaches of the implied warranties as described above, the Plaintiff has and continues to sustain damages and will in the future, continue to sustain direct and consequential damages, including but not limited to the cost of the increased flow, cost of replacing and repairing the latent defects found in the system and the underlying consequential damage.

WHEREFORE, Plaintiffs, respectfully requests judgment against Defendants, jointly, severally and in the alternative for:

- (a) Compensatory damages;
- (b) Consequential and Incidental damages;
- (c) Injunctive relief preventing the release of any performance or maintenance bonds;
- (d) Specific Performance;
- (e) Attorney's attorneys' fees and costs; and
- (f) Awarding such other relief as this Court may deem just and proper.

COUNT IV

Negligence

1. Plaintiff incorporate the above referenced facts and allegation as though more fully set forth herein.
2. At all times relevant hereto the defendants, individually as well as by and through their respective agents, servants and employees, were negligent and careless in the manner in which they performed repairs at the Route 35 Restoration Project.

3. Defendants failed to properly perform their duties with caution, failed to inspect their work, failed to prevent leaks in the sewerage system, caused additional leaks, compromised the sewerage delivery system, failed to take steps of a preventive, protective or remedial nature on the sewerage delivery system to prevent leaks that it knew, or in the exercise of due diligence should have known, would occur if the leaks were not stopped or prevented from occurring in the first place, despite being put on notice of those leaks.

4. Defendants failed to take steps or to engage another to take steps to sure up the sewerage lines that it knew or should have known were leaking or susceptible to leaks.

5. Defendants breached its duty to maintain the lines in a reasonably safe and stable condition and in such a manner so as not to cause damage to the lines or adjacent land.

6. Defendants allowed or permitted the lines to exist in a defective, dangerous and unstable condition after receiving notice that it was in such a condition.

7. Defendants allowed and or permitted the excessive sewerage flow to exist and persist.

8. Defendants failed to use such care and due regard for the rights of Plaintiff charged with the duty to not damage the Plaintiff's sewerage lines or surrounding land.

9. As a direct and proximate result of Defendants' aforesaid acts and omissions Plaintiffs were caused to and will continued to suffer severe direct and consequential damages and a loss of revenue because the defects recently discovered and to be discovered in the systems .

WHEREFORE, Plaintiffs, respectfully requests judgment against Defendants, jointly, severally and in the alternative for:

- (a) Compensatory damages;
- (b) Consequential and Incidental damages;
- (c) Injunctive relief preventing the release of any performance or maintenance bonds;
- (d) Specific Performance;
- (e) Attorney's attorneys' fees and costs; and
- (f) Awarding such other relief as this Court may deem just and proper.

COUNT V

Res Ipsa Loquitor

1. Plaintiff incorporate the above referenced facts and allegation as though more fully set forth herein.
2. At all times relevant hereto, the instrumentality which caused the Plaintiff's damages was/were in the exclusive control of the defendants and the circumstances surrounding the happening of the leaking sewerage lines and faulty workmanship were of such a nature that, in the ordinary course of events, the incident would not have occurred if the defendants having control over the instrumentality and manner in which the work was performed had used reasonable care under the circumstances.
3. The defendants are liable to Plaintiff for damages by way of the doctrine of *Res Ipsa Loquitor*.

4. As a direct and proximate result of Defendants' aforesaid acts and omissions Plaintiffs were caused to and will continued to suffer severe direct and consequential damages and a loss of revenue because the defects recently discovered and to be discovered in the systems .

WHEREFORE, Plaintiffs, respectfully requests judgment against Defendants, jointly, severally and in the alternative for:

- (a) Compensatory damages;
- (b) Consequential and Incidental damages;
- (c) Injunctive relief preventing the release of any performance or maintenance bonds;
- (d) Specific Performance;
- (e) Attorney's attorneys' fees and costs; and
- (f) Awarding such other relief as this Court may deem just and proper.

COUNT VI

Remediation Costs

1. Plaintiff incorporate the above referenced facts and allegation as though more fully set forth herein.

2. As a result of the aforementioned acts and omissions of the defendants aforesaid, the Plaintiff's land has been polluted and saturated with millions of gallons of raw sewage.

3. As a direct and proximate result of Defendants' aforesaid acts and omissions, Plaintiffs will be caused to expend large sums of money in remediation costs to remove the raw sewerage from its land and soil.

WHEREFORE, Plaintiffs, respectfully requests judgment against Defendants, jointly, severally and in the alternative for:

- (a) Compensatory damages;
- (b) Consequential and Incidental damages;
- (c) Injunctive relief preventing the release of any performance or maintenance bonds;
- (d) Specific Performance;
- (e) Attorney's attorneys' fees and costs; and
- (f) Awarding such other relief as this Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demand a trial by jury as to all issues so triable.

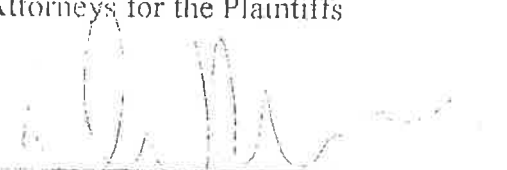
NOTICE OF TRIAL COUNSEL

Please take notice that DINA M. VICARI, ESQ. is hereby designated as Trial Counsel in the above-captioned matter for the firm of R.C. SHEA & ASSOCIATES, P.C., pursuant to Rule 4:25 et. seq.

CERTIFICATION

I hereby certify that this matter is not the subject of any other action pending in any Court or a pending Arbitration proceeding, nor is any other action or Arbitration proceeding contemplated. All parties known to Plaintiff at this time who should have been joined in this action, have been joined.

R.C. SHEA & ASSOCIATES, P.C.
Attorneys for the Plaintiffs



DINA M VICARI, ESQ.

Dated: June 27, 2016

Exhibit A

STUAMCA (5/02/12) NEW JERSEY DEPARTMENT OF TRANSPORTATION
P.O. BOX 600 TRENTON, NEW JERSEY 08625

UTILITY AGREEMENT MODIFICATION

Construction Authorization for Utility Owner

Category: Construction Authorization (CA)

Full Federal Oversight Yes _____ No X

Date: 07/23/2013

UPC No: 950319

Project Name: Rt. 35 Restoration, Berkeley Twp to Toms River, MP 0-4

Utility Owner Name: Berkeley Township Sewerage Authority

Municipality: Twp. of Berkeley & Toms River, Borough of Seaside Heights

County: Ocean

Utility Engineering/Construction Agreement No: UECA-3-35restmp04-950319

Utility Agreement Modification No.: UMA-1-3-35restmp04-950319

Contract ID No.: N/A

TO:

Greg DePaul, Superintendent

255 Atlantic City blvd.

Bayville, NJ 08721

Dear Mr. DePaul:

The Utility is hereby authorized to proceed with the work described in accordance with the provisions set forth in the subject Agreement:

- (1) The Utility shall have the individual responsible for overseeing the utility work specified in this Agreement Modification to attend the State's Utility Pre-Construction meeting schedule by the State's Resident Engineer with the State's contractor to discuss the work and necessary coordination.
- (2) The State shall undertake the relocation and/or adjustment of their existing Sewer facilities as required to accommodate the construction of the project, as indicated all or in part on the attached plan, consisting of two (2) sheets, which is a part of this Agreement and is entitled: "New Jersey Department of Transportation, Utility Agreement Plan, Rt. 35 Restoration, Berkeley Twp to Toms River (MP 0.0-4.0), Berkeley Twp., Toms River Twp., Boroughs of Seaside Height, Ocean County, Sewer Facilities, Berkeley Township Sewerage Authority, UECA-3-35restmp04-950319 attached for UAM-1-3-35restmp04-950319, Scale as indicated, Date April 2013 (hereinafter called the "Utility Agreement Plan").
- (3) That the facilities constructed for the utility by the State and paid for by the State, under the terms of this Agreement, shall upon completion and acceptance become the sole property of the utility and the utility shall be responsible for the operation, repair, and maintenance thereof.
- (4) The facilities removed or disrupted, as called for herein, shall be replaced in such a manner that will result in services being restored to the status and degree of use as existed prior to said changes and the facilities constructed by the State's contractor shall be installed to the utility's satisfaction and the utility shall reach understandings with State's Resident Engineer regarding inspection of materials used in the installations.

STUAMCA (5/02/12) NEW JERSEY DEPARTMENT OF TRANSPORTATION
P.O. BOX 600 TRENTON, NEW JERSEY 08625

UTILITY AGREEMENT MODIFICATION

Construction Authorization for Utility Owner

Category: Construction Authorization (CA)

Full Federal Oversight Yes _____ No X

Date: 07/23/2013

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Project Name: Rt. 35 Restoration, Berkeley Twp to Toms River, MP 0-4

Utility Owner Name: Berkeley Township Sewerage Authority

Municipality: Twp. of Berkeley & Toms River, Borough of Seaside Heights

County: Ocean

Utility Engineering/Construction Agreement No: UECA-3-35restmp04-950319

Utility Agreement Modification No.: UMA-1-3-35restmp04-950319

Contract ID No.: N/A

- (5) The relocation and/or adjustment work shall be performed in accordance with the "Schedule" cited on the Utility Plan. However, once work on the project has commenced, the Utility shall comply with the reasonable directions of the Resident Engineer as to the time for completion of the required work.
- (6) In performing the work required by this Agreement, the Utility shall not be responsible for delays caused by acts of God, fires, floods, riots, civil commotion's, labor disputes, freight embargoes, acts of the State's contractor(s), changes in plans by the State, failure of the State to give reasonable notice prior to requiring the Utility to relocation and/or adjust its facilities, or by its inability to secure materials or supplies due to reasons beyond its control.
- (7) The timing of work called for herein is based on anticipated scheduling and phasing of the project. However, all work to be performed by the Utility, or its contractor shall be coordinated with the operations of the State's contractor in a manner which will obtain the maximum economy in utility facility relocation that is compatible with the minimum interference to the operations of the State's contractor.
- (8) Utility facilities constructed by the State's contractor will be installed to the Utility's satisfaction and the Utility shall reach an understanding with State's Resident Engineer for the inspection of material to be used for utility facilities before said material is installed.
- (9) Certain temporary facilities may have to be constructed due to staging of highway construction and service requirements which are not specifically indicated, however, it is the intention of this Agreement to cover such work and same shall be accomplished by the Utility where necessary, subsequent to State approval.
- (10) All lengths relative to utility relocations as indicated on the Utility Agreement Plan are understood to be plus or minus and construction as-built measurements shall govern the actual amounts for which payment will be made.
- (11) Overtime work, not exceeding 10% of the labor cost of this Agreement, is authorized when approved by the State's Resident Engineer. Overtime work, exceeding 10% of the labor cost of this Agreement, will be treated as a "Major Change" of the plan under the State's Billing Regulations.
- (12) The Utility shall notify the State's Resident Engineer on a daily basis when and where the Utility and/or its contractor will be performing relocation work.

STUAMCA (5/02/12) NEW JERSEY DEPARTMENT OF TRANSPORTATION
P.O. BOX 600 TRENTON, NEW JERSEY 08625

UTILITY AGREEMENT MODIFICATION

Construction Authorization for Utility Owner

Category: Construction Authorization (CA)

Full Federal Oversight Yes _____ No X

Date: 07/23/2013

UPC No: 950319

Project Name: Rt. 35 Restoration, Berkeley Twp to Toms River, MP 0-4

Utility Owner Name: Berkeley Township Sewerage Authority

Municipality: Twp. of Berkeley & Toms River, Borough of Seaside Heights

County: Ocean

Utility Engineering/Construction Agreement No: UECA-3-35restmp04-950319

Utility Agreement Modification No.: UMA-1-3-35restmp04-950319

Contract ID No.: N/A

(13) The Utility shall permit the State to do the work prescribed herein and shall cooperate in the completion of such work.

(14) Upon completion of the work called for herein, the State will have completed it's obligations under this Agreement for the rearrangement of the sewer facilities required by the construction of the project and that any other work performed by the utility in this area on it's existing or future facilities shall be done at the sole cost and expense of the utility and no further charges will be accepted by the State.

(15) Costs incurred by utility for construction field engineering, inspection and main management operations performed by the utility personnel relative to the relocation/rearrangement work will also be reimbursed by the State. The estimated costs for these services is \$30,000.00.

(16) The estimated cost of relocation/rearrangement work (included in the State's contract) is \$200,000.00.

The cost estimate indicated herein is based on figures submitted by the company but payment is to be made on the basis of actual cost or in accordance with an approved billing method. The company shall identify all work including preliminary engineering when billing the State with work item number and/or letter designations referring to utility plans and estimates.

ESTIMATED COST TO STATE FOR WORK PERFORMED BY THE UTILITY

Description	Cost Estimate
Inspection & Administration	\$30,000.00
Total Cost	\$30,000.00

STUAMCA (5/02/12) NEW JERSEY DEPARTMENT OF TRANSPORTATION
P.O. BOX 600 TRENTON, NEW JERSEY 08625

UTILITY AGREEMENT MODIFICATION

Construction Authorization for Utility Owner

Category: Construction Authorization (CA)

Full Federal Oversight Yes ☐ No ☒

Date: 07/23/2013

UPC No: 950319

Project Name: Rt. 35 Restoration, Berkeley Twp to Toms River, MP 0-4

Utility Owner Name: Berkeley Township Sewerage Authority

Municipality: Twp. of Berkeley & Toms River, Borough of Seaside Heights

County: Ocean

Utility Engineering/Construction Agreement No: UECA-3-35restmp04-950319

Utility Agreement Modification No.: UMA-1-3-35restmp04-950319

Contract ID No.: N/A

	PRELIMINARY ENGINEERING	CONSTRUCTION	TOTAL
Amt. Of Original Contract	\$25,000.00		\$25,000.00
Amt. Based on Utility Agreement Modifications			
Preliminary Engineering UAMPE (No's _____)			
Construction Authorization UAMCA (No's _____)			
Const. Change Order UAMCCO (No's _____)			
Amt. this UAM No. 1-3-35restmp04-950319		\$30,000.00	\$30,000.00
Adjusted Contract Amount as of this UAM	\$25,000.00	\$30,000.00	\$55,000.00

NJDOT Funding Data for THIS Action

Job Code No. 1506520
Construction Program Year 2013
Item Number 357
Fed.-State % 80% - 20%
Fed. Project Number ER 7044(105)

Reserved for F.H.W.A. - Approval

Certification of Funds:

[Signature] 8/19/13

Director of Accounting & Auditing (Date)

Recommended:

[Signature] 7/23/13
Ahmad A Qureshi, Project Manager (Date)
Division of Project Management, Group-C

Approved:

[Signature] 8/15/13
Richard G. Jaffe, Director (Date)
Division of Capital Program Support

Distribution: Accounts Payable (1 original & 1 copy), Utility Owner (1 original & 1 copy),
Federal Aid Coordinator, (1-Federal), Regional Construction (4), Regional Maintenance (2),
Project File (1)

CHRISTOPHER S. PORRINO
ATTORNEY GENERAL OF NEW JERSEY
R.J. Hughes Justice Complex
25 Market Street
PO Box 114
Trenton, NJ 08625-0114
Attorney for Defendants
New Jersey Department of Transportation and
James Mesinger

By: Sudha V. Raja - ID No.: 024022000
Brad M. Reiter - Id. No.: 123182014
Deputy Attorneys General
(609) 292-8036

BERKELEY TOWNSHIP SEWERAGE
AUTHORITY,

Plaintiff,

v.

STATE OF NEW JERSEY, DEPARTMENT
OF TRANSPORTATION; JAMES
MESINGER; UNION PAVING AND
CONSTRUCTION COMPANY, INC.;
MCCORMICK AND TAYLOR DESIGN
ENGINEERS, INC.; C.J. HESSE
INC.

Defendants.

: SUPERIOR COURT OF NEW JERSEY
: LAW DIVISION - OCEAN COUNTY
: DOCKET NO.: OCN-L-1728-16
:
:
:

Civil Action

: STIPULATION EXTENDING TIME TO
: RESPOND TO COMPLAINT
:
:
:
:
:
:
:

It is hereby stipulated and agreed by and between the attorney for the plaintiff, Berkeley Township Sewerage Authority, and the attorney for the defendants, the New Jersey Department of Transportation and James Mesinger, that the time within which the said defendant may serve and file a responsive pleading to the Complaint dated June 27, 2016 is extended through and including September 30, 2016, consistent with R. 4:6-1(c).

R.C. SHEA & ASSOCIATES
COUNSELLORS AT LAW, P.C.

By: _____

Dina M. Vicari, Esq.
Attorney for Plaintiff
Berkeley Township Sewerage
Authority

Dated: _____

8/22/16

CHRISTOPHER S. PORRINO
ATTORNEY GENERAL OF NEW JERSEY

By: _____

Brad M. Reiter
Deputy Attorney General
Attorney for Defendants
The New Jersey Department
of Transportation and
James Mesinger

Dated: _____

8/31/16

Appendix XII-B1

	CIVIL CASE INFORMATION STATEMENT (CIS)		FOR USE BY CLERK'S OFFICE ONLY			
			PAYMENT TYPE: ☐ CK ☐ CG ☐ CA			
			CHG/CK NO.			
			AMOUNT:			
			OVERPAYMENT:			
				BATCH NUMBER:		
ATTORNEY / PRO SE NAME Sudha V. Raja, DAG			TELEPHONE NUMBER (609) 292-8036		COUNTY OF VENUE Ocean	
FIRM NAME (if applicable) State of New Jersey			DOCKET NUMBER (when available) 1728-16			
OFFICE ADDRESS R.J. Hughes Justice Complex, PO Box 114, 8th Floor Trenton, NJ 08625			DOCUMENT TYPE Answer, Third Party Complaint			
			JURY DEMAND ☐ YES ☒ NO			
NAME OF PARTY (e.g., John Doe, Plaintiff) State of New Jersey, Department of Transportation and James Mesinger			CAPTION Berkeley Township Sewerage Authority v. State of New Jersey, Department of Transportation and James Mesinger, et al.			
CASE TYPE NUMBER (See reverse side for listing) 513		HURRICANE SANDY RELATED? ☐ YES ☒ NO		IS THIS A PROFESSIONAL MALPRACTICE CASE? ☐ YES ☒ NO IF YOU HAVE CHECKED "YES," SEE N.J.S.A. 2A:53 A -27 AND APPLICABLE CASE LAW REGARDING YOUR OBLIGATION TO FILE AN AFFIDAVIT OF MERIT.		
RELATED CASES PENDING? ☐ YES ☒ NO			IF YES, LIST DOCKET NUMBERS			
DO YOU ANTICIPATE ADDING ANY PARTIES (arising out of same transaction or occurrence)? ☒ YES ☐ NO			NAME OF DEFENDANT'S PRIMARY INSURANCE COMPANY (if known) ☐ NONE ☐ UNKNOWN			
THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE.						
CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION						
DO PARTIES HAVE A CURRENT, PAST OR RECURRENT RELATIONSHIP? ☒ YES ☐ NO		IF YES, IS THAT RELATIONSHIP: ☐ EMPLOYER/EMPLOYEE ☐ FRIEND/NEIGHBOR ☐ OTHER (explain) ☐ FAMILIAL ☒ BUSINESS				
DOES THE STATUTE GOVERNING THIS CASE PROVIDE FOR PAYMENT OF FEES BY THE LOSING PARTY? ☐ YES ☒ NO						
USE THIS SPACE TO ALERT THE COURT TO ANY SPECIAL CASE CHARACTERISTICS THAT MAY WARRANT INDIVIDUAL MANAGEMENT OR ACCELERATED DISPOSITION						
 DO YOU OR YOUR CLIENT NEED ANY DISABILITY ACCOMMODATIONS? ☐ YES ☒ NO		IF YES, PLEASE IDENTIFY THE REQUESTED ACCOMMODATION				
WILL AN INTERPRETER BE NEEDED? ☐ YES ☒ NO		IF YES, FOR WHAT LANGUAGE?				
I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with Rule 1:38-7(b).						
ATTORNEY SIGNATURE: <i>Sudha V. Raja</i> 9/30/16						



CIVIL CASE INFORMATION STATEMENT (CIS)

Use for initial pleadings (not motions) under *Rule 4:5-1*

CASE TYPES (Choose one and enter number of case type in appropriate space on the reverse side.)

Track I - 150 days' discovery

- 151 NAME CHANGE
- 175 FORFEITURE
- 302 TENANCY
- 399 REAL PROPERTY (other than Tenancy, Contract, Condemnation, Complex Commercial or Construction)
- 502 BOOK ACCOUNT (debt collection matters only)
- 505 OTHER INSURANCE CLAIM (including declaratory judgment actions)
- 506 PIP COVERAGE
- 510 UM or UIM CLAIM (coverage issues only)
- 511 ACTION ON NEGOTIABLE INSTRUMENT
- 512 LEMON LAW
- 801 SUMMARY ACTION
- 802 OPEN PUBLIC RECORDS ACT (summary action)
- 999 OTHER (briefly describe nature of action)

Track II - 300 days' discovery

- 305 CONSTRUCTION
- 509 EMPLOYMENT (other than CEPA or LAD)
- 599 CONTRACT/COMMERCIAL TRANSACTION
- 603N AUTO NEGLIGENCE - PERSONAL INJURY (non-verbal threshold)
- 603Y AUTO NEGLIGENCE - PERSONAL INJURY (verbal threshold)
- 605 PERSONAL INJURY
- 610 AUTO NEGLIGENCE - PROPERTY DAMAGE
- 621 UM or UIM CLAIM (includes bodily injury)
- 699 TORT - OTHER

Track III - 450 days' discovery

- 005 CIVIL RIGHTS
- 301 CONDEMNATION
- 602 ASSAULT AND BATTERY
- 604 MEDICAL MALPRACTICE
- 606 PRODUCT LIABILITY
- 607 PROFESSIONAL MALPRACTICE
- 608 TOXIC TORT
- 609 DEFAMATION
- 616 WHISTLEBLOWER / CONSCIENTIOUS EMPLOYEE PROTECTION ACT (CEPA) CASES
- 617 INVERSE CONDEMNATION
- 618 LAW AGAINST DISCRIMINATION (LAD) CASES

Track IV - Active Case Management by Individual Judge / 450 days' discovery

- 156 ENVIRONMENTAL/ENVIRONMENTAL COVERAGE LITIGATION
- 303 MT. LAUREL
- 508 COMPLEX COMMERCIAL
- 513 COMPLEX CONSTRUCTION
- 514 INSURANCE FRAUD
- 620 FALSE CLAIMS ACT
- 701 ACTIONS IN LIEU OF PREROGATIVE WRITS

Multicounty Litigation (Track IV)

- | | |
|--|---|
| 266 HORMONE REPLACEMENT THERAPY (HRT) | 288 PRUDENTIAL TORT LITIGATION |
| 271 ACCUTANE/ISOTRETINOIN | 289 REGLAN |
| 274 RISPERDAL/SEROQUEL/ZYPREXA | 290 POMPTON LAKES ENVIRONMENTAL LITIGATION |
| 278 ZOMETHA/AREDDIA | 291 PELVIC MESH/GYNECARE |
| 279 GADOLINIUM | 292 PELVIC MESH/BARD |
| 281 BRISTOL-MYERS SQUIBB ENVIRONMENTAL | 293 DEPUY ASR HIP IMPLANT LITIGATION |
| 282 FOSAMAX | 295 ALLODERM REGENERATIVE TISSUE MATRIX |
| 284 NUVARING | 296 STRYKER REJUVENATE/ABG II MODULAR HIP STEM COMPONENTS |
| 285 STRYKER TRIDENT HIP IMPLANTS | 297 MIRENA CONTRACEPTIVE DEVICE |
| 286 LEVAQUIN | 601 ASBESTOS |
| 287 YAZ/YASMIN/OCELLA | 623 PROPECIA |

If you believe this case requires a track other than that provided above, please indicate the reason on Side 1, in the space under "Case Characteristics."

Please check off each applicable category



Putative Class Action



Title 59

CHRISTOPHER S. PORRINO
ATTORNEY GENERAL OF NEW JERSEY
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Attorneys for Defendant/ Third-Party Plaintiff New Jersey
Department of Transportation

By: Sudha V. Raja - ID No.: 024022000
Brad M. Reiter - Id. No.: 123182014
Deputy Attorneys General
(609) 292-8036

BERKELEY TOWNSHIP SEWERAGE
AUTHORITY,

Plaintiff,

v.

STATE OF NEW JERSEY, DEPARTMENT
OF TRANSPORTATION; JAMES
MESINGER; UNION PAVING AND
CONSTRUCTION COMPANY, INC.;
MCCORMICK AND TAYLOR DESIGN
ENGINEERS, INC.; C.J. HESSE
INC.

Defendants;

AND

STATE OF NEW JERSEY, DEPARTMENT
OF TRANSPORTATION;

Defendant/Third-Party
Plaintiff,

v.

GREENMAN-PEDERSON, INC.; UNION
PAVING AND CONSTRUCTION
COMPANY, INC.; MCCORMICK AND
TAYLOR DESIGN ENGINEERS, INC.

Third-Party Defendants.

: SUPERIOR COURT OF NEW JERSEY
: LAW DIVISION - OCEAN COUNTY
: DOCKET NO.: OCN-L-1728-16

:
:
: Civil Action
:

: CERTIFICATION OF GOOD CAUSE TO
: CHANGE TRACK ASSIGNMENT AND TO
: ASSIGN FOR CASE MANAGEMENT BY
: AN INDIVIDUAL JUDGE ON BEHALF
: OF THE STATE OF NEW JERSEY,
: DEPARTMENT OF TRANSPORTATION

I, Sudha V. Raja, Deputy Attorney General, certifies unto law as follows:

1. I have been assigned to represent the defendant/ third party plaintiff the State of New Jersey, Department of Transportation ("NJDOT") and defendant James Mesinger in the above-captioned matter. As such, I am familiar with this case.

2. This certification is made pursuant to Rule 4:5A-2(b) in support of a change of track assignment from Track II to Track IV (Complex Construction, No. 513) for individual case management by a judge.

3. This matter deals with complex construction litigation arising from a construction project in Ocean County.

4. Given the nature and complexity of the claims asserted, the parties will need sufficient time to conduct discovery, including but not limited to document reviews, numerous fact depositions, potential submission of expert reports, and depositions of experts.

4. To date, the NJDOT has not received consent for this request.

5. For the foregoing reasons, the NJDOT respectfully asserts that good cause has been shown to change the track assignment of this case to Track IV (Complex Construction, No. 513) and assign this case for individual case management by a judge, who can set appropriate discovery deadlines.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.


Sudha V. Raja

DATED: September 30, 2016

CHRISTOPHER S. PORRINO
ATTORNEY GENERAL OF NEW JERSEY
Richard J. Hughes Justice Complex
25 Market Street
P.O. Box 114
Trenton, New Jersey 08625-0114
Attorneys for Defendant/ Third
Department of Transportation

BERKELEY TOWNSHIP SEWERAGE
AUTHORITY,

Plaintiff,

V.

Civil Action

STATE OF NEW JERSEY, DEPARTMENT
OF TRANSPORTATION; JAMES
MESINGER; UNION PAVING AND
CONSTRUCTION COMPANY, INC.;
MCCORMICK AND TAYLOR DESIGN
ENGINEERS, INC.; C.J. HESSE
INC.

Defendants;

AND

STATE OF NEW JERSEY, DEPARTMENT
OF TRANSPORTATION;

Defendant/Third-Party
Plaintiff,

V.

GREENMAN-PEDERSON, INC.; UNION
PAVING AND CONSTRUCTION
COMPANY, INC.; MCCORMICK AND
TAYLOR DESIGN ENGINEERS, INC.

Third-Party Defendants.

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I, Sudha V. Raja, Deputy Attorney General, certifies unto law as follows:

1. I am a Deputy Attorney General and I am assigned to the Division of Law, Transportation, Construction and Condemnation Section.

2. On this date I caused to be served via hand delivery an original and two copies of the State of New Jersey, Department of Transportation and James Mesinger's (1) answer, affirmative defenses, counter claim, cross-claim, third-party complaint, and answer to all cross-claims, (2) stipulation extending time to answer, (3) case information statement, (4) certification of good cause to change track assignment, and (5) certification of service for the above-referenced filings to:

Superior Court of New Jersey
Civil Intake
Ocean County Courthouse
118 Washington Street
Toms River, NJ 08754

3. On this date I caused to be served via overnight delivery and e-mail, one copy of the same to:

Dina M. Vicari, Esq.
R.C. Shea & Associates
Counsellors at Law, P.C.
244 Main Street
PO Box 2627
Toms River, NJ 08754-2627
Attorney for Plaintiff, Berkeley Township Sewerage Authority

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