

Settlement Agreement

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

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (hereinafter referred to as this "Agreement") dated August 14, 2018, is entered into between and among the plaintiff, Berkeley Township Sewerage Authority (hereinafter "BTSA"), defendant Union Paving and Construction Company, Inc. (hereinafter "Union Paving"), defendant/third party plaintiff State of New Jersey, Department of Transportation (hereinafter referred to as "the NJDOT"), and third party defendant Greenman-Pedersen, Inc. (hereinafter "GPI"). BTSA, Union Paving, the NJDOT, and GPI will hereinafter be collectively referred to as "the Parties."

WITNESSETH

WHEREAS, the NJDOT advertised a contract for services related to a construction 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"); and

WHEREAS, Union Paving, as lowest responsible bidder, was awarded a contract to construct the Project ("the Contract") on June 26, 2013; and

WHEREAS, BTSA was identified as one of the existing utilities within the Project limits, and entered into an agreement with the NJDOT for the Project which included, *inter alia*, a Utility Agreement Modification dated July 23, 2013 (the "BTSA Agreement"); and

WHEREAS, GPI provided construction inspection services and resident engineer services for the Project; and

WHEREAS, during the course of the Project and in connection with the BTSA Agreement, disputes arose between and among the Parties that resulted in BTSA filing a civil lawsuit against Union Paving and the NJDOT in Ocean County Law Division, Docket Number: OCN-L-1728-16, entitled "Berkeley Township Sewerage

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Authority v. State of New Jersey, Department of Transportation, et al. ("the Civil Action")¹; and

WHEREAS, Union Paving filed cross-claims against the NJDOT in the Civil Action for contribution and indemnification; and

WHEREAS, the NJDOT filed cross-claims against Union Paving in the Civil Action for breach of contract, contribution, and indemnification, and a third party complaint against GPI in the Civil Action for contribution and indemnification;

WHEREAS, the Parties, for their mutual interest, desire to settle and compromise all of the claims and controversies among them arising out of the Project and in the Civil Action;

WHEREAS, the Parties agree that upon execution of this Agreement, a Stipulation of Dismissal with Prejudice will be signed and filed by the Parties in the Civil Action, dismissing the Civil Action in its entirety; and

NOW THEREFORE, for good, mutual, and valuable consideration, which is hereby expressly acknowledged, the Parties hereby agree as follows:

1. Recitals

The above recitals are incorporated as part of this Agreement as if fully set forth at length herein and shall constitute part of the consideration for this Agreement.

2. Settlement Terms

A. The Parties agree that the total settlement amount for complete and full resolution of all claims with respect to the BTSA Agreement and the Civil Action is \$250,000.00 (Two Hundred Fifty Thousand Dollars) ("the Settlement Amount"). The Parties agree that the Settlement Amount will be paid to BTSA by Union Paving, the NJDOT, and GPI (collectively, the "Settling Defendants") as part of a global settlement. The Settling

¹ The complaint filed by BTSA also named the NJDOT's Resident Engineer for the Project, James Mesinger, as a defendant in his official capacity. All claims against James Mesinger were dismissed as a matter of law by Order dated March 17, 2017.

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Defendants' respective contributions towards the Settlement Amount are set forth in subparagraph (B) herein.

B. Union Paving shall contribute \$160,000.00 towards the Settlement Amount, the NJDOT shall contribute \$82,500.00 towards the Settlement Amount, and GPI shall contribute \$7,500.00 towards the Settlement Amount. The Settling Defendants shall each pay their respective contributions to BTSA within sixty (60) days of execution of this Agreement.

3. Releases

A. Upon the execution of this Agreement, in mutual consideration for the promises made by the Parties herein, the Parties do hereby and forever release each other, as well as their officials, representatives, agents, employees, successors, and/or assigns, from any alleged claims, causes of action or rights, or potential claims, causes of action or rights, whether known or unknown, present, past or future, arising out of the BTSA Agreement and/or the Civil Action, whether or not they have been specifically or impliedly claimed or whether they should have or could have been claimed as arising out of the BTSA Agreement and/or the Civil Action, except as set forth in paragraph 3(B) herein. This release of claims shall not apply to any other project or contract to which the Parties may be involved, nor shall it apply to any other portion of the Contract and/or the Project other than those portions of the work involving BTSA's facilities.

B. The Parties agree that in the event that anyone other than the Parties to this Agreement makes a claim for property damages or personal injuries arising out of the Project, these releases do not waive, to the extent any rights exist, the right of the Parties to assert affirmative defenses or to seek indemnification and/or contribution against any of the Parties.

4. Careful Review and Understanding of Agreement

The Parties represent that their representatives have carefully read this Agreement and understand its terms and conditions without reservation or exception. The Parties acknowledge that they have had ample opportunity to consult with legal counsel regarding this Agreement.

5. Binding Effect

This Agreement shall be binding upon and inure to the

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benefit of the Parties and all of their heirs, legal representatives, attorneys, shareholders, former shareholders, officers, directors, principals, employees, agents, divisions, parent companies, subsidiaries or affiliated corporations, predecessors, successors, insurers, and assigns.

6. No Third Party Beneficiaries

This Agreement is entered into solely for the benefit of the Parties and no right or benefit is intended to be conferred upon any third party that is not a signatory to this Agreement.

7. Acknowledgement of Consideration

The Parties acknowledge that the covenants contained in this Agreement provide good and sufficient consideration for every promise, duty, release, obligation, and right contained within this Agreement.

8. Integration Clause

This Agreement is the entire and exclusive settlement agreement among the Parties, superseding any prior understandings, representations, or writings.

9. No Admission

The Parties expressly acknowledge that this Agreement does not represent an admission of fault or liability by either of the Parties, and that any such alleged fault or liability is deemed to be denied.

10. Severability

If any part of this Agreement is declared unenforceable or invalid, those parts that are enforceable or valid shall remain in full force.

11. Choice of Law

This Agreement shall be interpreted in accordance with the laws of the State of New Jersey, including the New Jersey

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Contractual Liability Act, N.J.S.A. 59:13-1, et seq., which shall apply to this Agreement.

12. Authority

The individuals executing this Agreement on behalf of their respective principals represent that they have the authority to so bind their respective principals.

13. Counterparts

This Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which shall constitute by one and the same instrument.

14. Effective Date

This Agreement shall not become effective until executed by the Commissioner of the NJDOT or his duly appointed representative.

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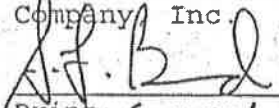
IN WITNESS WHEREOF, the Parties have executed, either personally
or through a duly authorized representative on their behalf, on
the day and year as designated below.

Berkeley Township Sewerage
Authority

By: _____
Print: _____
Print Title: _____

Dated: _____

Union Paving and Construction
Company Inc.

 PRESIDENT
Print: GERARD L. BURDI

Dated: 7-18-18

Greenman-Pedersen, Inc.

By: _____
Print: _____
Print Title: _____

Dated: _____

Attest/Witness/Affix Seal

State of New Jersey
Department of Transportation

Print:
Department Secretary

By: _____
Snehal Patel
Assistant Commissioner

Dated: _____

Approved as to form only:
GURBIR S. GREWAL
ATTORNEY GENERAL OF NEW JERSEY

By: _____
Sudha V. Raja
Deputy Attorney General

Dated: _____

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IN WITNESS WHEREOF, the Parties have executed, either personally
or through a duly authorized representative on their behalf, on
the day and year as designated below.

Berkeley Township Sewerage
Authority

By: [Signature]

Print: Diran M. Vici

Print Title: BTSA Attorney

Dated: 7/20/18

Union Paving and Construction
Company, Inc.

Print: _____

Dated: _____

Greenman-Pedersen, Inc.

By: [Signature]

Print: _____

Print Title: GREGORY P. JOHNSON, P.E.

Executive Vice President/Branch Manager

Dated: 8/1/18

Attest/Witness/Affix Seal

[Signature]
Print: Anika James
Department Secretary

State of New Jersey
Department of Transportation

By: [Signature]

Snehal Patel

Assistant Commissioner

Dated: 8/14/18

Approved as to form only:
GURBIR S. GREWAL
ATTORNEY GENERAL OF NEW JERSEY

By: [Signature]

Sudha V. Raja

Deputy Attorney General

Dated: 8/9/18