

**RESOLUTION NO. 2023-067**

**RESOLUTION OF THE TOWNSHIP OF LITTLE EGG  
HARBOR, COUNTY OF OCEAN, STATE OF NEW  
JERSEY, AUTHORIZING THE EXECUTION OF A  
SETTLEMENT AGREEMENT AND RELEASE WITH  
DSC CONSTRUCTION CORPORATION**

**WHEREAS**, DSC Construction Corporation was the successful bidder for a drainage improvement project in Little Egg Harbor Township called the Twin Lakes Boulevard Drainage Improvement Project ("Twin Lakes Project") in 2018; and

**WHEREAS**, Donald Siegel, is the principal of the DSC Construction Corporation; and

**WHEREAS**, DSC Construction Corporation filed a Complaint in the Superior Court of New Jersey, Law Division, Ocean County, Docket No. OCN-L-1252-20, against Township alleging the following causes of action (1) breach of contract; (2) unjust enrichment and other related claims; and

**WHEREAS**, the parties desire to resolve all claims that may have or could have arisen between them; and

**WHEREAS**, the governing body desires to authorize settlement of the litigation and further authorize execution of a Settlement Agreement and Release with DSC Construction Corporation.

**NOW, THEREFORE, BE IT RESOLVED**, by the governing body of the Township of Little Egg Harbor, County of Ocean, State of New Jersey as follows:

1. That the governing body does hereby authorize the settlement of litigation entitled Township of Little Egg Harbor v. DSC Construction Corporation, Docket No. OCN-L-1252-20, in accordance with the terms and conditions contained within the Settlement Agreement and Release attached herein as Schedule A.

**r|m|s|h|c**

Rothstein, Mandell, Strohm,  
Halm & Cipriani, P.A.  
ATTORNEYS AT LAW

98 East Water Street  
Toms River, NJ 08753

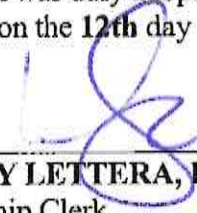
o: 732.363.0777  
f: 732.905.6555

2. That the Mayor is hereby authorized to execute and the Township Clerk to attest to, respectively, the Settlement Agreement and Release with DSC Construction Corporation, in a form acceptable to the Township Attorney.

3. That a certified copy of this resolution, together with a copy of, be forwarded to the Chief Financial Officer, Township Engineer and Township Attorney.

**CERTIFICATION**

I, **KELLY LETTERA, RMC**, Municipal Clerk of the Township of Little Egg Harbor do hereby certify that the foregoing resolution was duly adopted by the Township of Little Egg Harbor Township Committee at a meeting held on the **12th** day of **January, 2023**.

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**KELLY LETTERA, RMC**  
Township Clerk  
Little Egg Harbor Township

**r|m|s|h|c**

Rothstein, Mandell, Strohm,  
Halm & Cipriani, P.A.  
ATTORNEYS AT LAW

98 East Water Street  
Toms River, NJ 08753

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## **SETTLEMENT AGREEMENT AND RELEASE**

This Settlement Agreement and Release ("Agreement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2023, by and between Plaintiff, DSC Construction Corporation, and its principal (hereinafter "Plaintiff") on the one hand, and Defendant, Township of Little Egg Harbor (hereinafter "Defendant" or "Township") on the other hand (together with Plaintiff, the "Parties").

### **WITNESSETH**

**WHEREAS**, Plaintiff was the successful bidder for a drainage improvement project in Little Egg Harbor Township called the Twin Lakes Boulevard Drainage Improvement Project ("Twin Lakes Project") in 2018; and

**WHEREAS**, Donald Siegel, is the principal of the DSC Construction Corporation; and

**WHEREAS**, Plaintiff filed a Complaint in the Superior Court of New Jersey, Law Division, Ocean County, Docket No. OCN-L-1252-20, against Defendant alleging the following causes of action (1) breach of contract; (2) unjust enrichment and other related claims (hereafter referred to as the "Lawsuit");

**WHEREAS**, the Parties to this Agreement desire to resolve all claims that may have or could have arisen between them; and

**WHEREAS**, without any admission of any wrongdoing or liability by or on the part of any party hereto, the Parties have reached an agreement to compromise, settle, resolve and terminate all claims, disputes and matters which have been brought, or could have been brought between them;

**NOW, THEREFORE**, with the foregoing background deemed incorporated herein by this reference as if more fully set forth at length, the Parties hereto, intending to be legally bound hereby, and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and in consideration of the mutual covenants contained herein, covenant and agree as follows:

1. **Settlement Sum & Payment.** In full and complete settlement of all claims that Plaintiff has, had or may have had against Defendant in any way relating to the Lawsuit and subject to the terms and conditions hereinafter set forth, the Defendant shall pay Plaintiff the sum of forty thousand dollars and zero cents (\$40,000.00) (the "Settlement Sum"). The Parties acknowledge that the monies referred to in this paragraph represent settlement of all claims Plaintiff had or may have had against Defendant. The settlement proceeds shall be paid within thirty (30) days of the date of approval and ratification by the governing body of the Township of Little Egg Harbor; counsel for Defendant receives the Agreement signed by Plaintiff; a signed stipulation of dismissal of the Litigation, with prejudice. The payment will be made payable to the Trust Account of Bathgate Wegner & Wolf.

2. **Ties Severed and All Obligations Included.** The Parties acknowledge that the intention of this Agreement is to sever all ties between Plaintiff on the one hand, and the Defendant on the other hand, except as set forth in this Agreement. Upon execution of this Agreement, Plaintiff waives any and all claims he has or could have brought against Defendant and Insurers. Plaintiff affirms that he is not a party to, and that he has not filed, or caused to be filed, any claim, complaint, or action against Defendant in any forum or form. Plaintiff further affirms that he has received all compensation, to which he may be entitled, and that no other compensation are due to him except as provided in this Agreement.

3. **Plaintiff's Release of Defendant.** The Parties have chosen to enter into this Agreement in order to avoid further proceedings with respect to certain claims Plaintiff has made against Defendant. Plaintiff and Defendant understand and agree that Defendant denies every allegation of wrongdoing made by Plaintiff in the Lawsuit. The Parties understand and agree that the making of this Agreement shall not, in any way, be construed or considered an admission by the Defendant of guilt or non-compliance with any federal, state or local law or of any other wrongdoing whatsoever. In exchange for the promises made by Defendant herein, including but not limited to the Defendant's obligation to make payment as provided in Paragraph 1 above, Plaintiff, Plaintiff's heirs, executors, administrators, fiduciaries, successors and/or assigns:

- (a) agree to the dismissal, with prejudice and without an award of costs or attorneys' fees of the Lawsuit; and
- (b) unconditionally and irrevocably give up and release, to the full extent permitted by law, Township of Little Egg Harbor, its past and present employees, members and officers, governing body, administrators, fiduciaries, employment benefit plans and/or pension plans or funds, executors, attorneys, insurers (including their subsidiaries or parent companies), reinsurers and/or agents and their successors and assigns individually and in their official capacities jointly and severally, of and from all claims, known or unknown, that Plaintiff has or may have against the Township as of the date of execution of this Agreement including, but not limited to, those claims set forth in the Lawsuit, or otherwise arising out of the Twin Lakes Project, or any alleged violation of:
  - any public policy, contract (oral, written or implied), tort, or common law;
  - all statutory claims, including but not limited to, claims arising under state or federal law, and any and all claims arising under the United States or New Jersey Constitutions;
  - all claims arising under any Executive Order or derived from or based upon any state or federal regulations;
  - any other federal, state or local civil rights law, whistle-blower law or any other local, state or federal law, regulation or ordinance;
  - all common civil law claims, including but not limited to, violation of public policy, breach of an express or implied contract, breach of an implied covenant



of good faith and fair dealing, promissory estoppel, equitable estoppel, detrimental reliance, retaliation, and negligence;

- any basis for costs, fees, or other expenses including attorneys' fees.

Plaintiff understands this release includes all claims related in any manner to Plaintiff's contract with the Township relating to the Twin Lakes Project. Plaintiff further understands that he is hereby releasing any known or unknown claim for or alleged right to discovery of information or documents from Defendant.

If any claim is not subject to release, to the extent permitted by law, Plaintiff waives any right or ability to be a class or collective action representative or to otherwise participate in any putative or certified class, collective or multi-party action or proceeding based on such a claim in which Defendant or any Released Party identified in this Agreement is a party.

Nothing in this Agreement prohibits or prevents Plaintiff from filing a charge with or participating, testifying, or assisting in any investigation, hearing, whistleblower proceeding or other proceeding before any federal, state, or local government agency (e.g. EEOC, NLRB, SEC., etc.), nor does anything in this Agreement preclude, prohibit, or otherwise limit, in any way, Plaintiff's rights and abilities to contact, communicate with, report matters to, or otherwise participate in any whistleblower program administered by any such agencies. However, to the maximum extent permitted by law, Plaintiff agrees that if such an administrative claim is made, Plaintiff shall not be entitled to recover any individual monetary relief or other individual remedies.

- (c) Plaintiff affirms that he is not a party to, and that Plaintiff has not filed or caused to be filed, any claim, complaint, or action against Defendants in any forum or form, except the present Lawsuit. Plaintiff further affirms that he has received all compensation, wages, bonuses, commissions, and/or benefits to which Plaintiff may be entitled and that no other compensation, wages, bonuses, commissions and/or benefits are due to Plaintiff, except as provided in this Agreement.
- (d) Plaintiff further affirms Plaintiff has not complained of any fraudulent activity or any act(s) which would form the basis of a claim of fraudulent or illegal activity of Released Parties.

4. **Acknowledgment of Plaintiff.** Plaintiff acknowledges that Defendants have advised him to read this Agreement and to consider carefully all of its terms before signing it. Defendant has provided Plaintiff with a reasonable amount of time in which to consider this Agreement. The Agreement will not become effective until the Parties sign it. Plaintiff understands the legal consequences of the Agreement and has reviewed the Agreement with an attorney.

5. **Indemnification.** Plaintiff agrees that he is responsible for all applicable local, state and federal taxes, if any, as a result of receipt of these monies. Plaintiff understands and agrees that Defendant is not providing him with any representations regarding tax obligations or consequences that may arise from this Agreement. Plaintiff agrees to indemnify Defendant and hold Defendant harmless for all taxes, penalties and interest, withholding or otherwise, for

which Defendant may be found liable as a consequence of having paid monies to Plaintiff pursuant to this Agreement. It is expressly agreed that if Defendants are required to provide payments for taxes or interest or penalties to any taxing authority, Plaintiff must reimburse Defendant for such payments to such taxing authority within thirty (30) days after Defendant notifies Plaintiff, in writing, that it or they have incurred such liabilities.

6. **Payment of Liens, Bills and Costs.** This Agreement is reached with, and is based on the understanding that, any liens, costs, or outstanding bills from Plaintiff's subcontractors related to the Twin Lakes Project have been paid, or will be paid, by Plaintiff. Plaintiff further represents and warrants that no liens, claims, demands, subrogated interests, or causes of action of any nature or character exist or have been asserted arising from the Twin Lakes Project. Plaintiff further agrees that they, and not the Township, shall be responsible for satisfying all such liens, claims, demands, subrogated interests, or causes of action that may exist or have been asserted or that may in the future exist or be asserted from Plaintiff's subcontractors. In the event any action is commenced whereby the Township are pursued for payment in connection with Plaintiff's subcontractors on the Twin Lakes Project, Plaintiff agrees to indemnify the Township and hold the Township harmless in full.

7. **No Admission.** The Parties agree that neither this Agreement, nor the furnishing of the consideration for this Agreement, shall be deemed or construed at any time to be an admission by the Parties of any improper or unlawful conduct.

8. **Disqualification under N.J.S.A. 40A:11-4.** Plaintiff and its principal understand and agree to refrain from bidding on any future Township sponsored, financed or managed project for the next five (5) years from the date of this Agreement. The Township reserves the right to seek removal of Plaintiff and its principal from any and all Township projects or to reject any bid from Plaintiff or its principals under the Plaintiff's corporate name or any other corporate name, should they apply before the expiration of the five (5) year term. The Plaintiff acknowledges that failure to accept a bid from the Plaintiff or its principal before the expiration of the five (5) year term will not be the basis for any claim against the Township.

9. **Plaintiff is Not a Prevailing Party.** Plaintiff shall not be considered a prevailing party for any purpose.

10. **Construction.** Each party and counsel for each party have participated in the drafting of this Agreement, and accordingly the general rule of construction to the effect that any ambiguities in the contract are to be resolved against the party drafting the contract shall not be employed in the construction and interpretation of this Agreement.

11. **Unenforceability.** In the event that any provision of this Agreement is declared illegal or unenforceable by a court of competent jurisdiction and cannot be modified to be enforceable, excluding the general release language contained in Paragraph 4, such provision shall immediately become null and void, leaving the remainder of this Agreement in full force and effect. Moreover, if any such provision which is determined to be invalid, illegal or unenforceable can be made valid, legal or enforceable by modification thereof, then the party

for whose benefit the provision exists, may make such modification as necessary to make the provision valid, legal and enforceable.

12. **Entire Agreement.** It is expressly understood and agreed that this Agreement contains the entire agreement and understanding of the Parties concerning the subject matter hereof, and that this Agreement supersedes all prior negotiations and agreements between the Parties hereto, whether written or oral. All of the recitals of this Agreement are hereby incorporated herein. It is expressly understood and agreed that there have been no promises, agreements, warranties or inducements not herein expressed, made to either party. The Parties hereto acknowledge that they have read this Agreement and are executing it and the release contained herein without relying upon any statements, representations or warranties, written or oral, which are not expressly set forth herein.

13. **Waiver, Modification and Amendment.** No provision of this Agreement may be waived unless in writing and signed by the party or parties whose rights are thereby waived. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein. This Agreement may be modified or amended only by written agreement executed by the Parties hereto.

14. **Attorneys' Fees.** In the event there is any litigation to enforce this Agreement or the releases and covenants not to sue contained herein, and except as otherwise stated in this Agreement, any party found to be in breach of this Agreement shall be responsible for the payment of all reasonable attorney's fees and costs incurred by the non-breaching party in enforcing this Agreement.

15. **Governing Law and Venue.** This Agreement shall be governed and conformed in accordance with the laws of the State of New Jersey without regard to its conflict of laws provisions and any dispute pertaining to this Agreement shall be brought only in, and Plaintiff and Defendant agree to subject themselves to the personal jurisdiction of, the Superior Court of New Jersey (Ocean County) or the United States District Court for the District of New Jersey (Trenton Vicinage) (to the extent that subject matter jurisdiction exists). The parties to this Agreement shall be entitled to seek injunctive relief in accordance with applicable law for breaches (including anticipated breaches) of the Agreement.

16. **Descriptive Headings.** The headings of the paragraphs of this Agreement are inserted for convenience and shall not limit, extend or delineate the scope or intent of the provisions hereof.

17. **Advice of Counsel.** Each party represents and warrants that it has consulted and received, or had the opportunity to consult and receive, the advice of independent legal counsel prior to signing this Agreement and acknowledges that no other party or agent or attorney of any other party has made any promise, representation, or warranty whatsoever, express or implied, not contained herein, concerning the subject matter hereof or to induce the party to sign this Agreement.

18. **Knowing and Voluntary.** Plaintiff VERIFIES THAT HE HAS READ AND

UNDERSTANDS THE PROVISIONS OF THIS AGREEMENT AND THE RELEASE CONTAINED HEREIN, AND THAT HE KNOWINGLY AND VOLUNTARILY ENTERS INTO THIS AGREEMENT. HE HAS BEEN PROVIDED WITH SUFFICIENT AND REASONABLE TIME TO REVIEW THIS AGREEMENT, HE HAS BEEN ADVISED TO REVIEW THIS AGREEMENT WITH HIS ATTORNEY AND HAS DONE SO, THE RELEASE CONTAINED HEREIN IS HIS FREE AND VOLUNTARY ACT, AND HE HAS NOT BEEN COERCED OR THREATENED INTO SIGNING THIS AGREEMENT OR THE RELEASE CONTAINED HEREIN.

19. **Execution.** This Settlement Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of them together shall constitute one and the same Settlement Agreement. Such execution may be evidenced by signatures delivered by facsimile or electronic transmission.

**IN WITNESS WHEREOF**, the Parties hereto intending to be legally bound have executed this Agreement the day and date first written above.

**DSC CONSTRUCTION CORPORATION, PLAINTIFF**

By: \_\_\_\_\_

Dated:

Name: Donald Siegel

Title: President of DSC Construction Corporation

\_\_\_\_\_  
Edward F. Bezdecki

Attorney for the Plaintiff

Dated:

**THE TOWNSHIP OF LITTLE EGG HARBOR, DEFENDANT**

By: \_\_\_\_\_

Dated:

Name:

Title:

\_\_\_\_\_  
Attorney for the Defendant, The Township of Little Egg Harbor

Dated: