



Mayor and Council

400 Witherspoon Street
Princeton, NJ 08540

Meeting: 01/24/22 07:00 PM
Department: Clerk

RESOLUTION 22-44

Resolution Approving Settlement Agreement with Integrated Construction & Utilities of NJ, LLC, Steven Eleftheriou and the Ohio Casualty Insurance Company in the Matter Captioned Integrated Construction & Utilities of NJ, LLC v. Municipality of Princeton, Docket No: MER-L-850-21, and Rescinding Termination for Cause and Confirming Termination for Convenience for the Project Known as the "Improvements to Linden Lane and Spruce Street"

WHEREAS, in May 2019 the Municipality of Princeton ("Princeton") executed a contract with Integrated Construction & Utilities of NJ, LLC ("ICUNJ") for completion of a project known as the "Improvements to Linden Lane and Spruce Streets" (the "Linden/Spruce Contract"); and

WHEREAS, on November 23, 2020, by Resolution 20-379, Princeton terminated the Linden/Spruce Contract for the reasons set forth in said resolution ("2020 Contract Termination"); and

WHEREAS, following 2020 Contract Termination, Princeton made a claim with the Ohio Casualty Insurance Co. ("Surety"), the surety company under ICUNJ's Performance Bond for the Linden/Spruce Contract, for the Surety to complete the remainder of the Linden/Spruce Contract; and

WHEREAS, pursuant to a Tender Agreement (the "Tender Agreement") dated June 28, 2021 between Princeton, the Surety, and Black Rock Enterprises, LLC ("Black Rock"), the Surety assumed ICUNJ's obligations under the Linden/Spruce Contract and assigned said contract to Black Rock, and Black Rock assumed the Linden/Spruce Contract, for completion of the remainder of the work thereunder; and

WHEREAS, on or about May 10, 2021, ICUNJ filed a Complaint against Princeton in the Superior Court of New Jersey, Mercer County, Law Division, captioned *Integrated Construction & Utilities of NJ, LLC v. Municipality of Princeton*, Docket No.: MER-L-850-21, in which ICUNJ asserted claims against Princeton for, among other things, wrongful termination of the Linden/Spruce Contract and for payments due and allegedly owing for ICUNJ's work thereunder; and

WHEREAS, the Complaint also made claims for payments due and allegedly arising out of ICUNJ's prior performance of other sewer rehabilitation and construction contracts completed for Princeton, including but not limited to the "Valley Road Improvement Project" and "Rehabilitation of Sanitary Sewer and Laterals - Edgehill Road Sanitary Sewer Service Area" (collectively the "Other Contracts"); and

WHEREAS, pursuant to an Order entered on September 24, 2021, the forgoing complaint was dismissed without prejudice, and ICUNJ and Princeton completed mediation of their disputes, pursuant to the requirements of the Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq.; and

WHEREAS, as a result of the mediation between the parties, Princeton and ICUNJ have agreed to settle any and all claims between them arising out of the Linden/Spruce Contract as well as the Other Contracts; and

WHEREAS, Princeton has determined that settlement of any and all claims with ICUNJ is in its best interest at this time, based on factors including but not limited to the cost and uncertainty of protracted litigation; and

WHEREAS, for full and complete resolution of any matters in dispute between ICUNJ and Princeton and the performance of the terms of settlement between ICUNJ and Princeton, the Surety has agreed to be party to the Settlement Agreement with ICUNJ and Princeton, with reference to any claims between ICUNJ and Princeton related to the Linden/Spruce Contract, the 2020 Contract Termination and the Tender Agreement; and

WHEREAS, as required by the Settlement Agreement, which is on file in the Office of the Municipal Clerk, following the execution of the Settlement Agreement by the parties, Princeton shall rescind the 2020 Contract Termination and adopt a resolution terminating the Linden/Spruce Contract between ICUNJ and Princeton for the convenience of ICUNJ and Princeton; and

WHEREAS, because of the disputes between the parties prior to settlement in connection with the Linden/Spruce Contract and Other Contracts, Princeton has been retaining funds for work completed by ICUNJ, but remaining unpaid, on these contracts; and

WHEREAS, because the Settlement Agreement resolves all outstanding disputes in connection with the Linden/Spruce Contract and Other Contracts, said agreement also provides that Princeton shall remit payment to ICUNJ as compensation for all amounts allegedly due and owing by Princeton to ICUNJ for the Linden/Spruce Contract and the Other Contracts; and

WHEREAS, the Chief Financial Officer has certified that sufficient funds are available for satisfaction of Princeton's \$437,188.00 financial obligation to ICUNJ under the Settlement Agreement, as set forth in the Certification of Availability of Funds, which is attached hereto and incorporated herein as if fully restated.

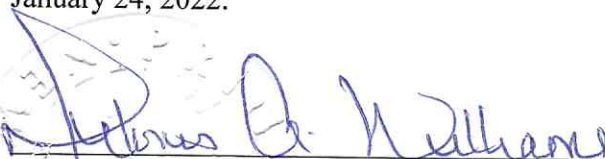
NOW, THEREFORE, BE IT RESOLVED by the Council of the Municipality of Princeton, County of Mercer, State of New Jersey, as follows:

1. The “Whereas” clauses are incorporated herein as if fully restated.
2. The Settlement Agreement between Princeton, ICUNJ and the Surety in the Matter Captioned *Integrated Construction & Utilities of NJ, LLC v. Municipality of Princeton*, Docket No. MER-L-850-21, is hereby approved.
3. The Mayor and Clerk are hereby authorized and directed to execute the Settlement Agreement on Princeton’s behalf.
4. The following provisions shall automatically go into effect upon the execution of the Settlement Agreement by Princeton, ICUNJ and the Surety:
 - a. The November 23, 2020 termination of the Linden/Spruce Contract by Princeton pursuant to Resolution 20-379 is hereby RESCINDED.
 - b. The Linden/Spruce Contract, between ICUNJ and Princeton, is hereby terminated for the convenience of ICUNJ and Princeton.
 - c. Princeton is authorized and directed to release two payments to ICUNJ, pursuant to the terms of the Settlement Agreement, and as follows:
 - (1) \$400,000.00 as compensation for amounts allegedly due and owing by Princeton to ICUNJ for the Linden/Spruce Contract and other rehabilitation and construction contracts between Princeton and ICUNJ; and
 - (2) \$37,188.00 as reimbursement to ICUNJ for the payment of same amount of funds to the Surety;
5. A certified copy of this resolution shall be sent to ICUNJ’s attorney as follows:

Gerard J. Onorata, Esq.
 Peckar & Abramson, P.C.
 70 Grand Avenue
 River Edge, NJ 07661

Councilperson	Absent	Present	1 st	2 nd	Yea	Nay	Abstain	Disqualified
Mr. Cohen		X	X		X			
Ms. Fraga		X			X			
Ms. Niedergang		X		X	X			
Ms. Pirone Lambros		X			X			
Ms. Sacks		X			X			
Mr. Newlin		X			X			
Mayor Freda		X						

I, Delores A. Williams, Municipal Clerk of Princeton, do hereby certify that the above is a true copy of a resolution adopted by the Mayor and Council of Princeton at a meeting held January 24, 2022.



Delores A. Williams, Municipal Clerk

ATTACHMENTS:

- FINAL SETTLEMENT AGREEMENT AND GENERAL RELEASE (DOCX)