

RESOLUTION NO. 71-2024
APPROVING THE SETTLEMENT AGREEMENT WITH
SETTEMBRINO ARCHITECTS AND AUTHORIZING THE MAYOR TO SIGN

Councilmember Leckstein offered the following resolution and moved for its adoption; seconded by Councilmember Bieber:

WHEREAS, the Borough engaged Settembrino Architects (Settembrino) to provide architectural services for projects known as the "Municipal Complex" and the "New Ocean Front Beach Pavilion"; and,

WHEREAS, disputes arose between the Borough and Settembrino regarding the services rendered by Settembrino; and,

WHEREAS, the Borough and Settembrino agreed to mediate the disputes with the Honorable Frank A. Buczynski, J.S.C. (Ret.); and,

WHEREAS, as a result of the mediation process, the Borough and Settembrino reached a settlement which was memorialized in a Settlement Agreement and Release.

NOW, THEREFORE, BE IT RESOLVED by the Borough Council of the Borough of Sea Bright, County of Monmouth, State of New Jersey that the Mayor is authorized to sign and the Clerk to attest the attached Settlement Agreement and Release in the form as attached subject to attorney review.

BE IT FURTHER RESOLVED that a certified copy of this Resolution be forwarded to the following:

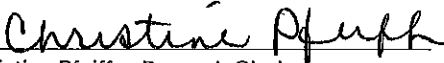
1. Borough Attorney

Roll Call:	Bieber,	Catalano,	Gorman,	Keeler,	Lamia,	Leckstein
	Yes	Yes	Yes	Yes	Yes	Yes

March 19, 2024

CERTIFICATION

I, Christine Pfeiffer, Borough Clerk do hereby certify that the foregoing is a resolution adopted by the Borough Council of the Borough of Sea Bright, County of Monmouth, State of New Jersey, at a Council Meeting held on March 19, 2024.


Christine Pfeiffer, Borough Clerk

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (hereinafter the "Agreement") is made and entered into on the ____ day of _____, 2024, by and between Borough of Sea Bright ("BOROUGH"), on the one hand, and Settembrino Architects P.A. ("SETTEMBRINO"), on the other hand, collectively the "Parties".

RECITALS

WHEREAS, the Parties are engaged in a dispute related to the provision of architectural and engineering services by SETTEMBRINO to the BOROUGH for projects known as the "Municipal Complex" and the "New Ocean Front Beach Pavilion" pursuant to an AIA B132-2009 agreement (the "Dispute"), and;

WHEREAS, BOROUGH is represented by McLaughlin Stauffer & Shaklee, P.C., and SETTEMBRINO is represented by Thompson Becker LLC, and;

WHEREAS, the Parties agreed to mediate this action with the Honorable Frank A. Buczynski, J.S.C. (Ret.), and;

WHEREAS, the Parties reached a settlement in principle during mediation, and;

WHEREAS, the Parties hereto, to avoid the expense and time of further litigation, have agreed to the resolution, compromise, and settlement of all disputes, claims, and controversies among them as provided herein, and;

WHEREAS, in consideration of BOROUGH signing this Agreement and releasing SETTEMBRINO from any and all claims asserted or that could have been asserted in the Dispute, SETTEMBRINO will provide BOROUGH with the Settlement Payment and other consideration as set forth below; and

NOW, THEREFORE, in consideration of the mutual covenants set forth herein and for other good and valid consideration the receipt and sufficiency of which is hereby acknowledged, the Parties to this Agreement, intending to be legally bound, agree as follows:

1. Settlement Payments.

(1) In consideration for the promises made by BOROUGH set forth in this Agreement, SETTEMBRINO promises to pay BOROUGH the total sum of Fifty-Three Thousand Five Hundred Dollars (\$53,500.00) (the "Settlement Payment"). The Settlement Payment shall be paid in the following manner: One or more checks shall be made payable to BOROUGH by or on behalf of SETTEMBRINO in the amount of Fifty-Three Thousand Five Hundred Dollars (\$53,500.00).

(b) BOROUGH's counsel shall provide a fully executed IRS form 1099 in relation to the payment.

(c) BOROUGH shall solely be responsible for the payment of all taxes, penalties, and other liabilities or costs that may be assessed in connection with the amount set forth in this paragraph.

(d) The Settlement Payments shall be made no later than the 30th day following SETTEMBRINO's counsel's receipt of the executed Agreement signed by all Parties; provided, however, that if that day is a Saturday or Sunday, delivery shall occur on the immediate following business day. Additionally, the time-period set forth in this paragraph shall not commence unless and until BOROUGH provides any and all documentation set forth in subsection (b) of this section of the Agreement.

2. Release.

(a) As used in this Agreement, the term "Releasee" shall include the SETTEMBRINO, CNA Insurance Company, and their successors, predecessors, subsidiaries, parents, affiliates, employees, consultants, shareholders, partners, owners, representatives, attorneys, insurers, re-insurers, assigns, managing directors, officers, board members, and directors, in their individual and/or representative capacities, past and present, individually and collectively.

(b) As used in this Agreement, the term "Releasor" shall include BOROUGH and its successors, predecessors, subsidiaries, parents, affiliates, employees, agents, shareholders, partners, owners, representatives, attorneys, insurers, re-insurers, assigns, managing directors, officers, board members, and directors, in their individual and/or representative capacities, past and present, individually and collectively.

(c) In consideration of the Settlement Payment, BOROUGH hereby releases and forever discharge SETTEMBRINO from any and all actions, causes of action, suits, charges, obligations arising out of, complaints, claims, liabilities, agreements, controversies, damages, and expenses (including attorneys' fees and costs), and all other claims of any nature whatsoever, known or unknown, in law or in equity which they may have against the SETTEMBRINO, arising out of or in any way related to the Dispute. This release includes, but is not limited to, any and all claims under any municipal, local, state or federal law, common or statutory, arising out of the Parties' relationship which were asserted or could have been asserted at any time before the execution of this Agreement, as well as any future claims for contribution and/or indemnification arising out of property damage or personal injury allegedly caused by any design or construction defects which are the subject of the Dispute including but not limited to the apparatus bay floor slope and curb profiles, and ceiling heights, especially in the prisoner processing and holding cell areas. BOROUGH expressly understands and acknowledges that it is possible that unknown losses or claims exist or that present losses may have been underestimated in amount or severity. BOROUGH expressly accepts and assumes the risk of such unknown or underestimated losses or claims and acknowledge and agree that the benefits to be provided to them pursuant to this Agreement fully compensate them for such risks.

This release is intended by the Parties to be construed to release any and all claims and rights that BOROUGH may have against Releasee arising on or before the date of execution of this Agreement to the fullest extent permitted by law.

(d) SETTEMBRINO hereby releases and forever discharges BOROUGH from any and all actions, causes of action, suits, charges, obligations arising out of, complaints, claims, liabilities, agreements, controversies, damages, and expenses (including attorneys' fees and costs), including unpaid fees and expenses for the projects, and all other claims of any nature whatsoever, known or unknown, in law or in equity which they may have against the BOROUGH, arising out of or in any way related to the Dispute. This release includes, but is not limited to, any and all claims under any municipal, local, state or federal law, common or statutory, arising out of the Parties' relationship which were asserted or could have been asserted at any time before the execution of this Agreement. SETTEMBRINO expressly understands and acknowledges that it is possible that unknown losses or claims exist or that present losses may have been underestimated in amount or severity. SETTEMBRINO expressly accepts and assumes the risk of such unknown or underestimated losses or claims and acknowledges and agrees that the benefits to be provided to them pursuant to this Agreement fully compensate them for such risks.

This release is intended by the Parties to be construed to release any and all claims and rights that SETTEMBRINO may have against BOROUGH arising on or before the date of execution of this Agreement to the fullest extent permitted by law.

(e) The Parties have been advised and are hereby advised in writing by this Agreement to consult with an attorney before signing this Agreement and have, in fact, consulted with the aforementioned counsel.

3. Tax Liabilities.

BOROUGH understands and acknowledges that the Settlement Payments made under the terms of this Agreement may be subject to federal, state and/or local taxes and that SETTEMBRINO is making no representations, promises, or warranties regarding the taxable nature of the Settlement Payments. BOROUGH further understands and agrees that any federal, state and/or local taxes that they owe as a result of this Agreement shall be their sole responsibility, to the extent applicable. BOROUGH agrees to indemnify and hold harmless SETTEMBRINO and their insurance carrier from any and all claims made against SETTEMBRINO or their

insurance companies by any federal, state, or local government agency for failing to withhold federal, state, or local taxes or other amounts from the Settlement Payment.

4. No Admission of Liability.

The execution of this Agreement and the settlement made hereunder shall not be construed as an admission of liability by any party in the Dispute referenced in this Agreement, such liability being expressly denied. Each party is responsible for their own respective attorneys' fees, expert witness fees and costs, and BOROUGH understands that attorneys' fees, expert witness fees and costs are encompassed in the settlement payment specified in Paragraph One above, and BOROUGH and its legal counsel waive their right to seek any attorneys' fees, expert witness fees, and costs.

5. Confidentiality.

The Parties agree that the existence and the terms and conditions of this Agreement shall remain confidential insofar as permitted by law. Nothing herein shall be construed to prevent the Parties from discussing the existence or terms and conditions of this Agreement with financial and legal advisors, as necessary to seek professional services and/or advice; or any persons as required by compulsory legal process; or as required by BOROUGH's public disclosure obligations. Subject to the foregoing, the Parties agree to not actively discuss the existence or terms and conditions of this Agreement with third parties. Additionally, the Parties agree not to actively publish information about the existence or terms and conditions of this Agreement. This prohibition shall include, but shall not be limited to, verbal communications, e-mail or text message communications, writing a letter to the editor of any publication, posting of any comments or communication on any website, weblog, or "blog" on-line Internet forum, or in any chat room including but not limited to any social media outlets such as Facebook, Twitter, SnapChat, Instagram, Google+, etc. The Parties agree that if contacted by any third party, including any member of the press or media or the general public, the only statement which will be made is, "No Comment" or "The matter has been resolved." The Parties understand and agree that this Paragraph Five is a material provision of this Agreement and that any breach of this Paragraph shall be a material breach of this Agreement, and that each Party would be irreparably harmed by violation of this provision.

6. Non-Disparagement.

The Parties agree not to make any statements, written or verbal, or cause or encourage others to make any statements, written or verbal, that defame, disparage or in any way criticize the personal or business reputation, practices, or conduct of the Parties, their employees, directors, and officers. The Parties acknowledge and agree that this prohibition extends to statements, written or verbal, made to anyone, including but not limited to, the news media, investors, potential investors, any board of directors or advisory board or directors, industry analysts, competitors, strategic partners, vendors, employees (past and present), clients, employers, etc., with respect to Parties. The Parties understand and agree that this Paragraph Six is a material provision of this Agreement

and that any breach of this Paragraph shall be a material breach of this Agreement, and that each Party would be irreparably harmed by violation of this provision. Notwithstanding the foregoing, BOROUGH is only bound to the extent permitted by law.

7. Binding on Successors and Assigns.

This Agreement shall be binding upon, and inure to the benefit of the Parties, and their heirs, beneficiaries, executors, administrators, successors, transferees, successors, assigns, or any corporation or any entity with which any party may merge, consolidate or reorganize. The Parties hereto represent, covenant and warrant that they have not directly or indirectly assigned, transferred, encumbered or purported to assign, transfer or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or rights herein released and discharged except as set forth herein.

8. Counterparts.

This Agreement may be executed in one or more counterparts, including by facsimile or email. All executed counterparts and each of them shall be deemed to be one and the same instrument. All executed copies of this Agreement, and photocopies thereof (including facsimile and/or emailed copies of the signature pages), shall have the same force and effect and shall be as legally binding and enforceable as the original.

9. Cooperation and Drafting.

The Parties have cooperated in the drafting and preparation of this Agreement; hence the drafting of this Agreement shall not be construed against any of the Parties. The Parties agree that the terms and conditions of this Agreement were negotiated at arm's length and in good faith by the Parties, and reflect a settlement that was reached voluntarily based upon adequate information and sufficient discovery and after consultation with experienced legal counsel.

10. Legal Representation.

(b) The Parties voluntarily execute this Agreement after having been advised to consult with legal counsel and after having had opportunity to consult with legal counsel and without being pressured or influenced by any statement or representation or omission (other than those expressly contained herein) of any person acting on behalf of any party, including the officers, agents and attorneys for any party.

11. All Prior Agreements.

This Agreement supersedes all prior written and oral negotiations, agreements, discussions, proposals and offer letters, and sets forth the entire understanding and agreement among the Parties.

12. No Oral Modifications.

No amendment, waiver, or modification hereto or hereunder shall be valid unless in writing and signed by an authorized signatory of the Party or Parties against whom such amendment, waiver, or modification is to be enforced and no waiver of any rights shall be construed as a continuing waiver or a waiver of that or any other rights unless made in writing and signed by such Parties.

13. Governing Law.

All terms of this Agreement and the exhibits hereto shall be governed by, interpreted, and enforced under to the laws of the State of New Jersey. Should this Agreement be in conflict with any federal, state or local laws, this Agreement will be considered amended or revised to the extent necessary in order to conform with the law.

14. Jurisdiction and Venue.

The Parties agree to submit all disputes with respect to the interpretation, implementation, and enforcement of the terms of this Agreement to the Honorable Frank A. Buczynski, J.S.C. for further mediation. To the extent that the Parties cannot resolve any such dispute with the Honorable Frank A. Buczynski, J.S.C., the Parties shall continue to be governed by the dispute resolution provisions set forth in the respective contractual agreements amongst them.

15. Severability.

The Parties agree that each provision of this Agreement is severable and further agree that if any part or term of this Agreement is later held to be illegal, unenforceable or ineffective, the validity of the remaining provisions shall not be affected and the other obligations will be enforced as if the Agreement did not contain the part or term held to be invalid.

16. Electronic Signature.

This Agreement may be executed by electronic signature which shall have the force and effect of an original signature.

17. Authority.

Each person(s) executing this Agreement in a representative capacity warrants that he or she is duly authorized to bind his or her represented Party.