

RESOLUTION 2025-053

**RESOLUTION OF THE TOWNSHIP OF CHATHAM, IN THE COUNTY OF MORRIS,
STATE OF NEW JERSEY, AUTHORIZING A SETTLEMENT AGREEMENT WITH
MAK GROUP, LLC WITH RESPECT TO THE MUNICIPAL BUILDING ROOFING
PROJECT, AND CERTAIN RELATED ACTIONS IN CONNECTION THEREWITH**

WHEREAS, the Township of Chatham (“Township”) is a municipal corporation of the State of New Jersey; and

WHEREAS, the Township and MAK Group, LLC (“MAK”) had previously contracted with respect to the undertaking and performance of the CHATHAM TOWNSHIP MUNICIPAL BUILDING ROOFING PROJECT (the “Project”); and

WHEREAS, during the course of the undertaking and performance of the Project, disputes unfortunately developed between the parties with respect thereto, and with respect to Project close-out; and

WHEREAS, the parties subsequently became engaged in litigation with respect to the same, under the case captioned *MAK Group, LLC v. Township of Chatham, et al.*, BER-L-6144-24 and previously pending in the Superior Court of New Jersey (the “Litigation”), pertaining to their respective rights, interests and obligations with respect to the Project; and

WHEREAS, the parties now desire to resolve all claims and disputes amongst them in connection with the Project and the Litigation, on the following terms:

- a) MAK shall provide the Township with a credit, against the outstanding Project contract balance due it, of \$10,000, in resolution of any and all claims that the Township could have asserted in connection with the Project, excepting only any claims arising in connection with the performance or enforcement of the contemplated Settlement Agreement (“Agreement”), and any claims that may arise following Project acceptance by the Township, including by way of example and not limit, any claims relating to the quality of and any defects related to any Project work, if any, warranty claims, and the like.
- b) MAK shall comply with, and shall provide all requirements, deliverables and items required by, Items 2 and 3 of Project Engineer John Ruschke’s October 16, 2024 Memorandum respecting project close-out (“Close Out Memo”), including without limit, the provision of the Project manufacturer/supplier’s roof warranty. The parties shall work together on an agreed form of sample warranty which is reasonable to both. Compliance with the outstanding requirements of the Close Out Memo shall occur within the time frames set forth in the Settlement Agreement. Upon such compliance, which shall be confirmed by the Project Engineer, the monies to be held in escrow – as further set forth in the Agreement - will then be released to MAK and the Project manufacturer/supplier, respectively.
- c) Once the form of the Project manufacturer/supplier’s warranty is worked out to the satisfaction of both parties, the Township as Owner will then issue two (2) checks, to be held in escrow by the Township’s general counsel, McManimon, Scotland & Baumann, LLC (“Escrow Agent”). One shall be for the amount owed for, and payable to, the Project manufacturer/supplier for the roof warranty (\$175,186.63), and the other payable to MAK for the remaining Project balance due under the contract, less the \$10,000 credit referenced in this Agreement. Once the form of Project roof warranty is agreed upon,

the Escrow Agent shall make payment to the Project manufacturer/supplier contemporaneous with the submission of the roof warranty to the same. MAK's check shall issue from escrow upon both timely completion of all outstanding items set forth in the Close Out Memo, and the issuance of the roof warranty.

- d) MAK will provide lien releases from all subcontractors and suppliers on this Project to the Township through the Project Engineer.
- e) The parties agree that time is of the essence with respect to performance under the Agreement and that, as such, all outstanding items set forth in the Close Out Memo shall be completed by MAK to achieve complete Project Close Out, no later than sixty (60) days from full execution of the Settlement Agreement. Insofar as Project Close Out is not achieved within that time frame, and MAK presents no good cause for the failure to achieve Project Close Out within that sixty (60) day window (or any extension thereof which may be agreed upon in writing by the parties), MAK shall pay \$200 *per diem* in liquidated damages for each day that passes until Project Close Out is achieved. The Township may credit such liquidated damages from the remaining Project contract balance before the same is paid to MAK by the Escrow Agent.
- f) Upon full execution of the Agreement, the parties shall execute and file with the Court in the Litigation a Stipulation of Dismissal *Without* Prejudice. Upon full performance under this Agreement, the parties shall thereafter file with the Court in the Litigation, a Stipulation of Dismissal *With* Prejudice; and

WHEREAS, subject to the foregoing and as otherwise set forth in the Settlement Agreement, the parties have agreed to amicably resolve, settle and compromise all outstanding issues, disputes and differences they have or may have existing as of the date of the Settlement Agreement in connection with the Project and Litigation in the manner set forth in the Agreement (subject to any exception as noted therein), and as authorized by formal action of each the parties as required by applicable law; and

WHEREAS, in furtherance of all of the forgoing, the Township Committee is now desirous of authorizing the Settlement Agreement with respect to the Project and the Litigation consistent with the above, including the execution of necessary documents to effectuate the said Settlement Agreement.

NOW, THEREFORE, BE IT RESOLVED by the Township Committee of the Township of Chatham, County of Morris, State of New Jersey, as follows:

Section 1. The aforementioned Recitals are incorporated herein as though fully set forth at length.

Section 2. The Settlement Agreement with respect to the Project and the Litigation be and hereby is authorized, all consistent with the above Recitals. In that regard, all necessary officers, personnel and legal counsel of the Township be and hereby are authorized and directed to execute such documents as may be reasonably necessary, and in such form as may be approved in consultation with legal counsel, to effectuate the terms of the Settlement Agreement as aforesaid. It is anticipated that such documents shall include, without limitation but only by way of example, the Settlement Agreement itself, the entry of any and all necessary orders or stipulations within the Litigation to effectuate the Settlement Agreement, as well as any necessary release documents that may be executed with MAK with respect hereto.

Section 3. All actions previously taken by any Township authorized officers, or by any employee, contractor, legal counsel or consultant employed by or engaged by the Township, in connection with the subject of this Resolution, are hereby ratified, confirmed and approved.

Section 4. If any part(s) of this Resolution shall be deemed invalid, such part(s) shall be severed and the invalidity thereof shall not affect the remaining parts of this Resolution.

Section 5. This Resolution shall take effect immediately.

Adopted: January 28, 2025

TOWNSHIP OF CHATHAM IN
THE COUNTY OF MORRIS

Attest:



Gregory J. LaConte, Clerk

By 

Michael Choi, Mayor