

**VILLAGE OF DOWNERS GROVE**  
**Report for the Village**  
**11/13/2018**

<b>SUBJECT:</b>	<b>SUBMITTED BY:</b>
Approval of Settlement Agreement - Kee Construction	Enza Petrarca Village Attorney

**SYNOPSIS**

A resolution has been prepared authorizing execution of a settlement agreement regarding *Legacy Underground Corporation v. Village of Downers Grove and Kee Construction, LLC*.

**STRATEGIC PLAN ALIGNMENT**

The 2017-2019 goals include *Steward of Financial, Environmental and Neighborhood Sustainability*.

**FISCAL IMPACT**

The final payout amount is \$144,041.66, which will be paid from the Parking Fund (Page 4-33, Line 21).

**RECOMMENDATION**

Approval on the November 13, 2018 consent agenda.

**BACKGROUND**

In the summer of 2015, Kee Construction LLC, as general contractor, began the reconstruction of Parking Lot H at the Belmont train station. The parking lot was substantially completed and put into use at the beginning of December 2015. In August 2016, one of Kee's subcontractors, Legacy Underground Corporation, filed a mechanic's lien action against the Village, Kee and Great American Insurance Company (Kee's bond company). During the course of the lawsuit, Legacy filed for bankruptcy so its claim was dismissed, which left crossclaims filed by both the Village and Kee pending.

The Village and Kee had a dispute over the total amount owed to Kee under the contract. The Village has agreed to pay Kee approximately \$14,000 above the amount calculated by the Village of work performed by Kee for a final payout amount of \$144,041.66. This settlement agreement will resolve all outstanding issues regarding the pending litigation, which will be dismissed with prejudice upon approval of the agreement.

**ATTACHMENTS**

Resolution  
Settlement Agreement

**RESOLUTION NO. \_\_\_\_\_****A RESOLUTION AUTHORIZING EXECUTION OF A  
SETTLEMENT AGREEMENT AND RELEASE BETWEEN  
THE VILLAGE OF DOWNERS GROVE AND KEE CONSTRUCTION, LLC**

BE IT RESOLVED by the Village Council of the Village of Downers Grove, DuPage County, Illinois, as follows:

1. That the form and substance of a certain Settlement Agreement (the "Agreement"), between the Village of Downers Grove (the "Village") and Kee Construction, LLC ("Kee"), for the settlement and release of all claims concerning Case No. 16 L 807, as set forth in the form of the Agreement submitted to this meeting with the recommendation of the Village Attorney, is hereby approved.

2. That the Village Attorney and Village Clerk are hereby respectively authorized and directed for and on behalf of the Village to execute, attest, seal and deliver the Agreement, substantially in the form approved in the foregoing paragraph of this Resolution, together with such changes as the Manager shall deem necessary.

3. That the proper officials, agents and employees of the Village are hereby authorized and directed to take such further action as they may deem necessary or appropriate to perform all obligations and commitments of the Village in accordance with the provisions of the Agreement.

4. That all resolutions or parts of resolutions in conflict with the provisions of this Resolution are hereby repealed.

5. That this Resolution shall be in full force and effect from and after its passage as provided by law.

\_\_\_\_\_  
Mayor

Passed:

Attest: \_\_\_\_\_

Village Clerk

**SETTLEMENT AGREEMENT AND RELEASE OF ALL CLAIMS**

This Agreement is entered into this \_\_\_\_ day of November, 2018, between the Village of Downers Grove ("the Village") and Kee Construction, LLC ("Kee").

WHEREAS, on or about May 19, 2015, Kee and the Village entered into a contract for Kee to serve as general contractor on a project to reconstruct Parking Lot H ("the Project") at the Belmont train station in Downers Grove ("the Contract"); and,

WHEREAS, on or about June 24, 2015, Kee entered into a subcontract with Legacy Underground Corporation ("Legacy"), wherein Legacy agreed to provide labor and materials for a portion of the Project ("the Subcontract"); and,

WHEREAS, on May 26, 2016, pursuant to 770 ILCS 60/23, Legacy served a notice of lien claim on public funds and a notice of bond claim, pursuant to 30 ILCS 550/2 in the amount of \$125,004.18 on the Village, Kee and Great American Insurance Company ("Great American"); and

WHEREAS, on August 22, 2016, Legacy filed suit against the Village, Kee and Great American in the Circuit Court of DuPage County, case number 16 L 807, asserting claims for (1) lien against public funds under 770 ILCS 60/23; (2) public construction bond act under 30 ILCS 550/2; (3) breach of contract; (4) interest under the Local Government Prompt Payment Act; and (5) unjust enrichment; and

WHEREAS, the Village and Kee filed crossclaims against one another for breach of contract; and

WHEREAS, during the course of this suit Legacy filed a petition for Chapter 7 bankruptcy, wherein that court entered an order that the bankruptcy trustee was not going to pursue Legacy's claim against the Village, Kee or Great American in this case; and

WHEREAS, based on the bankruptcy court's order, on July 26, 2018, the court in this case entered an order dismissing all of Legacy's claims for want of prosecution, which then left only the Village's and Kee's crossclaims remaining; and

WHEREAS, the judge held a pretrial conference with the Parties on October 16, 2018, at which time the Parties agreed upon \$1,421,484.71 as a settlement amount, with the Village having already paid \$1,167,574.88 at that time, leaving a balance of \$253,909.83 to be paid by the Village to Kee; and

WHEREAS, since the date of the pretrial conference the Village made an additional payment to Kee in the amount of \$109,868.17; and

WHEREAS, in order to avoid any further costs and risks associated with litigation, the Parties wish to settle and resolve all matters each may have against the other in relation to the Project and this suit; and

NOW THEREFORE, in consideration of the terms and conditions set forth below, the Parties do hereby agree as follows:

1. The above recitals are hereby incorporated by reference as though fully set forth herein.
2. The Parties agree that within ten (10) days of approval of this Agreement by the Village Council, the Village shall issue a final check made payable to Kee, in the amount of \$144,041.66 ("Final Payout"), as full and complete settlement of all claims Kee has, or may have, against the Village in relation to the Project. After Kee has received payment from the Village, any and all remaining claims, crossclaims or counterclaims shall be dismissed with prejudice.
3. In exchange for payment of the Final Payout, and other good and valuable consideration, Kee and the Village irrevocably and unconditionally release and forever discharge each other, their officers, representatives, agents, employees or successors, from any and all claims, counterclaims, crossclaims, charges, liabilities, debts, demands, grievance and causes of action of whatsoever kind, whether at law or in equity, whether accrued, contingent or inchoate, and whether known or unknown, suspected or unsuspected, or otherwise which Kee and the Village each has, had or may have against the other arising from or relating to the Project in any way. Kee and the Village expressly reserve their rights to assert claims of contribution or negligence that may arise in the future from any personal injury claim or third-party claim with respect to the Project that was caused in whole or in part by their negligence.
4. Additionally, Kee shall indemnify and hold harmless the Village, its elected officials, officers, employees, and agents from and against any suit, action, cause of action, claim, suits, judgments, administrative fines or penalties, costs and expenses (including reasonable attorneys' fees) that may arise, directly or indirectly, with respect to any violation or alleged violation involving lien waivers and certified payroll records.
5. Each party shall be responsible for its own attorneys' fees and costs incurred relating to Parking Lot H and this lawsuit, whether incurred before, during or after the pendency of this lawsuit.
6. This Agreement shall be binding upon and inure to the benefit of each of the Parties and their respective assigns, legal representative and successors.
7. This Agreement shall be governed in accordance with the laws of the State of Illinois, without regard to choice of law principles. Venue for any disputes arising out of this Agreement shall be in DuPage County, Illinois.
8. Claims released by this Agreement shall not be construed as releasing any obligation under this Agreement or any claim for, or arising from a breach of this Agreement.
9. Each party acknowledges that it has carefully read and fully understands the terms and effect of this Agreement, has consulted with counsel and is voluntarily entering into this Agreement, for the consideration stated herein and for no other consideration.

10. This Agreement expresses a full and complete settlement and satisfaction, regardless of the adequacy of the aforesaid consideration, of any and all claims related to Lot H.

11. The Parties acknowledge that this settlement is the compromise of disputed claims and that the Final Payout is not to be construed as an admission of liability on the part of the Village, its representatives, officers, agents and employees.

IN WITNESS WHEREOF, the Parties hereto have caused this Settlement Agreement and Release to be executed on or as of the date shown below.

KEE CONSTRUCTION, LLC

VILLAGE OF DOWNERS GROVE

By: [Signature]  
Its: VICE PRESIDENT  
Date: 11/8/2018

By: David Fieldman  
Its: Village Manager  
Date: \_\_\_\_\_

Attest:

\_\_\_\_\_  
Village Clerk

I, the undersigned, a Notary Public in and for the County of COOK, State of Illinois, CERTIFY THAT GRETA KERANON personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that he/she is the RESIDENT of Kee Construction, LLC, that he/she has been duly authorized by Kee Construction to execute this Agreement, and that he/she has signed and delivered this Agreement as the free and voluntary act of Kee Construction.

Given under my hand and notarial seal, this 8 day of November 2018.

\_\_\_\_\_  
Notary Public

My commission expires on JUNE 17, 2021.

