



UNION COUNTY IMPROVEMENT AUTHORITY

1499 US Highway One, North, 3rd Floor
 Rahway, New Jersey, 07065
 www.ucimprovementauthority.org
 (732) 382-9400 (732) 382-5862 fax

Resolution No. 56-2017

Date: August 2, 2017

**RESOLUTION OF THE UNION COUNTY IMPROVEMENT AUTHORITY
 AUTHORIZING THE EXECUTIVE DIRECTOR TO ENTER INTO A SETTLEMENT
 AGREEMENT WITH APS CONTRACTING, INC. REGARDING THE NEW UNION
 COUNTY FAMILY COURTHOUSE PROJECT**

APPROVED AS TO FORM:
 Lisa M. da Silva, RMC
 Clerk of the Authority

APPROVED AS TO SUFFICIENCY OF FUNDS
 YES NO NONE REQUIRED
 UNION COUNTY IMPROVEMENT AUTHORITY

Lisa M. da Silva

M. L. B. [Signature]

	PRESENT	ABSENT	AYE	NAY	ABSTAIN	MOTION	SECOND
<i>Bornstad, Treasurer</i>	✓		✓			✓	
<i>D'Elia</i>	✓		✓				✓
<i>Hockaday</i>	✓		✓				
<i>Huff</i>		✓					
<i>Lattimore</i>	✓		✓				
<i>Salerno, Secretary</i>		✓					
<i>Szpond</i>	✓		✓				
<i>Rountree, Vice Chairwoman</i>	✓		✓				
<i>Scutari, Chairman</i>	✓		✓				

**RESOLUTION OF THE UNION COUNTY IMPROVEMENT AUTHORITY
AUTHORIZING THE EXECUTIVE DIRECTOR TO ENTER INTO A SETTLEMENT
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COUNTY FAMILY COURTHOUSE PROJECT**

WHEREAS, the Union County Improvement Authority (the “Authority”) has been duly created by ordinance of the Union County Board of Chosen Freeholders as a public body corporate and politic of the State of New Jersey pursuant to and in accordance with the County Improvement Authorities Law, N.J.S.A. 40: 37A-44 et seq.; and

WHEREAS, pursuant to N.J.S.A. 40:37A-55(t), the Authority is empowered to enter into any and all agreements or contracts, execute any and all instruments, and do and perform any and all acts and things necessary, convenient or desirable for the purposes of the Authority, subject to the Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq.; and

WHEREAS, on or around May 1, 2013, the Union County Improvement Authority (hereinafter “the Authority”) published a notice of request for bids pursuant to the New Jersey Local Public Contracts Law (N.J.S.A. 40A:11-1 *et seq*) for the construction of a new Family Court Building

WHEREAS, on May 29, 2013 the Authority received bids from seven (7) respondents.

WHEREAS, the Authority determined that APS Contracting, Inc., (hereinafter APS) submitted the lowest responsible bid, and awarded a contract to APS in accordance with N.J.S.A 40A:11-1 *et seq*.

WHEREAS, the Authority and APS Contracting Inc. entered into a Contract Agreement dated July 1, 2013 for the construction of the new Union County Family Courthouse located at 2 Cherry Street, Elizabeth, New Jersey; and

WHEREAS, on August 7, 2014 APS was sent a Time of the Essence Notice by the Authority’s General Counsel on behalf of the Authority expressing concerns with their inability to achieve the completion dates set forth in an agreed upon schedule; and

WHEREAS, on April 30, 2015 APS was sent a certified letter from the Authority putting them on notice of the Authority’s intent to terminate services and demand the Surety for APS, take over the project due to the failure of APS to meet the minimal conditions of the original Agreement; and

WHEREAS, on May 8, 2015 APS received a Supplemental Notice of Termination of Employment from the Authority’s General Counsel; and

WHEREAS, on or about July 16, 2015 the Surety for APS took over the project and a Takeover Agreement between the Authority, Fidelity & Deposit Company of Maryland and Zurich American Insurance Company (hereinafter the “Surety”) was entered to complete the work on the

project by the Surety at the Surety's sole cost and expense in accordance with the terms of the original Agreement; and

WHEREAS, on June 8, 2017 the Authority sent a disqualification hearing letter to APS due to their prior negative experience on the new Union County Family Courthouse Project in accordance with N.J.S.A. 40A 11-4 et seq; and

WHEREAS, APS requested a disqualification hearing; and

WHEREAS, in lieu of proceeding with the disqualification hearing on August 2, 2017 it is the intention of the parties to enter into this Settlement Agreement; and

WHEREAS, the Union County Improvement Authority and APS Contracting Inc. and all its principals desire to enter into this Settlement Agreement in substantially the form annexed hereto as **Exhibit A** in order to settle the disputed disqualification hearing claims and avoid conflict and further expense;

NOW THEREFORE, BE IT RESOLVED by the Board of Commissioners of the Authority as follows:

- 1) The foregoing recitals are incorporated herein as if set forth at length; and
- 2) The Executive Director is hereby authorized and directed to execute the Settlement Agreement between the Authority and APS Contracting Inc. to resolve the disputed disqualification hearing claims, a copy of which is attached hereto as **Exhibit A**; and
- 3) The Executive Director is hereby authorized and directed to take any and all actions necessary to execute the Settlement Agreement; and
- 4) The Executive Director is hereby authorized to take any and all actions necessary to implement the Settlement Agreement; and
- 5) This resolution shall take effect immediately.

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT is made and entered into this ____ day of _____ 2017, by and between the Union County Improvement Authority, located at 1499 US Highway One, North, Rahway, New Jersey 07065 and APS Contracting Inc. 155-161 Pennsylvania Ave, Paterson, New Jersey 07053 and its principal Svetozar Savreski.

WHEREAS, on or around May 1, 2013, the Union County Improvement Authority (hereinafter “the Authority”) published a notice of request for bids pursuant to the New Jersey Local Public Contracts Law (N.J.S.A. 40A:11-1 *et seq*) for the construction of a new Family Court Building;

WHEREAS, on May 29, 2013 the Authority received bids from seven (7) respondents; and

WHEREAS, the Authority determined that APS Contracting, Inc., (hereinafter APS) submitted the lowest responsible bid, and awarded a contract to APS in accordance with N.J.S.A. 40A:11-1 *et seq.*; and

WHEREAS, the Authority and APS Contracting Inc. entered into a Contract Agreement dated July 1, 2013 for the construction of the new Union County Family Courthouse located at 2 Cherry Street, Elizabeth, New Jersey; and

WHEREAS, on August 7, 2014 APS was sent a Time of the Essence Notice by the Authority’s General Counsel on behalf of the Authority expressing concerns with their ability to achieve the completion dates set forth in the agreed upon schedule; and

WHEREAS, APS thereafter discussed such concerns with representatives of the Authority at regularly scheduled project meetings; and

WHEREAS, on April 30, 2015, APS was sent a certified letter from the Authority putting them on notice of the Authority's intent to terminate services and demand the Surety for APS, take over the project due to their alleged failure of APS to meet the minimal conditions of the original Agreement; and

WHEREAS, on May 8, 2015 APS received a Supplemental Notice of Termination of Employment from the Authority's General Counsel; and

WHEREAS, on May 29, 2015 APS sent a letter to the Authority disputing the grounds for said Termination; and

WHEREAS, on or about July 16, 2015 the Surety for APS took over the project and a Takeover Agreement between the Authority and Fidelity & Deposit Company of Maryland and Zurich American Insurance Company (hereinafter the "Surety") was entered to complete the work on the project by the Surety at the Surety's sole cost and expense in accordance with the terms of the original Contract Agreement; and

WHEREAS, on June 8, 2017 the Authority sent a disqualification hearing letter to APS asserting it was based on their prior negative experience on the new Union County Family Courthouse Project in accordance with N.J.S.A. 40A 11-4 et seq; and

WHEREAS, APS requested a disqualification hearing; and

WHEREAS, APS, through its counsel, has advised the Authority, APS has no desire to bid on any Authority projects for the next five (5) years.

WHEREAS, in lieu of proceeding with the disqualification hearing on August 2, 2017, it is the intention of the parties to enter into this settlement agreement; and

WHEREAS, the Union County Improvement Authority and APS Contracting Inc. and its principal desire to enter into this **SETTLEMENT AGREEMENT** (hereinafter referred to as the

"Agreement") in order to settle the disputed disqualification hearing claims and avoid conflict and further expense regarding the same; and

WHEREAS, it is understood and agreed by the Union County Improvement Authority and APS Contracting Inc. and its principal that this Agreement is a settlement of the disputed disqualification hearing claims and the parties understand and acknowledge that this Agreement does not constitute an admission of liability or wrongdoing on the part of any of the parties hereof, and this Agreement is purely an act of practical compromise;

NOW, THEREFORE, in consideration of the mutual promises of the parties to this Agreement, the Union County Improvement Authority (hereinafter "the Authority") and APS Contracting Inc., and its principal (hereinafter "APS") agree as follows:

1. It is understood and agreed by the Authority that it will not proceed with any resolution to disqualify APS under N.J.S.A 40A:11-4, from bidding on any future Authority sponsored, financed or managed projects.
2. It is further understood and agreed that APS will withdraw its request for a hearing before the Authority Board of Commissioners under N.J.S.A. 40A:11-4 (c)(3).
3. In consideration for this Agreement and in settlement of disputed disqualification hearing claims, APS and its principal agree to refrain from bidding on any future Authority sponsored, financed or managed projects for the next five (5) years from the date of this Agreement.
4. The Authority hereby reserves the right to seek removal of APS from any and all Authority projects or to reject any bid from APS or its principals under the APS corporation name or any other corporate name, should they apply before the expiration of the five (5) year term.

5. The Authority and APS affirm that the terms stated herein constitute the entire consideration for this Agreement. This Agreement contains and constitutes the entire understanding and agreement between the parties respecting the subject matter hereof. No change or addition is to be made to this Agreement, except in a written memorandum executed by the parties hereto.
6. The Authority and APS acknowledge that they each have the power, pursuant to the laws of the State of New Jersey and any applicable by-laws, certificates of incorporation, or partnership or shareholder agreements, to enter into this Agreement, and the parties acknowledge that they have mutually entered into this Agreement in reliance thereon, as well as in reliance upon all of the other terms and conditions contained herein.
7. The Authority and APS affirm that they have carefully read the foregoing Agreement, know its contents, and freely and voluntarily, without duress, coercion, or undue influence, agree to all of its terms and conditions, after full consultation with their attorneys.

IN WITNESS WHEREOF, the parties have signed this Agreement and is effective as of the date first written on page 1 of this agreement.

APS CONTRACTING, INC.

By: _____
SVETOZAR SAVRESKI
President, APS Contracting Inc.

Date: _____

UNION COUNTY IMPROVEMENT AUTHORITY

By: _____
DANIEL P. SULLIVAN
Executive Director, UCIA

Date: _____

STATE OF NEW JERSEY, COUNTY OF UNION

I, _____ CERTIFY that on _____, 2017,

Svetozar Savreski., personally came before me and acknowledged under oath, to my satisfaction,
that this person (or if more than one, each person):

- (a) is named in and personally signed this document; and
- (b) signed, sealed and delivered this document as his or her act and deed.
- (c) is authorized by the Corporation to sign this document.

Prepared by:

STATE OF NEW JERSEY, COUNTY OF UNION:

I, _____ CERTIFY that on _____, 2017,

Daniel P. Sullivan, personally came before me and acknowledged under oath, to my satisfaction,
that this person (or if more than one, each person):

- (a) is named in and personally signed this document; and
- (b) signed, sealed and delivered this document as his or her act and deed.
- (c) is authorized by the Authority to sign this document.

Prepared by:
