

RESOLUTION 14-072

RESOLUTION AUTHORIZING EXECUTION OF FIRST AMENDMENT TO SETTLEMENT AGREEMENT BY AND BETWEEN ROCKAWAY VALLEY REGIONAL SEWERAGE AUTHORITY AND INSITUFORM TECHNOLOGIES, LLC f/k/a INSITUFORM TECHNOLOGIES, INC. ("ITI") REGARDING THE INTERCEPTOR SEWER REHABILITATION PROJECT 2009, CONTRACT NO. 35 – REBID AND UPON FULL EXECUTION OF SAID AMENDMENT, AUTHORIZING RELEASE OF FINAL PAYMENT TO ITI IN THE AMOUNT OF \$486,061.23 TOGETHER WITH THE RELEASE OF RETAINAGE IN THE AMOUNT OF \$19,542.33

WHEREAS, the Rockaway Valley Regional Sewerage Authority ("RVRSA") entered into a public contract with Insituform Technologies, Inc. entitled Interceptor Sewer Rehabilitation Project 2009, Contract No. 35 - Rebid, State EIT Project No. S340756-02, for the rehabilitation of its trunk line; and

WHEREAS, Insituform Technologies, Inc. changed its name to Insituform Technologies, LLC effective on December 31, 2011 by filing a Certificate of Conversion from a corporation to a limited liability company in the State of Delaware, the jurisdiction where the corporation was first formed on March 27, 1980 ("ITI" shall hereinafter refer to Insituform Technologies, Inc. prior to the effective date of the aforementioned Certificate of Conversion and shall refer to Insituform Technologies, LLC at the time and after the effective date of the aforementioned Certificate of Conversation); and

WHEREAS, during the course of the work, certain issues arose regarding the bypass pumping and lining of the interceptor under Washington Street in the Town of Boonton that was not performed by ITI, the Parshall Flume meter located on the property of RVRSA was damaged by ITI's subcontractor National Water Main, claims for a time extension and claims for extra work were asserted by ITI, certain credits were asserted by RVRSA, together with claims for reimbursement for certain legal and engineering fees incurred by RVRSA in connection with a discharge of sewage at the intersection of Monroe and Washington Street in the Town of Boonton, and such other claims as set forth in the attached Settlement Agreement and its attached Contract Modification CM-1; and

WHEREAS, the Authority and ITI executed a Settlement Agreement on July 11, 2013 to fully resolve any and all claims between the parties with respect to Contract No. 35-Rebid;

WHEREAS, the Authority desires to authorize the Executive Director to execute the First Amendment to the Settlement Agreement in order to reduce the amount owed to ITI in the amount of \$7,003.35 and in exchange for this reduction in the contract price, release ITI of any obligation to perform a video inspection of the liner work performed by ITI; and

WHEREAS, upon full execution of the First Amendment to the Settlement Agreement, the Authority desires to make final payment to ITI in the amount of \$486,061.23 and release retainage to ITI in the amount of \$19,542.33 in accordance with paragraph fourteen of the Settlement Agreement, as amended.

NOW, THEREFORE, BE IT RESOLVED by the Rockaway Valley Regional Sewerage Authority as follows:

1. The Executive Director is hereby authorized and directed to execute the First Amendment to the Settlement Agreement by and between the Rockaway Valley Regional Sewerage Authority and Insituform Technologies, LLC f/k/a Insituform Technologies, Inc. substantially

in the form as that attached hereto, upon receipt of the executed original from Insituform Technologies, LLC f/k/a Insituform Technologies, Inc.

2. Upon full execution of the First Amendment to the Settlement Agreement by and between the Rockaway Valley Regional Sewerage Authority Insituform Technologies, LLC f/k/a Insituform Technologies, Inc. in substantially in the form as that attached hereto, the Rockaway Valley Regional Sewerage Authority authorizes the release of final payment to Insituform Technologies, LLC f/k/a Insituform Technologies, Inc. in the amount of \$486,061.23 and the release of retainage in the amount of \$19,542.33 in accordance with paragraph fourteen of the Settlement Agreement, as amended.
3. The CFO has certified that funds for the aforementioned payments are available from account 14-EIT-035.
4. This Resolution shall take effect as provided by law.

I hereby certify that this Resolution was adopted at a regularly scheduled meeting of the Rockaway Valley Regional Sewerage Authority held on August 14, 2014

On motion of John Cegelka

Second by Glenn Corbett


and a Roll Call Vote as Follows:

Yeas: (5) Andes, Cegelka, Corbett, Guadagno, Lowell,

Nays: (0) None

Abstain: (1) Vincitore

Absent: (4) Recchia, Schaefer, Schorno, Secco


Michael Guadagno
Board Secretary

**FIRST AMENDMENT TO
SETTLEMENT AGREEMENT
DATED JULY 11, 2013**

THIS AMENDMENT, made this _____ day of August, 2014

By and Between: **ROCKAWAY VALLEY REGIONAL SEWERAGE AUTHORITY**
(hereinafter referred to as "RVRSA" or the "Authority"), with a mailing
address of RD#1, 99 Greenbank Road, Boonton, New Jersey 07005 and a
principal place of business at 99 Greenbank Road, Parsippany Troy Hills
Township, New Jersey.

and

**INSITUFORM TECHNOLOGIES, LLC f/k/a INSITUFORM
TECHNOLOGIES, INC.** (hereinafter referred to as "ITI"), with a legal
address and principal place of business at 17988 Edison Avenue,
Chesterfield, Missouri 63005.

WITNESSETH

WHEREAS, on August 12, 2010, after public bidding in accordance with the requirements of the Local Public Contracts Law, N.J.S.A. 40:11-1 et seq., the RVRSA awarded Interceptor Sewer Rehabilitation Project 2009 - Contract No. 35-Rebid in the bid amount of \$1,143,082.00 to ITI and a Notice to Proceed with the work was issued to ITI on October 8, 2010; and

WHEREAS, during the course of the work, certain issues arose regarding the bypass pumping and lining of the interceptor under Washington Street in the Town of Boonton that was not performed, the Parshall Flume meter located on the property of RVRSA was damaged by ITI's subcontractor National Water Main, a discharge of sewage at the intersection of Monroe and Washington Street in the Town of Boonton occurred, impacting homeowners and an adjacent park which has led to separate litigation that is not subject to settlement under this agreement, but for which certain legal and engineering fees incurred by RVRSA are the subject of this settlement agreement, claims for a time extension and claims for extra work have been asserted by ITI and certain credits have been asserted by RVRSA, and such other claims set forth in the attached CM-1; and

WHEREAS, ITI has been paid \$464,509.80 for work completed and the parties executed a Settlement Agreement on July 11, 2013 to resolve all remaining work and claims; and

WHEREAS, the parties desire to enter into this First Amendment to the Settlement Agreement dated July 11, 2013 in order to resolve a dispute that arose regarding the work to be provided for the video inspection of the liner installed by ITI.

NOW WHEREFORE, in consideration of the payment of One Dollar (\$1.00) dollar by the RVRSA to ITI, receipt of which is hereby acknowledged, the parties agree that the Settlement Agreement by and between the Authority and ITI continues to remain in full force and effect and is amended as follows:

1. The amount of \$493,064.58 referenced in paragraph 14 of the Settlement Agreement by and between the Authority and ITI, dated July 11, 2013 is reduced to \$486,061.23 representing a \$7,003.35 reduction in the amount to be paid by the Authority to ITI.
2. ITI is released of any obligation to perform a video inspection of the liner installed by ITI as referenced in Exhibit B of the Settlement Agreement by and between the Authority and ITI, dated July 11, 2013.
3. This Amendment shall be construed, interpreted and enforced in accordance with the laws of the State of New Jersey.
4. This Amendment may be executed in counterparts each of which shall be deemed an original, but all of which taken together, shall constitute one and the same instrument.
5. This Amendment is not valid without an approval Resolution of RVRSA.

IN WITNESS WHEREOF, the said parties have hereunto caused these presents to be signed by their proper corporate officers and have caused their proper seal to be hereunto affixed the day and year first above-written.

Attest:

INSITUFORM TECHNOLOGIES, LLC.

By: _____

Jeffrey J. Kowal, P.E.
Vice President and General Manager

Attest:

ROCKAWAY VALLEY REGIONAL
SEWERAGE AUTHORITY

By: _____

JoAnn Mondsini
Executive Director