

SETTLEMENT AGREEMENT AND RELEASE

THIS SETTLEMENT AGREEMENT AND RELEASE (the "Agreement") is entered into as of the ____ day of June, 2012, by and between Brothers Asphalt Paving, Inc. ("BAP"), V3 Companies of Illinois, Ltd., an Illinois corporation ("V3"), and the Village of Orland Park (the "Village") (collectively, the "Parties").

WHEREAS, the Village contracted with V3 to perform certain construction oversight services related to the installation of a water main along the north side of 143rd Street (the "Project");

WHEREAS, the Village contracted with BAP to, *inter alia*, install the water main for the Project, including layout and staking;

WHEREAS, on May 9, 2012, the Village notified V3 and BAP that the water main along the north side of 143rd Street immediately east of Main Street was outside of the 143rd Street north right-of-way line which resulted in certain disputes between the Parties (the "Dispute");

WHEREAS, the Parties desire to resolve all disputes between them related to the Dispute and to release, remise and acquit any claim or potential claim against each other without admitting liability, which is expressly denied, and to keep the Dispute and its resolution confidential to the extent permitted by law;

NOW, THEREFORE, for good and valuable consideration as set forth herein, including the recitals which are expressly incorporated into this Agreement, the receipt and sufficiency of which are hereby acknowledged and agreed to by the Parties hereto, the Parties agree as follows:

1. **Consideration.**

- a. V3 agrees to prepare the design and plans for the location of the water main (the "V3 Re-design");
- b. BAP agrees to provide the construction services necessary to move the water main so that it fully complies with the V3 Re-design (the "Construction"). BAP shall be solely responsible for the means, methods, techniques, sequences and procedures of the Construction;
- c. V3 agrees to provide periodic construction observation for the Construction;
- d. V3 further agrees to pay BAP one-half of the cost of Construction, at BAP's cost without mark-ups or profit and subject to audit of BAP's

records, within twenty-eight (28) days of the completion of Construction and Village's acceptance thereof;

- e. The Parties acknowledge that the Construction, when completed, will leave the affected area backfilled with stone;
- f. BAP agrees and acknowledges that time is of the essence and that the Construction shall be complete by July 15, 2012;
- g. The Village shall coordinate the Construction with James McHugh Construction Company and ensure that BAP and V3 have unrestricted access to all areas reasonably necessary so that the Construction can be proceed without disruption as time is of the essence.

2. **Releases.**

a. **The Village's Release of V3.** Upon completion of the Construction to the Village's satisfaction, which satisfaction shall not be unreasonably withheld, the Village, for itself and on behalf of its legal representatives, current and former officials, employees, agents, assigns, representatives, and any other persons or entities that might claim under it, hereby fully and forever release V3, and its legal representatives, current and former principals, partners, officers, directors, employees, agents, predecessor and successor corporations, parent corporations, subsidiaries, shareholders, assigns, associates, representatives, professionals, and consultants and any other persons, firms or corporations that might claim under it from any and all claims, liabilities, demands, sums of money, agreements, promises, damages, costs or expenses (including attorneys' fees), duties, obligations or cause of action of any kind whatsoever relating to any matters of any kind, whether presently known or unknown, suspected or unsuspected, that the Village had, have or may have against or with respect to the Dispute.

b. **The Village's Release of BAP.** Upon completion of the Construction to the Village's satisfaction, which satisfaction shall not be unreasonably withheld, the Village, for itself and on behalf of its legal representatives, current and former officials, employees, agents, assigns, representatives, and any other persons or entities that might claim under it, hereby fully and forever release BAP, and its legal representatives, current and former principals, partners, officers, directors, employees, agents, predecessor and successor corporations, parent corporations, subsidiaries, shareholders, assigns, associates, representatives, partnerships, professionals, and consultants and any other persons, firms or corporations that might claim under it from any and all claims, liabilities, demands, sums of money, agreements, promises, damages, costs or expenses (including attorneys' fees), duties, obligations or cause of action of any kind whatsoever relating to any matters of any kind, whether presently known or unknown, suspected or unsuspected, that the Village had, have or may have against or with respect to the Dispute.

3. **No Admission of Liability.** The Parties acknowledge and agree that this Agreement does not, in any manner, constitute an admission of liability or fault whatsoever by V3 or BAP and that this Agreement is made solely for the purpose of resolving the Dispute.

4. **Assignment.** The Village represents and warrants that there has been no assignment, negotiation, transfer or alienation of any causes of action, or any other rights, obligations, liabilities, demands or claims existing against V3 or BAP or which could be asserted by the Village with respect to the Dispute.

5. **Representation.** In connection with the negotiating, drafting and execution of this Agreement, the Parties have been represented by their own, separate and independent legal counsel.

6. **Binding Agreement.** The Parties to this Agreement warrant that they have read this Agreement, that they intend to be legally bound by the same, that they have entered into this Agreement freely and voluntarily and that they have the full right, power, authority and capacity to enter into and execute the same. The Parties hereto further warrant that this Agreement is entered into with no Party relying upon any statement or representation made by any other person or entity not embodied in this Agreement.

7. **Confidentiality and Nondisclosure.** The Parties agree to restrict disclosure of the terms of this Agreement solely to their attorneys, accountants and tax, insurance and financial advisors with a need to know, all of whom shall be instructed similarly to hold the existence and terms of this Agreement in the strictest of confidence, and not to disclose the terms of this Agreement to others except as required by law.

8. **Non-Admissibility.** The Parties further agree that this Agreement shall not be admissible in a Court of law or any other tribunal for the resolution of disputes except to enforce the terms of this Agreement.

9. **Collaborative Drafting.** This Agreement represents the collaborative drafting of the Parties and their respective attorneys. Accordingly, no provisions of this Agreement shall be deemed to have been drafted by any one Party or that Party's attorney. Likewise, any uncertainty or ambiguity shall not be construed for or against any Party as an attribution of drafting by any Party.

10. **Integration Clause.** This Agreement is complete and reflects all of the agreements, representations, warranties, undertakings and promises between the Parties and supersedes and controls over all prior agreements, understandings and discussions whatsoever between and among the Parties.

11. **Governing Law.** This Agreement shall be governed and construed in accordance with Illinois law without regard to its choice of law provisions.

12. **Counterparts.** This Agreement may be executed in separate counterparts and shall become effective upon the delivery of original signatures or of signatures transmitted by facsimile.

13. **Waiver.** No waiver of any provision of this Agreement shall operate as a waiver of such provision or any other provision on a future occasion.

14. **Modification.** This Agreement may only be amended or modified by a writing signed by each of the Parties.

15. **Recitals.** The recitals made above are an integral part of this Agreement and are hereby incorporated herein and made a part hereof as though fully set forth herein.

The parties hereby execute this Agreement as of the date set forth above.

V3 Companies, an Illinois corporation,

Brothers Asphalt Paving, Inc.

By:_____

By:_____

Its:_____

Its:_____

The Village of Orland Park

By:_____

Its:_____

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