

Kelsey Bortz,
Plaintiff,

Vs Case No 2021 CV 225
Case Code Administrative Agency Review 30607

City Of Columbus,
Defendant and Third-Party Plaintiff

General Engineering Company and
Ultimate Construction Company, Inc of Cottage Grove,
Third-Party Defendants

**COMPLETE AND GENERAL RELEASE
AND SETTLEMENT AGREEMENT**

WHEREAS, there is a lawsuit pending in Columbia County, Wisconsin, Case No. 22-CV-225 filed by Kelsey Bortz (hereinafter referred to as “Plaintiff”) against the City of Columbus, as defendant, and as third-party defendants, General Engineering Company, Inc. and Ultimate Construction, Inc. (hereinafter referred to collectively as “Defendants”). This civil action is known herein as the “Lawsuit.” The parties agree that a mutual settlement was obtained through negotiations and that the terms of said settlement are contained herein;

WHEREAS, Plaintiff has alleged the City of Columbus wrongfully approved construction of a residence at 428 River Road in the City, which residence is located in a floodplain.

WHEREAS, the City brought a third-party claim against General Engineering Company, Inc., (“GEC”) and Ultimate Construction, Inc. (“Ultimate”), alleging that these parties’ actions or omissions proximately caused the damages claimed by Plaintiff;

WHEREAS, all Defendants expressly deny any and all liability for any and all claims, causes of action, or damages allegedly sustained by Plaintiff and as set forth in the pleadings in the filings, and Court Record of the Lawsuit. Further, the Defendants expressly deny that any and all claims, causes of action, or damages allegedly sustained by Plaintiff were the result or caused by the conduct of the Defendants, their employees, representatives, organizations and/or agents;

WHEREAS, Plaintiff and Defendants have reached a full and complete resolution in settlement of the Plaintiff’s known and unknown claims, actions, causes of action and actions which were, or could have been asserted, pursuant to terms acceptable to each; and

WHEREAS, this settlement agreement constitute a complete, general and unrestricted release by the Plaintiff of the Defendants, including but not limited to the City, GEC, Ultimate and their respective employees, representatives, organizations, agents, as well as their related and affiliated entities, employees, employers, insurers, partners, shareholders, owners, organizations, successors, heirs, and assigns (hereinafter collectively referred to as the “Released Parties”).

WHEREAS, this settlement agreement and also constitutes a complete, general and unrestricted release by the Defendants of their counter-claims and cross-claims by the City against GEC and Ultimate, by GEC against City and Ultimate, and by Ultimate against the City and GEC, as well as all of the defendants’ respective employees, representatives, organizations, agents, as well as their related and affiliated entities, employees, employers, insurers, partners, shareholders, owners, organizations, successors, heirs, and assigns (hereinafter collectively referred to as the “Released Parties”).

NOW, THEREFORE, the parties stipulate, agree, represent, and warrant as follows:

1. DESCRIPTION OF CLAIMS RELEASED

A. Plaintiff Releases City, GEC and Ultimate.

Kelsey Bortz hereby fully and completely releases the City, GEC and Ultimate, as well as their insurers, related and affiliated entities, employees, employers, partners, organizations, representatives, agents, heirs, and assigns from any and all claims, actions, and demands which were, or could have been asserted, that now exist or may hereafter accrue, for all injuries, losses, and/or damages to the Plaintiff, including, but not limited to, all suits, claims, actions, and demands based on matters now known or unknown, anticipated or unanticipated, whether directly or indirectly incurred, including any contingent or derivative claims as well as any claims arising by subrogation or contribution, in any way arising from the transactions and occurrences which gave rise to the Lawsuit.. There are no rights intended to be retained or reserved by the Plaintiff upon the execution of this agreement for matters arising out of the actions or omissions which gave rise to the Lawsuit.

B. Defendants City, GEC and Ultimate Release Plaintiff and Other Defendants.

Defendants City, GEC and Ultimate hereby fully and completely release Bortz, the City, GEC and Ultimate, as well as their insurers, related and affiliated entities, employees, employers, partners, organizations, representatives, agents, heirs, and assigns from any and all claims, third-party claims, actions, and demands which were, or could have been asserted, that now exist or may hereafter accrue, for all injuries, losses, and/or damages to one another, including, but not limited to, all suits, claims, actions, and demands based on matters now known or unknown, anticipated or unanticipated, whether directly or indirectly incurred, including any contingent or derivative claims as well as any claims arising by subrogation or contribution, in any way arising from the transactions and occurrences which gave rise to the Lawsuit. There are no rights intended to be retained or reserved by any party upon the execution of this agreement for matters arising out of

the actions or omissions which gave rise to the Lawsuit, other than the promises to repair which are contained in section 4 below.

C. Stipulation for Dismissal.

Plaintiff and Defendants agree to dismiss with prejudice and upon the merits, without costs, all claims against the Released Parties in the above-referenced Lawsuit. and agree to never institute any further suits, proceedings, or actions, whether civil or administrative, against them relating to the Incident or any other relationship or interaction between the Plaintiff and the Released Parties arising from the same. This release and covenant not to sue is binding on Plaintiff, defendants, their heirs, subrogees, legal representatives, and assigns. Notwithstanding the foregoing, the City does not waive, release or otherwise impair its ability to enforce its ordinances and other laws it is responsible to enforce. The City and GEC agree to provide written assurance to third parties that the funds provided herein will be released upon completion of the remedial work.

Plaintiff hereby declares and represents that the damages claimed may be, in some cases, unknown to the full extent and that the precise amount of damages is uncertain and indefinite. In making this release, Plaintiff understands and agrees that she relies upon her own judgment, her own belief and knowledge of the nature, extent, affect, and duration of damages and liability. This Release is made without reliance upon any statement or representation of the Released Parties, their employees, administrators, agents, attorneys, assigns or insurers. The Plaintiff has reviewed information produced in the Lawsuit, has spoken with their attorney and has counseled with other individuals to their satisfaction in entering into this release.

2. PERSONS OR PARTIES RELEASED

Plaintiff and Defendants City, GEC and Ultimate, their respective employees, representatives, organizations, agents, as well as their related and affiliated entities, employees, employers, insurers, partners, shareholders, owners, organizations, successors, heirs, assigns shall jointly and severally be, and hereby are, acknowledged to be the Released Parties for purposes of this agreement and hereby are deemed released as described more fully in Paragraph 1 above.

3. CONSIDERATION

Plaintiff, in signing this release, agrees to the adequacy of the consideration described herein. The good and valuable consideration for this release includes, but is not limited to, the following:

- (a) Payment of Fifty Thousand Dollars and No Cents (\$50,000.00) will be made to Plaintiff' Designee, the "Kasieta Legal Group, LLC Trust Account" by the City. Payment will be made by the City upon completion of the remedial work required under Section 4 below.
- (b) Payment of Fifty Thousand Dollars and No Cents (\$50,000.00) will be made to Plaintiff' Designee, the "Kasieta Legal Group, LLC Trust Account" by the GEC.
- (c) Ultimate will contribute services and materials equivalent in value to Fifty Thousand Dollars and No Cents (\$50,000.00) to the remediation of Plaintiff's residence as described in section 4.

- (d) The City will rescind the “Raze or Repair” order which the City adopted on May 19, 2020 upon completion of the remedial work under Section 4 below. Other good and valuable consideration including, but not limited to, the avoidance of the uncertainties of litigation, receipt and sufficiency of which are hereby acknowledged.

Plaintiff expressly agrees and acknowledges that the consideration paid hereunder is appropriate compensation, under the circumstances, for the alleged past, present, or future damages, whether known or unknown, in this matter as to the Released Parties.

4. REMEDIAL WORK TO BE PERFORMED.

As of the date of execution of this Stipulation, the residence owned by Plaintiff remains in non-compliance with floodplain zoning of the City, rules of the State of Wisconsin and regulations of the United States. Plaintiff shall take appropriate and lawful action to cure the violation of floodplain regulations. This agreement does not require Plaintiff to undertake any particular method of remediation, provided that Plaintiff works with due diligence to remodel, move or restructure, obtain a Letter of Map Revision Based on Fill (LOMR-F) or otherwise change the residence to achieve compliance from the United States Federal Emergency Management Agency. The funds and resources provided by GEC and Ultimate are to be used to pay for remedial efforts,

5. NON-ADMISSION OF LIABILITY

Neither this Release nor any payment, concession, or other action by the Released Parties, their attorneys, insurers, agents, and/or employees released hereunder is to be construed as an admission of liability. Liability is expressly denied. This Release is a product of offers and counter offers of settlement.

6. INDEMNIFICATION

Plaintiff agrees to defend, indemnify, and hold harmless the Released Parties from any and all liabilities, actions, causes of action, claims, or demands which may be incurred by the Released Parties in the event any third party may have or may in the future make a claim against any of the Released Parties as a result of the Incident.

7. ACKNOWLEDGEMENTS

Plaintiff declares and represents that no promise, inducement, nor agreement which is not expressed herein has been made, and that this Release contains the entire agreement between the Plaintiff, their attorneys, and/or assigns, and the Released Parties. Each paragraph of this Release and Settlement Agreement, including this paragraph, is contractual and not a mere recital.

Plaintiff further warrants and represents that as a material inducement for entering into this Release and Settlement Agreement that she has full right, title and authority to enter into this Release and Settlement Agreement, and that she has read it carefully, know and understands the contents hereof, and/or has had it fully explained by their respective legal counsel and/or Guardian ad Litem, and that she signs this Release and Settlement Agreement of her own free act and deed.

8. GOVERNING LAW AND JURISDICTION

Plaintiff and their attorneys, agents, and/or assigns, agree that this Confidential Complete and General Release and Settlement Agreement shall be construed under the laws of the State of Wisconsin, both as to procedure and substance. Plaintiff and their attorneys, agents, and/or assigns, hereby agree that the Courts of the State of Wisconsin have personal jurisdiction over them and that any action related to this settlement agreement is properly venued in Columbia County, State of Wisconsin.

9. PROMISE NOT TO SUE

Plaintiff agrees not to cause or permit the commencement, maintenance, or continuation of any lawsuit or proceeding against the Released Parties, or any of them directly or indirectly relating to the Incident, any other matter referred to in the Complaint in the Lawsuit, or any matter or claim released herein.

10. EXECUTION

All parties agree to execute all documents, pleadings, or papers consistent with the intent and purpose of this release and settlement agreement, including but not limited to a Stipulation and Order for Dismissal of All Claims against Defendants in the Lawsuit. Signatures obtained and transmitted via facsimile or e-mail are deemed authentic and as valid as the original signature.

CAUTION! READ BEFORE SIGNING

The undersigned are aware and acknowledge that by signing this Release they are giving up certain legal duties and taking on certain legal duties. The undersigned understand that this is a final release, and that upon execution of this document there are no rights to ever again assert any of the claims described herein against any of the Released Parties.

Dated

Dated

Dated

Dated