

RESOLUTION 2015 -

**RESOLUTION OF THE BOROUGH COUNCIL OF THE
BOROUGH OF BELMAR, COUNTY OF MONMOUTH,
AUTHORIZING SETTLEMENT OF THE LITIGATION WITH
PARTNER ENGINEERING AND SCIENCE, INC.**

WHEREAS, the Borough of Belmar ("Borough") is a defendant in a lawsuit (Docket No.: MON-L-003387-13) ("Lawsuit") filed by plaintiff Partner Engineering and Science ("Plaintiff"); and

WHEREAS, Plaintiff asserted various claims in the Lawsuit including that it was improperly compensated for the assets Plaintiff acquired from the bankruptcy of Birdsall Services Group, the Borough's previous engineering firm; and

WHEREAS, the Borough is desirous of avoiding the cost and expense of further litigation; and

WHEREAS, the Parties have reached an agreement to fully and finally resolve all claims among them, including, but not limited to, all claims in the Lawsuit, premised on the Borough making a payment of \$925,000.00 to Plaintiff in exchange for Plaintiff's release of all claims against the Borough and dismissal of the Lawsuit; and

WHEREAS, the Council desires to approve and enter the General Mutual Settlement and Release ("Agreement," attached hereto as Exhibit A) for filing in New Jersey Superior Court in settlement of the Lawsuit.

NOW THEREFORE, BE IT RESOLVED, by the Municipal Council of the Borough of Belmar, in the County of Monmouth, State of New Jersey as follows:

1. The recitals are hereby incorporated as if restated herein in full.
2. The Agreement, attached hereto as Exhibit A, is hereby approved and accepted, subject to such additions, deletions, modifications or amendments deemed necessary by the Mayor in his discretion in consultation with counsel, which additions, deletions, modifications or amendments do not alter the substantive rights and obligations of the parties thereto. The Borough is authorized to execute the Agreement, and to take all other necessary and appropriate action to effectuate the Agreement.
3. This Resolution shall take effect immediately.

offered the above resolution and moved its adoption. Seconded by Council member and adopted by the following vote on roll call:

Council members:	AYES	NAYS	ABSTAIN	ABSENT
Ms. Keown-Blackburn				
Mr. Magovern				
Mr. Brennan				
Mrs. Nicolay				
Mayor Doherty				

NOVINS, YORK & JACOBUS
202 MAIN STREET
CN 2032

TOMS RIVER, N.J. 08754
(732) 349-7100

Michael A. Jacobus, Esq. attorney ID 023421998
Attorneys for Plaintiff Partner Engineering and Science, Inc.

**PARTNER ENGINEERING AND
SCIENCE, INC.**

Plaintiff,

vs.

THE BOROUGH OF BELMAR
Defendant.

**SUPERIOR COURT OF NEW JERSEY
LAW DIVISION-MONMOUTH COUNTY**

Docket No. MON-L-003387-13

CIVIL ACTION

GENERAL MUTUAL SETTLEMENT AND RELEASE

THIS RELEASE dated the day of February, 2015 is given by the Releasors:

Partner Engineering and Science, Inc.

Referred to as "Partner"

and

The Borough of Belmar

Referred to as "Belmar"

THE PARTIES

Plaintiff Partner Engineering and Science, Inc. ("Partner ESI"), is an engineering design services firm which acquired most of the assets of Birdsall Services Group ("BSG") as of June 21, 2013. The purchase includes BSG's accounts receivable, physical assets, select contracts, existing project files, select intellectual property, and license agreements.

Defendant Borough of Belmar is a municipal corporation of the State of New Jersey with offices located at 601 Main Street, Borough of Belmar, Monmouth County, New Jersey 07719.

1. **Mutual Release of Claims and Counterclaims.** Partner and Belmar do hereby mutually release and give up any and all claims and rights which each may have against each other. This releases all claims, including those of which Partner and Belmar are not aware and those not mentioned in this Release. This Release applies to claims resulting from anything which has happened up to now. Partner and Belmar specifically release the following claims:

As those set forth in the above litigation, and more particularly referenced in the accounts receivable statement (Schedule A)

In addition, the undersigned mutually for itself, its members, partners, shareholders, successors and assigns, hereby mutually release each other, its past, present and future members, officers, employees, successors, and assigns from any and all past, present and future claims, demands, obligations, actions, causes of action, rights, damages costs, expenses or compensation which the undersigned has or may have, including rights of which the undersigned is unaware or which are not mentioned in this Release, resulting from work performed or services rendered prior to the date of this Release in connection with the aforementioned projects.

2. **Payment.** Belmar shall pay to Partner a total sum of \$925,000.00 (*NINE HUNDRED TWENTY FIVE THOUSAND DOLLARS*) on or before March 23, 2015. Belmar agrees that this payment is for full and final settlement of the claims against them as well as any claims and/or counterclaims which may be asserted by Belmar against Partner. All payments shall be made in the form of check made payable to "Partner Engineering and Science, Inc" and delivered to Michael A. Jacobus, Esq., located at 202 Main Street, Toms River, New Jersey 08753.

The parties further understand that if defendant Belmar defaults under the terms of the settlement herein, the Plaintiff Partner may on affidavit, with notice to the Defendant Belmar, sign and enter judgment for the full or remaining balance due and owing, including attorney fees and court costs. The amount of the judgment would be \$1,362,337.93 plus costs, less any credits for payments received.

3. **Who is Bound.** Partner and Belmar are bound by this Release. Anyone who succeeds to our rights and responsibilities, such as members, partners, shareholders, successors and assigns, are also bound.

4. **Release of Records.** Within thirty (30) days of receipt of the full settlement proceeds, Partner shall turn over to Belmar physical possession of all right, title, and interest in all files, records, and documents from Birdsall Services Group (BSG) or any other source, relating to any project or work performed for or in Belmar (collectively the "Files"). Belmar agrees to cooperate with the transfer of Files by providing the appropriate technical direction and/or assistance with electronic files as well as cooperation and/or assistance in completing the transfer of all physical files.

5. **Signatures.** I understand and agree to the terms of this Release. If this Release is made by a corporation its proper corporate officers sign and its corporate seal is affixed.

Dated:

PARTNER ENGINEERING AND SCIENCE, INC.

Dated:

BOROUGH OF BELMAR

STATE OF NEW JERSEY

COUNTY OF _____

SS.

I CERTIFY that on the _____ day of February, 2015,
personally came before me and stated under oath to my satisfaction that this person (or if more than one, each person):
(a) was the maker of the attached instrument; and,
(b) executed this instrument as his or her own act.
SIGNED and SWORN to before me on the _____ day of February, 2015,

Notary

STATE OF NEW JERSEY

COUNTY OF _____

SS.

I CERTIFY that on the _____ day of February, 2015,
personally came before me and stated under oath to my satisfaction that this person (or if more than one, each person):
(a) was the maker of the attached instrument; and,
(b) executed this instrument as his or her own act.
SIGNED and SWORN to before me on the _____ day of February, 2015,

Notary