

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into among the United States of America, acting through the United States Department of Justice, and on behalf of the United States Department of Transportation (“DOT”), and its component, the Federal Highway Administration (“FHWA”) (collectively the “United States”) and Cardi Corporation (“CARDI”) (hereafter collectively referred to as “the Parties”), through their authorized representatives.

RECITALS

A. CARDI is a domestic corporation organized and operating under the laws of the State of Rhode Island and Providence Plantations, with a principal place of business at 400 Lincoln Avenue, Warwick, RI 02888. CARDI’s business consists primarily of heavy construction, including but not limited to the construction of bridges, roads and highways, ramps, and other associated infrastructure.

B. At all times material to this Agreement, CARDI served as the prime contractor on Contract 7 (RI Contract No. 2003-CB-011) of the I-195 Relocation – Providence River Bridge project (hereinafter “Contract 7”). Contract 7 was let and administered by the Rhode Island Department of Transportation (“RIDOT”), an agency of the State of Rhode Island. Contract 7 was, *inter alia*, a “[c]ontract for the construction of the new alignment of Interstate Route 195 from the west shore of the Providence River to the south side of existing Interstate Route 195 including mainline bridges over the Providence River and city streets, a ramp bridge, highway approaches and the city streets under and adjacent to the new highway from the Providence River to India Point Park.” Pursuant to its statutory and regulatory authority, including, but not limited to 23 U.S.C. §

120, FHWA funds state construction projects on components of the interstate highway system, generally furnishing eighty per cent (80%) of the dollars used for these projects, and it provided such funding to RIDOT with respect to Contract 7. RIDOT in turn bore responsibility for overseeing, administering, and supervising the work performed under Contract 7, including all work funded by, or performed with, FHWA-furnished funds.

C. The United States contends that it has certain claims against CARDI under common law doctrines, as more specifically identified in Paragraph 2 below, for engaging in the following alleged conduct during the period from May 23, 2003 and the date of this Agreement:

The United States alleges that, during the course of construction on Contract 7, CARDI installed, or caused to be installed, a crash guardrail system (the "Two Bar Rail") in a manner that differed materially from the design specification provided by the governing contract documents and FHWA-mandated safety standards, notably by cutting, eliminating, or altering the use of structurally reinforcing rebar required to properly anchor the Two Bar Rail, and that as a result, the Two Bar Rail was unsafe, inadequate, unfit for its intended use and/or not in compliance with project specifications. The United States further alleges that this conduct occurred at various locations throughout the area covered by Contract 7, and that the manner in which CARDI installed the Two Bar Rail on Contract 7 was not approved by, or, in the alternative, lacked the requisite level of approval or authorization, from RIDOT.

This conduct is referred to below as the Covered Conduct.

D. As a result of the Covered Conduct, the United States alleges that CARDI received and retained payments from RIDOT to which it was not entitled under the common law doctrine of payment by mistake, and that the funds for these payments were derived, in substantial part, from grant funds furnished by FHWA. These payments covered both materials and labor related to the installation and construction of the Two Bar Rail system throughout Contract 7.

E. CARDI denies the allegations of the United States as set forth in the Covered Conduct, and denies that it received and retained payment to which it was not entitled.

F. This Settlement Agreement is neither an admission of liability by CARDI nor a concession by the United States that its claims are not well founded.

To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the above claims, and in consideration of the mutual promises and obligations of this Settlement Agreement, the Parties agree and covenant as follows:

TERMS AND CONDITIONS

1. CARDI shall pay to the United States the sum of FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00), together with interest thereon at the rate of 2.5% per annum from April, 11 2017 up to the date prior to which final payment is made (the "Settlement Amount"), by electronic funds transfer pursuant to written instructions to be provided by the Office of the United States Attorney for the District of Rhode Island, no later than one hundred twenty days after the Effective Date of this Agreement.

2. Subject to the exceptions in Paragraph 3 (concerning excluded claims) below, and conditioned upon CARDI's full payment of the Settlement Amount, the United States releases CARDI, together with its current and former parent corporations; direct and indirect subsidiaries; brother or sister corporations; divisions; current or former corporate owners; and the corporate successors and assigns of any of them from any civil or administrative monetary claim that the United States has for the Covered Conduct based upon the common law, for which the Civil Division, United States Department of Justice,

has actual and present authority to assert and compromise pursuant to 28 C.F.R. Part 0, Subpart I, § 0.45(d)(1995).

3. Notwithstanding the release given in paragraph 2 of this Agreement, or any other term of this Agreement, the following claims of the United States are specifically reserved and are not released:

- a. Any liability arising under Title 26, U.S. Code (Internal Revenue Code);
- b. Any criminal liability;
- c. Except as explicitly stated in this Agreement, any administrative liability, including the suspension and debarment rights of any federal agency;
- d. Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;
- e. Any civil claims by the United States under the False Claims Act, 31 U.S.C. §§ 3729-3733, or the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812 for the Covered Conduct;
- f. Any liability based upon obligations created by this Agreement;
- g. Any liability of individuals, except current or former corporate owners who are expressly released in paragraph 2.

4. CARDI waives and shall not assert any defenses it may have to any criminal prosecution or administrative action relating to the Covered Conduct that may be based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the Constitution, this Agreement bars a remedy sought in such criminal prosecution or administrative action. Nothing in this paragraph or any other provision of this Agreement constitutes an agreement by the United States concerning the

characterization of the consideration provided by Defendants under this Agreement for purposes of the Internal Revenue laws, Title 26 of the United States Code.

5. CARDI fully and finally releases the United States, its agencies, officers, agents, employees, and servants, from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that CARDI has asserted, could have asserted, or may assert in the future against the United States, its agencies, officers, agents, employees, and servants, related to the Covered Conduct and the United States' investigation, litigation, and resolution thereof.

6. a. Unallowable Costs Defined: All costs (as defined in the Federal Acquisition Regulation, 48 C.F.R. § 31.205-47) incurred by or on behalf of CARDI, and its present or former officers, directors, employees, shareholders, and agents in connection with:

- (1) the matters covered by this Agreement;
- (2) the United States' audit(s) and civil investigation(s) of the matters covered by this Agreement;
- (3) CARDI's investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and investigation(s) in connection with the matters covered by this Agreement (including attorney's fees);
- (4) the negotiation and performance of this Agreement;
- (5) the payment CARDI makes to the United States pursuant to this Agreement

are unallowable costs for government contracting purposes (hereinafter referred to as Unallowable Costs).

b. Future Treatment of Unallowable Costs: Unallowable Costs will be separately determined and accounted for by CARDI, and CARDI shall not charge such

Unallowable Costs directly or indirectly to any contract with the United States, nor will it attempt to recover such Unallowable Costs from the United States by any means or in any forum, including but not limited to any court, tribunal, arbitrator, agency, or board of contract appeals.

c. Treatment of Unallowable Costs Previously Submitted for Payment: Within 90 days of the Effective Date of this Agreement, CARDI shall identify and repay, by adjustment to future claims for payment or otherwise, any Unallowable Costs included in payments previously sought by CARDI or any of its subsidiaries or affiliates from the United States. CARDI agrees that the United States, at a minimum, shall be entitled to recoup from CARDI any overpayment plus applicable interest and penalties as a result of the inclusion of such Unallowable Costs on previously-submitted requests for payment. The United States, including the Department of Justice and/or the affected agencies, reserves its rights to audit, examine, or re-examine CARDI's books and records and to disagree with any calculations submitted by CARDI or any of its subsidiaries or affiliates regarding any Unallowable Costs included in payments previously sought by CARDI, or the effect of any such Unallowable Costs on the amount of such payments.

7. Notwithstanding the foregoing, nothing in this agreement shall be construed as prohibiting or in any way limiting any rights or claims which CARDI may have or assert, in whatever form, forum, court or tribunal, seeking payment from RIDOT or the State of Rhode Island for any and all costs incurred for work done by CARDI after substantial completion of Contract 7 to modify the Two Bar Rail system on Contract 7, which modification work was performed between 2013 and 2017 ("Modification Costs"). This agreement does not constitute a determination that such Modification Costs are recoverable

as against RIDOT or the State of Rhode Island, nor does it express an opinion by the United States on their recoverability. Modification Costs may not be sought by Cardi from the United States and recovered by Cardi from the United States in any form or manner.

8. This Agreement is intended to be for the benefit of the Parties only and is not intended to create any legal rights or impose any limitation on third parties.

9. Each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

10. Each party and signatory to this Agreement represents that it freely and voluntarily enters in to this Agreement without any degree of duress or compulsion.

11. This Agreement is governed by the laws of the United States. The exclusive jurisdiction and venue for any dispute relating to this Agreement is the United States District Court for the District of Rhode Island. For purposes of construing this Agreement, this Agreement shall be deemed to have been drafted by all Parties to this Agreement and shall not, therefore, be construed against any Party for that reason in any subsequent dispute.

12. This Agreement constitutes the complete agreement between the Parties. This Agreement may not be amended except by written consent of the Parties.

13. The undersigned represent and warrant that they are fully authorized to execute this Agreement on behalf of the persons and/or entities indicated below.

14. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Agreement.

15. This Agreement is binding on CARDI's successors, transferees, heirs, and assigns.

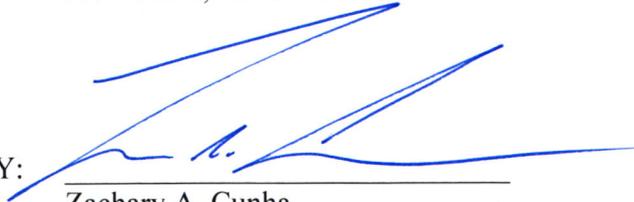
16. All parties consent to the United States' disclosure of this Agreement, and information about this Agreement, to the public.

17. This Agreement is effective on the date of signature of the last signatory to the Agreement (Effective Date of this Agreement). Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

FOR THE UNITED STATES OF AMERICA

STEPHEN G. DAMBRUCH
ACTING UNITED STATES ATTORNEY
DISTRICT OF RHODE ISLAND
50 Kennedy Plaza, 8th Floor
Providence, RI 02903

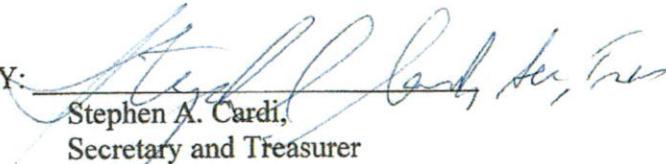
DATED: 4/13/17

BY: 

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FOR CARDI CORPORATION

DATED: 7/11/17

BY: 
Stephen A. Cardi,
Secretary and Treasurer
Cardi Corporation
400 Lincoln Avenue
Warwick, RI 02888

DATED: 4/11/17

BY: 
Jeremy Ritzenberg, Esq.
Vice President and General Counsel
Cardi Corporation
400 Lincoln Avenue
Warwick, RI 02888

DATED: _____

BY: _____
Michael J. Connolly, Esq.
Hinckley Allen
Counsel for Cardi Corporation
28 State Street
Boston, MA 02109

FOR CARDI CORPORATION

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BY: _____

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Secretary and Treasurer
Cardi Corporation
400 Lincoln Avenue
Warwick, RI 02888

DATED: _____

BY: _____

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