

04-1165-CD
R.H. BAILEY CONSTRUCTION VS WESTOVER BOROUGH

RH Bailey vs Westover Borough
2004-1165-CD

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FILED

AUG 03 2004

**SECTION 00560
WAIVER OF LIEN**

William A. Shaw
Prothonotary/Clerk of Courts

This instrument executed the 6th day of July, 2004, by R. H. Bailey
Construction, (the "Contractor"), for the benefit of BOROUGH OF WESTOVER, a
municipal entity organized and existing under the laws of the Commonwealth of Pennsylvania
("Owner").

WITNESSETH

A. Owner intends to enter into an agreement (the "Agreement") with the Contractor which provides for the Contractor to perform tasks related to the Westover Wastewater Treatment Facility ("System") on tracts of ground located in the Borough of Westover. The improvements to be constructed are herein called "Improvements" designated as Contract No. 2: General-Mechanical Work, Westover Wastewater Treatment Facility, on parcels of ground in the Borough of Westover, owned by the Owner.

B. By the terms of the Agreement, Contractor will covenant, promise, and agree that no mechanics' or materialmen's liens will be filed or maintained against the Improvements or the estate or title of Owner in the System or any part thereof, or the appurtenances thereto, either by itself or anyone else for or on account of any work, labor or materials supplied in the performance of the Agreement, or under any supplemental contract or for extra work, or in the erection, construction or completion of the Improvements on the System or any appurtenance thereto.

NOW, THEREFORE, in consideration of the contract and intending to be legally bound hereby:

(1) **WAIVER OF LIEN.** Contractor, for itself, its subcontractors, materialmen, laborers and anyone else acting or claiming through or under it, does hereby waive and relinquish all right to file a mechanic's lien, or notice of intention to file any lien, and does hereby covenant, promise and agree, to the extent permitted by law, that no mechanic's lien or other lien of any kind whatsoever shall be filed or maintained against the Improvements or the estate or title of the Owner in the System or the Improvements or the appurtenances thereto, by or in the name of Contractor, or any subcontractor, materialman or laborer for work done or materials furnished under the Contract or by any other party acting through or under them or any of them for and about the Improvements or the System or any part thereof.

(2) INDEPENDENT COVENANT. This Agreement waiving the right of lien shall be an independent covenant, shall operate and be effective irrespective of the Owner's performance under the Contract and shall operate and be effective as well with respect to work done and materials furnished under any supplemental contract for extra work in the erection, construction and completion of the Improvements as to any work and labor done and materials furnished under the Agreement.

(3) REMOVAL OF ANY LIEN. If any such mechanic's lien or other lien of any kind whatsoever shall be filed or maintained against the Improvements or the estate or title of the Owner in the System or appurtenances thereto, Contractor promptly and at its expense shall cause such lien to be removed or satisfied.

(4) POWER OF ATTORNEY TO SATISFY LIEN. In order to give Owner full power and authority to protect itself, the Improvements, the System, the estate or title of the Owner therein, and the appurtenances thereto, against any and all liens filed by the Contractor or anyone acting under or through it in violation of the foregoing covenant, the Contractor, to the extent permitted by law, hereby irrevocably authorizes and empowers any Attorney of any Court of Common Pleas of the Commonwealth of Pennsylvania, to appear as Attorney for it, them or any of them, in any such Court, and in its or their name or names, to the extent permitted by law, mark satisfied or record at the cost and expense of the Contractor or of any subcontractor or materialman, any and all lien or liens, filed in violation of the foregoing covenant, or cause to be filed and served in connection with such lien or liens, any pleading or instrument, or any amendment to any pleading or instrument previously filed by it or them, to incorporate therein, as part of the record, the waiver contained in this instrument, and for such act or acts this instrument shall be good and sufficient warrant and authority, and a reference to the court, term and number in which and where this Agreement shall have been filed shall be a conclusive evidence of the authority herein contained to warrant such action, and the Contractor for itself and, to the extent permitted by law, for them does hereby remise, release and quitclaim all rights and all manners of errors, defects and imperfections whatsoever in entering such satisfaction or in filing such pleading, instrument or amendment, or in any way concerning them.

(5) FILING WITH PROTHONOTARY. This instrument is made and intended to be filed with the Prothonotary in accordance with the requirements of Section 1402 of the Mechanics Lien Law of 1963 of the Commonwealth of Pennsylvania.

IN WITNESS WHEREOF, the undersigned Contractor has executed this instrument as of the day and year first above written.

ATTEST:

CONTRACTOR: R. H. BAILEY CONSTRUCTION
111 Walton Street
Philipsburg, PA 16866

Secretary

Robert H. Bailey
(Vice) President ~~OWNER~~

(SEAL)

COMMONWEALTH OF PENNSYLVANIA :

: SS

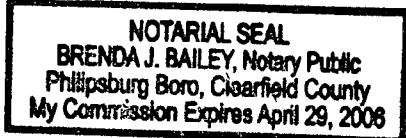
COUNTY OF CLEARFIELD :

On this, the 6th day of July, 2004, before me, a Notary Public in and for the Commonwealth of Pennsylvania, personally appeared Robert H. Bailey acknowledged X self to be the Owner of R. H. Bailey Construction, and that as such officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Brenda J. Bailey
Notary Public

My Commission Expires:



FILED

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AUG 03 2004

pd 20.00

le CC (above)

William A. Shaw

Prothonotary/Clerk of Courts