

RESOLUTION R-16-35

RESOLUTION AUTHORIZING THE EXECUTION OF AN AGREEMENT FOR THE BAY AVNEUE STREETScape PROJECT BETWEEN THE BOROUGH OF HIGHLANDS AND MONMOUTH COUNTY

WHEREAS, the Borough of Highlands Bay Avenue Streetscape Project is in the middle of construction of improvements to portions of Bay Avenue; and

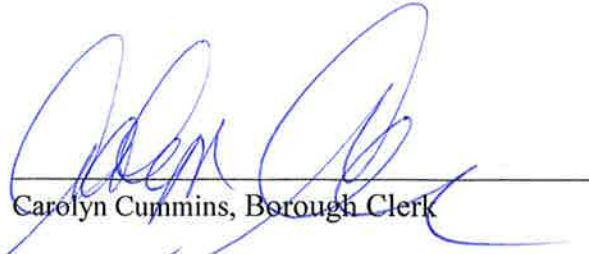
WHEREAS, the plans and specifications referred to in an agreement as "Improvement Plan" have been examined and approved by the Monmouth County Engineer.; and

WHEREAS, the County of Monmouth has prepared a written agreement and wishes to enter into an agreement for their approval of the project; and

NOW, THEREFORE, BE IT RESOLVED by the Governing Body of the Borough of Highlands, in the County of Monmouth and State of New Jersey, that the appropriate municipal officials are hereby authorized to execute an Agreement between the Borough of Highlands and the County of Monmouth substantially the form attached hereto.

	INTRODUCED	SECONDED	AYE	NAY	ABSTAIN	ABSENT
BROULLON	X		X			
CARD			X			
D'ARRIGO		X	X			
WELLS			X			
NOLAN						X
ON CONSENT AGENDA <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO						

DATE: January 20, 2016



Carolyn Cummins, Borough Clerk

I hereby certify this to be a true copy of Resolution R-16-35 adopted by the Governing Body of the Borough of Highlands on January 20, 2016.

Borough Clerk/Deputy Clerk

AGREEMENT

This Agreement, made and entered into this _____ day of _____, 2016, by and between the County of Monmouth, a Municipal Corporation of the State of New Jersey, hereinafter designated as the “**County**”; the Borough of Highlands, a Municipal Corporation of the State of New Jersey, hereinafter designated as the “**Borough**”.

PREAMBLE

The **County** and the **Borough** agree that the public interest requires improvements be made to County Route 8 (Bay Avenue) between Central Avenue and Washington Avenue and between Valley Street and Shrewsbury Avenue.

The plans and specifications, hereinafter designated as **Improvement Plans**, are incorporated into this agreement as if set forth at length herein. The improvements depicted upon the **Improvement Plans** shall be hereinafter referred to as the **Project**.

The above referenced **Improvement Plans** have been examined and approved by the Monmouth County Engineer. Execution of this agreement, by and between the **County** and the **Borough** shall conclusively evidence their acceptance and approval of the **Improvement Plans** and agreement, which are specifically incorporated herein as if set forth at length. Should a provision(s) of this agreement differ from the provisions of the **Improvement Plans**, the provisions of this agreement shall govern and control.

IN CONSIDERATION of the mutual covenants and conditions herein contained, and for other good and valuable consideration, IT IS MUTUALLY AGREED upon, by and between the parties as follows:

1. The construction and installation of the **Project** by the **Borough** shall be in accordance with the approved **Improvement Plans** and shall be in accordance with the regulations of the New Jersey Department of Transportation together with approvals from such other governmental regulatory agencies which may be entitled to pass upon and approve said installations, and the same shall be installed in a good and workmanlike manner so as to complete the **Project**. Notwithstanding the foregoing, should conditions arise during the course of construction of the **Project**, which necessitates a modification to the **Improvement Plans**; and the **Borough** will endorse such changes only if agreed upon by the County Engineer.
2. Every notice, approval, consent or other communication authorized or required by this Agreement shall not be effected unless the same shall be in writing and sent, by United States registered or certified mail, return receipt requested, directed to the other party at its address hereinafter mentioned, or such other address as either party may designate by notice given from time to time in accordance with this paragraph. Every notice shall be deemed to have been given on the date on which the envelope in which such notice is enclosed was postmarked as being mailed, as above provided, in a United States mailbox or post office, except as expressly otherwise provided.
3. Following **Project** completion, the **County** shall be responsible for roadway maintenance of the curb to curb regular asphalt pavement surface and storm sewers along County Route 8 (Bay Avenue) which are located within **County** right-of-way. All other improvements, of whatsoever type and description, located within or outside of the County right-of-way, including all curbing, sidewalk, landscaping, stamped concrete

sidewalk, and textured crosswalks and pavement treatments shall be the responsibility of the **Borough**.

4. The **Borough** shall be responsible for the restoration of textured crosswalks in the future **County** resurfacing program.
5. Future utility roadway opening application shall be submitted to the **County** and **Borough** for approval. **Borough** shall be responsible for the inspection of the restoration of textured crosswalks by utility companies.
6. Notices necessary and provided in this **Agreement** shall be mailed to:

To the Borough:
Borough of Highlands
Attention: Timothy Hill, Administrator
171 Bay Avenue
Highlands, NJ 07732

Copy to the Borough Clerk:
Borough of Highlands
Attention: Carolyn Cummins
171 Bay Avenue
Highlands, NJ 07732

Copy to the Borough Attorney:
Engineer:
Bruce Padula, Esq.
Cleary, Giacobbe, Alfieri,
Jacobs, LLC
5 Ravine Drive
Matawan, NJ 07747

Copy to the Borough's Consulting
Robert R. Keady, Jr., P.E., P.P.
T&M Associates
11 Tindall Road
Middletown, NJ 07748

And

To the County Engineer:
Joseph M. Ettore, P.E., P.P.
Monmouth County Engineer
County of Monmouth
Hall of Records Annex
One East Main Street
Freehold, NJ 07728

Copy to County Attorney:
Andrea I. Bazer, Esq.
Monmouth County Counsel
Hall of Records
One East Main Street
Freehold, NJ 07728

Copy to County Administrator:
Teri O'Connor
Monmouth County Administrator
Hall of Records
One East Main Street
Freehold, NJ 07728

7. If any term, covenant, condition or provisions of this Agreement, or the application thereof to any person or circumstances shall, at any time or to any extent, be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each term, covenant, condition and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.
8. The **Borough** does hereby indemnify and save harmless the **County** from and against any and all loss, damage, claims, actions, liability and expense, in contract or in tort, in connection with the loss of life, bodily injury and/or property damage, if occasioned in whole or in part by any act of any **Borough** employee, or agent of the **Borough**, or by any defect in workmanship, installation, construction, design, operation, inspection, maintenance or material for the improvement installed by the **Borough**, its contractors, subcontractors or by any agents, servants, employees or materialmen of the **Borough**. The **Borough** shall cause any general contractor to maintain liability insurance pursuant to the contract specifications and name **County** as additional insured.
9. The **County** shall indemnify, defend, and hold harmless the **Borough** against any and all claims arising out of the performance of any of the County's obligations under this contract except as noted in Paragraph 8 above.
10. This Agreement sets forth all of the promises, agreements, conditions and understandings between the parties relative to the subject matter hereof which shall bind and insure to the benefit of the parties and their respective heirs, executors, administrators, conditions and assigns, and there are no promises, agreements, conditions, or understandings either

written or oral, expressed or implied, between them other than as herein set forth. Except as herein otherwise provided, no subsequent alterations, amendments, changes or additions to the Agreement shall be binding upon any of the parties unless reduced to writing and signed by all parties.

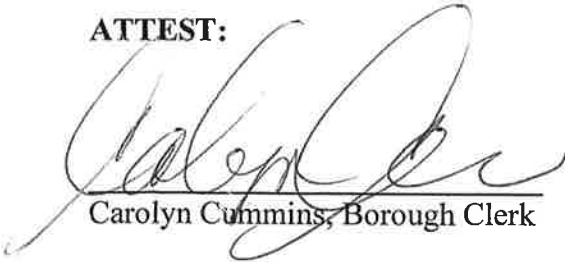
11. Miscellaneous Agreement Provisions:

- i. CAPTIONS/HEADINGS: All captions and headings are for purposes of reference only and shall not affect interpretation or construction of any provision of this Agreement.
- ii. GOVERNING LAW: This Agreement and the performance hereof shall be governed by interpreted, construed and enforced in accordance with the laws of the State of New Jersey.
- iii. GENDER AND NUMBERS: In all references herein to any party, persons, entities or corporations, the use of any particular gender or the plural or singular number is intended to include the appropriate gender or number as the text of the within instrument may require.
- iv. COUNTERPARTS: This Agreement may be executed in one or more counterparts, any or all of which shall constitute one and the same instrument. This Agreement may be delivered by any Party by facsimile transmission to the other Party with the same force and effect as if originally executed versions of this Agreement were delivered. If this agreement is executed in counterparts or delivered by facsimile transmission, any Party may require at any time thereafter that all Parties circulate sufficient additional copies of this Agreement for execution so that each Party may retain two (2) fully executed originals of this Agreement.
- v. NO ORAL CHANGES: This Agreement may not be altered or modified orally, but only a written agreement executed by the parties hereto.
- vi. DATE OF AGREEMENT: The date of this Agreement shall be the date on which it is executed by all parties or, if not executed simultaneously, the date on which it is executed by the last of the parties, which date will be inserted at the top of the first page hereof.

- vii. WAIVER: No waiver of either party or any failure of, or refusal, by, the other party to comply with its obligations under this Agreement shall be deemed a waiver of any other or subsequent failure or refusal or refusal to so comply.

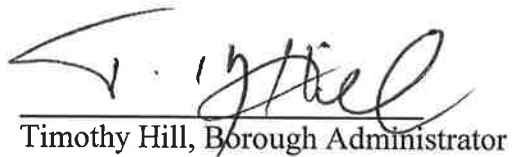
IN WITNESS WHEREOF, the parties of this agreement have caused these present to be signed by their duly authorized officers and their corporate seal to be hereunto affixed the day and year first above written.

ATTEST:



Carolyn Cummins, Borough Clerk

BOROUGH OF HIGHLANDS



Timothy Hill, Borough Administrator

ATTEST

James S. Gray, Clerk
Board of Chosen Freeholders
Monmouth County

Gary J. Rich, Sr.
Board of Chosen Freeholders
Monmouth County