

Mr. Caizza offered the following resolution and moved its adoption:

R-06-108
RESOLUTION TO APPLY FOR STATE AID FOR
WASHINGTON AVENUE PHASE-II FROM RECREATION PLACE TO MARINE
PLACE

BE IT RESOLVED, that application is hereby made to the Commissioner of Transportation for an allotment of aid for the improvement of Washington Avenue – Phase II from Recreation Place to Marine Place in the Municipality of the Borough of Highlands, County of Monmouth, State of New Jersey for a distance of 0.07 miles or such portion thereof as may be approved by the Commissioner of Transportation. The total cost estimate for this improvement is \$148,223.00. The Sponsor requests \$148,223.00 in State funds and anticipates contributing project design costs; and

BE IT RESOLVED that any aid received as a result of this application will only be used for eligible costs for the project; and

BE IT FURTHER RESOLVED that if this application is approved and accepted by the New Jersey Department of Transportation (“the Department”), the Sponsor agrees that:

- a. It shall arrange for financing of the total cost of the project provided for in this Agreement.
- b. It recognizes and agrees that continuation of funding under this Agreement is expressly dependent upon the availability to the Department of funds appropriated by the State Legislature from State revenues or such other funding sources as may be applicable. The Department shall be held liable for any breach of this Agreement because of the absence of available appropriation.
- c. In the event that the Department approves funds in an amount less than requested, the Sponsor, at its option, 1) may either rescind this Agreement or 2) continue with the project and assume the entire difference between the total cost of the project and the allotment of State funds or 3) re-evaluate the project limits or scope and submit a letter of justification to the Department for approval. In the event the Sponsor rescinds the Agreement, the allotted funds shall revert to the source of funding.
- d. The Sponsor must notify the Department of its rescission of this Agreement within thirty (30) days of the expiration of the Agreement or subsequent extensions. Not meeting this requirement will result in future grants being provided on a reimbursement basis until such time as the municipality demonstrates satisfactory performance in awarding construction contracts. This does not apply to the County Aid Program.
- e. Any purported transfer or assignment of the written obligations of the Sponsor contained herein without prior approval of the Department shall be void.
- f. New Jersey Office of Management and Budget, Circular Letter 05-12, Grant Agreements – Agency Contracts and any supplemental compliance statements by the Department, must be complied with by the Sponsor.
- g. The work to be performed by the Sponsor under this Agreement shall include but not be limited to the following:
 1. Preparation of contract drawings and supplementary specifications.
 2. The acquisition of all necessary right-of-way, easements, slope rights and permits.
 3. Construction of the above referenced improvement.
 4. Monitoring and supervising compliance with all provisions of this Agreement.
- h. It shall defend, indemnify, protect and save harmless the State and its officers, agents, servants, and employees from and against any and all suits, claims, demands or damages of whatsoever kind and nature arising out of, or claimed to arise out of, any act, error or omission of the Sponsor, its consultants, contractors, agents, servants and employees in the performance of the work of the project

including, but not limited to, expenditures for and costs of investigations, hiring of expert witnesses, court cost, counsel fees, settlements, and judgments.

i. It shall engage a Professional Engineering, registered in the State of New Jersey, for design services on the project. In its agreement for professional services, the Sponsor shall require the provisions of professional liability insurance or errors and omissions insurance sufficient to protect against liabilities arising out of the professional obligations performed pursuant to the agreements.

j. In its agreements for professional and non-professional services, the Sponsor shall require the provisions of public liability insurance and every such policy shall include the Sponsor and State as additional names insureds.

k. All design work shall conform to the applicable American Association of State Highway and Transportation Officials (AASHTO) design criteria and the Department's Bicycle Compatible Roadways and Bikeways Planning and Design Guidelines. The design of traffic barriers and drainage systems shall conform to the Department's Roadway Design Manual. No deviation shall be allowed without the knowledge of the Department. If there is deviation from those standards, the Sponsor shall accept any and all responsibility for any injury or damage by such deviation to any Person or property and shall indemnify the State as outlined in this Agreement. All design shall also conform to the current "Manual on Uniform Traffic Control Devices" published by Federal Highway Administration. Design Exception reports will be prepared for all controlling substandard design elements in accordance with the Department's Design Exception Manual. Design Exception reports shall be certified by a New Jersey licensed professional engineer.

l. It shall provide maps, reports, detailed plans, supplementary specification and contract documents required by the Department.

m. All workmanship and materials shall conform to current "New Jersey Department of Transportation Standard Specifications for Road and Bridge Construction" as amended for State Aid.

n. It is the responsible authority, without recourse to the State, regarding the settlement and satisfaction of all contractual and administrative issues arising out of the procurement entered in support of this funding.

o. Prior to advertising for bids, the Sponsor shall notify the Department if it intends to substantially change the scope of the project proposed in the resolution, Application, and Agreement. No substantial change shall be included in the project unless it has been approved by the Department.

p. Any changes in work after the award of contract shall be documented with a Department approved change order.

q. Fifteen (15) calendar days prior to advertisement, the Sponsor shall submit the following to the Division of Local Aid and Economic Development:

1. One (1) copy of the contract plans, specifications, engineer's estimate, and engineer's design certification.
2. Other documents as required.

r. It shall advertise and award the contract in accordance with the provisions of the Local Public Contracts Law, N.J.S.A. 40 A:11-1 et. seq.

s. It shall comply with all applicable Federal, State and Local laws, rules, ordinances and regulations.

t. Within thirty (30) calendar days of construction bids, unless the Department grants an extension of this time, the Sponsor shall submit the following to the Division of Local Aid and Economic Development:

1. Two (2) copies of the summary of construction bids.

2. A resolution awarding the contract to the lowest responsible bidder submitting a responsive bid, subject to the approval of the Department.
 - u. For municipal grants, the municipality shall award a construction contract for the grant project within eighteen (18) months of approval of this Resolution, Application, and Agreement by the Department. The Department in its sole discretion may provide one six (6) month extension after receiving an adopted resolution and justification from the Sponsor at least thirty (30) days prior to the expiration of the grant agreement. The Department in its sole discretion may provide a second six (6) month extension under extraordinary circumstances as defined by N.J.A.C. 16:20B1.3 after receiving an adopted resolution and justification from the Sponsor at least thirty (30) days prior to the expiration of the first six month extension. The Department may cancel the grant agreement if requested at least thirty (30) days prior to the expiration of the grant agreement of subsequent extensions; or if an extension of time is not granted.
 - v. Cancellation of the grant agreement because a construction contract was not awarded within the time requirements or because an extension of time was not properly requested thirty (30) days prior to grant agreement expiration or subsequent extensions will result in future grant funds being provided on a reimbursement basis until such time as the Sponsor demonstrated it can award a construction contract within the specified timeframes.
 - w. Sponsors may voluntarily cancel the grant agreement with written notice thirty (30) days prior to the expiration of the grant agreement or subsequent extensions. Voluntarily canceling the grant agreement with proper notification will result in no penalties or future grants.
 - x. Upon prior approval of the Department, it may elect to undertake the work through the use of its own forces when it is deemed applicable and appropriate.
 - y. Neither design costs, the costs for acquisition of all necessary right-of-way, easements, slope rights, and permits nor utility costs shall be considered costs of the project for purposes of computation of the allotment of State Aid funds under this Agreement except in special cases approved by the Department.
 - z. State participation in the cost of the project shall not exceed the lesser of either 100 percent of the cost of the completed construction work including eligible construction supervision, inspection and material testing, or the original allotment. State participation in inspection and material testing costs combined shall be limited to 15 percent of the eligible construction work cost. The State shall not participate in costs that the Department determines to be beyond the scope of the purposes of the allotment, excessive or otherwise unallowable. The Sponsor shall be afforded an opportunity to challenge this determination at an informal hearing.
 - aa. At the discretion of the Commissioner of Transportation, payment of the allotted funds may be made to the project Sponsor in the form of a grant. Grant payments shall be made as follows:
 1. For programs administered by the Division of Local Aid and Economic Development, a specified percentage, of the lesser of the eligible award amount or allotment amount shall be paid at the time of concurrence in the award of contract by the Department or the full amount of the allotment shall be paid upon approval of this Agreement as determined by the Commissioner. The remaining percentage or balance of funds shall be paid upon submission of a final voucher with supporting information as required by the Department. The final voucher must be submitted to the Department within six (6) months of project acceptance. The Department reserves the right to inspect the work associated with the grant as per N.J.A.C. 16:20B-3.2.
 2. For County Aid and the Local Bridge Bond Act, the full amount of the annual allotment amount shall be paid upon approval of the Annual Transportation Plan (ATP) and the

execution of this Agreement unless the County has demonstrated unsatisfactory performance, whereby funds will be provided similar to municipal grants.

3. If the Sponsor requests, progress payments shall be on a reimbursement basis. It shall request reimbursement from the Department by submitting vouchers supplied by the Department with supporting information as required by the Department. Progress payments of not less than \$50,000 may be made.
- bb. The Sponsor hereby certifies that all allotted funds shall only be spent on eligible costs for the approved project(s) as described in this Agreement.
- cc. In the event allotted funds remain after completion of the work, the remaining funds shall revert to the source of the funding and shall be re-allotted by the Department in manner determined solely by the Commissioner of Transportation.
- dd. In the event that the Department determines that it has reimbursed the Sponsor in an amount in excess of the funds actually due under this Agreement, the Sponsor shall, upon notice from the Department, make timely repayments to the State. Upon failure of the Sponsor to timely repay such funds, the State is hereby authorized by this Agreement to deduct those funds from any monies due the Sponsor under the terms of any agreement between the State, its Departments and Agencies and the Sponsor or to gain reimbursement through any other remedies available at law or equity.
- ee. It shall provide cost certification and maintain financial records relating to all costs for the project in accordance with N.J.A.C. 16:A or 16:20B, as applicable, and comply with State of New Jersey audit requirements specified therein.
- ff. It shall maintain complete documentation of the project for a period of three (3) years after receiving final reimbursement or payment by the State.
- gg. It shall maintain the completed project in a manner satisfactory to the Department.
- hh. It will comply with Title VI of the 1964 Civil Rights Act.
- ii. Failure to comply with all provisions contained in this Resolution, Application and Agreement may result in the suspension and/or termination of funding.
- jj. Approval as to Form by Certification Process.

BE IT FURTHER RESOLVED that the Mayor and Clerk are hereby authorized to execute and attest this Resolution, Application and Agreement.

Resolution seconded by Mr. Urbanski and adopted on the following roll call vote:

ROLL CALL:

AYES: Mr. Nolan, Mrs. Little, Mr. Caizza, Mr. Urbanski, Mayor O'Neil
NAYES: None
ABSENT: None
ABSTAIN: None

DATE: June 21, 2006

NINA LIGHT FLANNERY, Borough Clerk

I hereby certify that the foregoing is a true copy of a resolution adopted by the Borough Council of the Borough of Highlands at a regular meeting held on _____

Borough Clerk/Deputy Clerk