

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

R-08-164
RESOLUTION CANCELING CONTRACT
WITH M&R MECHANICAL CONTRACTORS, INC.

WHEREAS, the Borough of Highlands (“Borough”), pursuant to the Local Public Contracts Law, N.J.S.A. 40A:11-1 et. seq., advertised for sealed bids for the construction of a new municipal firehouse at Miller Street and Shore Drive in the Borough (the “Project”); and

WHEREAS, on July 19, 2004, in response to said advertisement, the Borough received sealed bids for the Project and by Resolution 04-179 adopted September 15, 2004 the Governing Body of the Borough awarded the contract for construction to M&R Mechanical Contractors, Inc. (“M&R”) as the lowest responsible bidder; and

WHEREAS, the Borough entered into a contract for construction of the Project with M&R dated as of September 15, 2004 (the “Contract”) in the aggregate contract lump sum cost of \$1,665,000.00; and

WHEREAS, during the course of construction of the Project, the Governing Body of the Borough, by Resolutions 06-34 dated 2/1/06, 06-140 dated 8/16/06, 07-23 dated 1/17/07, 07-38 dated 2/7/07, 07-57 dated 4/4/07, 07-96 dated 5/16/07 and 07-144 dated 8/15/07, approved change orders increasing the aggregate lump sum cost of said Contract from \$1,665,000.00 to \$1,779,734.62 and extending the date of substantial completion from April 12, 2006 to September 25, 2006; and

WHEREAS, the municipal construction official issued a Certificate of Occupancy for the new municipal firehouse on May 31, 2007 and the Project was deemed substantial complete as of that date; and

WHEREAS, based upon approved certificates of payment the Borough has paid M&R the aggregate sum of \$1,657,089.60 against the contract lump sum of \$1,779,734.62 for the Project; and

WHEREAS, the balance of the final contract lump sum in the amount of \$122,645.02 represents monies withheld by the Borough and not paid to M&R on account of retainage, uncorrected deficiencies in the work and an amount left for completion; and

WHEREAS, the cost to correct the deficiencies in the work performed by M&R on the Project plus reimbursement for utilities paid by the Borough which are the contractual responsibility of M&R as well as unpaid liquidated damages for late completion exceed the amount of \$122,645.02 retained by the Borough; and

WHEREAS, in December, 2007 the Borough and M&R submitted their dispute to non-binding mediation before a single mediator under the auspices of the American Arbitration Association which mediation was unsuccessful;

WHEREAS, on May 8, 2008 written notice was issued to M&R extending one final opportunity to M&R to correct all deficiencies in its work on the Project including, by way of example and not limitation, the removal and replacement of the concrete apron to the firehouse by not later than May 31, 2008; and

WHEREAS, by letter dated June 11, 2008 the Borough agreed to postpone any award of a contract to remove and replace the concrete apron to the firehouse for a period of at least thirty (30) days so as to afford M&R an opportunity to engage a qualified expert to evaluate and assess the condition of concrete apron; and

WHEREAS, M&R submitted an engineering report dated July 12, 2008 prepared by Frederick S. Roland, PE, SECB, RA, CFEI, engineer and architect of Wilmington, Maryland which report has been reviewed by Michael Pierce of Pierce Engineering, the expert engaged on behalf of the Borough with respect to the condition of the concrete apron; and

WHEREAS, based upon his own inspection and evaluation of the concrete apron Michael Pierce states that the concrete apron does not comply with the Project specifications as to uniform finish and allowable tolerance to true plane, has surface flaws such as scaling, and has random, irregular cracking induced by drying shrinkage. Following his review of and in response to the report of Frederick Roland submitted on behalf of M&R, Michael Pierce opines that the cause of the irregular drying shrinkage cracks is due to the failure of M&R to "saw cut the contraction joints in a timely manner within the required 12 hour window from concrete placement." Furthermore Mr. Pierce states that M&R "failed to cut all of the joints to a minimum depth of 1.5 inches as required by the Project Documents."; and

WHEREAS, more than 15 months have passed since substantial completion of the firehouse was attained and despite numerous requests by the Borough and numerous opportunities for M&R to do so, M&R still has not corrected the noted deficiencies in its work on the Project ;

NOW, THEREFORE, BE IT RESOLVED by the Governing Body of the Borough of Highlands that the contract for the construction of the new municipal firehouse dated as of September 15, 2004 between the Borough and M&R Contractors, Inc., as amended, be, and it hereby is, cancelled to the extent of the monies retained by the Borough for and on account of claims of the Borough against M&R Contractors, Inc. including by way of example and not limitation uncorrected deficiencies in the work, in the amount of \$122,645.02.

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

ROLL CALL:

AYES: Mr. Caizza, Mr. Urbanski, Mayor Little

NAYES: Mr. Nolan

ABSENT: Mrs. Burton

ABSTAIN: None

Date: September 24, 2008

NINA LIGHT FLANNERY
Borough Clerk

I, _____, Clerk/Deputy Clerk, do hereby certify this to be a true copy of the Resolution adopted by the Governing Body of the Borough of Highlands on September 24, 2008.