

RESOLUTION
of the
BOROUGH OF NEW PROVIDENCE
Resolution No. 2012-049

Council Meeting Date: 01-09-2012

Date Adopted: 01-09-2012

TITLE: RESOLUTION APPROVING FINAL CLOSEOUT OF THE PROJECT
COMMONLY KNOWN AS "DOWNTOWN STREETSCAPE PROJECT
PHASE 2 – BANNER POLES"

Councilperson Robinson submitted the following resolution, which was duly seconded by Councilperson Muñoz.

WHEREAS, the Borough of New Providence awarded a contract to CMS Construction Inc., for the project commonly known as "Downtown Streetscape Project Phase 2 – Banner Poles", and

WHEREAS, the Engineering Department has determined that the project has been completed; and

WHEREAS, the Borough Engineer recommends the release of the final payment, in the amount of \$2,455.46.

NOW THEREFORE BE IT RESOLVED by the Mayor and Borough Council of the Borough of New Providence, County of Union and State of New Jersey that they hereby approve final payment in the amount of \$ 2,455.46 to CMS Construction, Inc., 152 Sherman Avenue, Newark, N.J. 07114.

APPROVED, this 9th day of January, 2012.

RECORD OF VOTE

| | AYE | NAY | ABSENT | NOT VOTING |
|-----------|-----|-----|---------------------------|------------|
| CUCCO | X | | | |
| GALLUCCIO | X | | | |
| GENNARO | X | | | |
| LESNEWICH | X | | | |
| MUÑOZ | X | | | |
| ROBINSON | X | | | |
| HERN | | | TO BREAK COUNCIL TIE VOTE | |

I hereby certify that the above resolution was adopted at a meeting of the Borough Council held on the 9th day of January, 2012.

Wendi B. Barry, Borough Clerk

B O R O U G H O F
NEW PROVIDENCE
SETTLED IN 1720

J. Brooke Hern, Mayor
Andrew R. Hipolit, Borough Engineer
Mark G. Demareski, Assistant Engineer

MEMORANDUM

To: Doug Marvin, Borough Administrator
From: Mark Demareski, Assistant Borough Engineer *MD*
CC: Wendi Barry, Borough Clerk (w/attachments)
Carl Woodward, Esq., Borough Attorney (w/attachments)
Andrew R. Hipolit, P.E., Borough Engineer
Dated: January 3, 2012
RE: **Resolution for Final Payment
Downtown Streetscape Project Phase 2 - Banner Poles**

With reference to the above captioned project, I hereby transmit Final Payment in the amount of \$2,455.46 for approval through Resolution by the Mayor and Council.

CMS Construction, Inc. has completed the entire project and final closeout documents have been reviewed by Suburban Consulting Engineers and the Engineering Department.

Final closeout documents for CMS Construction, Inc. are as follows:

1. Final Payment (10% Retainage)
2. Maintenance Bond valid for a period of 2 year from the date of acceptance
3. Affidavit
4. Release

I hereby recommend that the Mayor and Council approve Final Payment to CMS Construction, Inc. in the amount of \$2,455.46.

Attached are copies for your reference

File: Downtown Streetscape Project Phase 2 / Banner Poles
Capital Account # 15--251-908-4-42001

ATTACHMENT 1

Suburban Consulting Engineers, Inc.
 Engineer's Payment Form: CMS Construction, Inc.
 SCE-2457.1 Banner Poles
 Borough of New Providence, Union County, New Jersey

| Item # | DESCRIPTION | Quantity | Unit | Unit Price | Amount | FIRST PAYMENT | | % Total | |
|--------------------|--|----------|------|--------------|--------------|---------------|---------|--------------|-----------------------|
| | | | | | | Amount | % Total | | |
| 1 | BANNER POLES AND SPAN WIRE INSTALLATION | 2 | UNIT | \$ 10,000.00 | \$ 21,000.00 | \$ 1,000.00 | 2 | 100% | |
| 2 | POLICE TRAFFIC DIRECTORS (ALLOWANCE \$1,600) | 1 | UNIT | 1,304.56 | 1,304.56 | 1,204.36 | 1 | 100% | |
| 3 | TOPSOILING, 4" THICK | 1 | L.S. | 1,550.00 | 1,550.00 | 1,550.00 | 1 | 100% | |
| 4 | FERTILIZING, SEEDING AND MULCHING TYPE "A" | 1 | L.S. | 700.00 | 700.00 | 700.00 | 1 | 100% | |
| TOTAL \$ 14,554.56 | | | | | | \$ 24,554.56 | | \$ 24,554.56 | TTL CONTRACT TO DATE |
| LESS 10% RET. | | | | | | \$ 2,455.46 | | \$ 22,099.10 | TTL RETAINAGE TO DATE |
| 1ST PAYMENT | | | | | | \$ 22,099.10 | | \$ 22,099.10 | TTL PAYMENTS TO DATE |

Final Paym.
1/3/12
AMO

Maintenance Bond
A.C. Davis
Released
Received 12/30/11

[Signature]
 DATE 11/22/11

Daniel A. Clark, PE, CMB
 Suburban Consulting Engineer, Project Manager

RECOMMENDED PAYMENT THIS PERIOD \$ 22,099.10

ATTACHMENT 2



FIRST INDEMNITY OF AMERICA
INSURANCE COMPANY

119 Littleton Road
Parsippany, NJ 07054
Fax: (201) 402-0770
(201) 402-1200

MAINTENANCE BOND NO. A01411M

The undersigned declare that we, CMS CONSTRUCTION, INC., as Principal, and FIRST INDEMNITY OF AMERICA INSURANCE COMPANY, as Surety, are held and firmly bound unto BOROUGH OF NEW PROVIDENCE as Owner, in the sum of TWO THOUSAND FOUR HUNDRED FIFTY FIVE AND 46/100 Dollars (\$ 2,455.46) to be paid to the said obligee only, to which payment well and truly to be made, we bind ourselves, our heirs, executors, administrators and successors.

The condition of this obligation is such that, whereas, the Principal did on the 2nd day of DECEMBER, ~~X9~~ 2011 enter into a contract with the Owner for the construction of DOWNTOWN STREETSCAPE PROJECT PHASE 2 BANNER POLES PROJECT, which said contract is made a part of the bond as though set forth herein; and the same contract was completed and accepted on DECEMBER 15, 2011.

Now, if the said Principal shall remedy without cost to the Owner any defects which may develop during a period of two (2) years from the date of completion and acceptance of the work performed under the contract, provided such defects, according to reasonable construction and engineering standards, are the result of defective or inferior materials or workmanship, then this obligation shall be void, otherwise, it shall be and remain in full force and effect. The Surety hereby stipulates and agrees that no modifications, deletions or additions in or to the terms of said contract, drawings or specifications therefore shall in no way affect its obligation on this bond.

IN WITNESS WHEREOF, the Principal and Surety have duly executed this bond under seal this day of DECEMBER 15, ~~X9~~ 2011.

ATTEST:

By: [Signature]
MARIA PEREIRA

PRINCIPAL: CMS CONSTRUCTION, INC.

By: [Signature]
CARLOS DASILVA PRESIDENT

Address: 152 SHERMAN AVENUE
NEWARK, N.J. 07114

ATTEST:

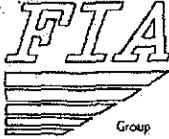
By: [Signature]
MICHELE CHARETTE

FIRST INDEMNITY OF AMERICA
INSURANCE COMPANY

By: [Signature]

MARY JANE FUNICELLI Attorney-in-Fact
119 Littleton Road
Parsippany, New Jersey 07054

Member:



FIRST INDEMNITY OF AMERICA INSURANCE COMPANY

119 Littleton Road

Parsippany, New Jersey 07054

Telephone - (973) 402-1200

POWER OF ATTORNEY

Know All Men By These Presents: That First Indemnity of America Insurance Company, a Corporation of the State of New Jersey does hereby appoint **MARY JANE FUNICELLI** its true and lawful Attorney-in-Fact: to make, execute, sign, acknowledge, affix the Company Seal to, deliver any and all surety bonds, undertakings, recognizances, and other contracts of indemnity and writings obligatory in the nature of a bond, for and on behalf of said Company and as an act and deed of said Company.

IN WITNESS WHEREOF, First Indemnity of America Insurance Company of the State of New Jersey has executed these presents this 22nd day of July 2004.



Patrick J. Lynch
Patrick J. Lynch, President

STATE OF NEW JERSEY)
COUNTY OF MORRIS) ss:

On this 22nd day of July, 2004, before me came the above named officer of First Indemnity of America Insurance Company of New Jersey, to me personally known to be the individual and officer described herein, and acknowledge that he executed the foregoing instrument and affixed the seal of said corporation thereto by authority of this office.



Frances A. Frazzani
Frances A. Frazzani
Notary Public State of
New Jersey
Term Expires May 10, 2012

CERTIFICATE

Excerpts of Resolutions (Article V, Paragraph 5, of the By-Laws of said Company) adopted by the Board of Directors of the First Indemnity of America Insurance Company of the State of New Jersey, September 19, 1996.

RESOLVED, that the President, or any one of the Vice-Presidents specially authorized to do so by the Board of Directors, or by the Executive Committee, shall have power, by and with the concurrence of the Secretary or any one of the Assistant Secretaries, to appoint Attorneys-in-Fact as the business of the company may require, or to authorize any person or persons to execute on behalf of the Company any bonds, undertakings, recognizances, stipulations, policies, contracts, agreements, deeds, and release and assignment of judgements, decrees, mortgages and instruments in the nature of mortgages, and also all other instruments and documents which the business of the Company may require and to affix the Seal of the Company thereto.

RESOLVED, that the signatures and attestations of such officers and the seal of the Company may be affixed to any such Power of Attorney or to any certificate relating to the Power of Attorney by facsimile, and any such Power of Attorney or certificate bearing such facsimile signatures or facsimile seal shall be valid and binding upon the Company with respect to any bond, undertaking, recognizances or other contract of indemnity or writing obligatory in the nature thereof.

I, Jane E. Lynch, Secretary of First Indemnity of America Insurance Company of New Jersey, do hereby certify that the foregoing excerpts of the Resolution adopted by the Board of Directors of the Corporation and the Powers of Attorney issued pursuant thereto, are true and correct and that both the Resolution and the Powers of Attorney are in full force and effect. IN WITNESS WHEREOF, I have herewith set my hand and affixed the seal of said Corporation this
of DECEMBER 15, 2011.



Jane E. Lynch
Jane E. Lynch, Secretary

FIRST INDEMNITY OF AMERICA INSURANCE COMPANY

119 Littleton Road

Parsippany, NJ 07054

STATEMENT OF FINANCIAL CONDITION AS OF DECEMBER 31, 2010

| | |
|--|----------------------------|
| Assets: | |
| Bonds | \$ 1,979,657 |
| Preferred Stocks | 5,291 |
| Mortgage Loans | - |
| Cash and Short Term Investments | 2,383,254 |
| Investment Income Due and Accrued | 29,898 |
| Premiums in the Course of Collection (under 90 days) | 316,871 |
| Reinsurance Recoverable on Loss and LAE Payments | 87,350 |
| Deferred Tax Asset | 346,299 |
| Receivable from Affiliate | - |
| Other Assets | <u>223,770</u> |
| Total Admitted Assets | <u><u>\$ 5,372,390</u></u> |
| Liabilities and Surplus: | |
| Reserve for Loss and Loss Adjustment Expenses | (2,620,289) |
| Other Expenses | 221,459 |
| Taxes Licenses and Fees | 88,885 |
| Unearned Premium | 1,654,451 |
| Funds Held Under Reinsurance Treaties | 205,868 |
| Ceded Reinsurance Balances Payable | 902,564 |
| Liability for Unauthorized Reinsurers | <u>39,547</u> |
| Total Liabilities | 492,485 |
| Capital & Surplus: | |
| Common Stock, Paid Up | 3,500,000 |
| Paid in and Contributed Surplus | 480,945 |
| Unassigned Surplus | <u>898,960</u> |
| Surplus as Regards to Policyholders | <u>4,879,905</u> |
| Total Liabilities and Surplus | <u><u>\$ 5,372,390</u></u> |

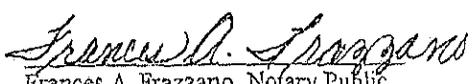
I, Glenn A. Runne, Chief Financial Officer of First Indemnity of America Insurance Company, do hereby certify that the foregoing statement is a correct exhibit of the assets and surplus of the said company, on the 31st day of December, 2009, according to the best information, knowledge, and belief.


Glenn A. Runne
Acting Treasurer

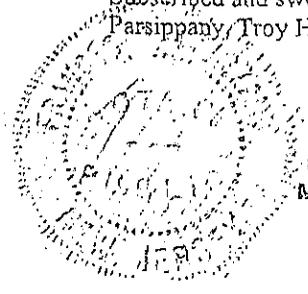


State of New Jersey)
County of Morris) SS:

Subscribed and sworn to, before me, a Notary Public of the State of New Jersey in the Township of Parsippany, Troy Hills, this 31st day of December, 2009.


Frances A. Frazzano
Notary Public - State of New Jersey
My commission expires May 10, 2012

Frances A. Frazzano, Notary Public
My Commission Expires May 10, 2012



ATTACHMENT 3

ATTACHMENT 4

RELEASE

KNOW ALL MEN BY THESE PRESENTS: THAT

CMS Construction, Inc., hereinafter known as the Releasor, for and in consideration of the sum of **\$24,554.56** dollars lawful money of the United States of America, to the Releasor in hand paid by the Borough of New Providence in the County of Union, a Municipal Corporation hereinafter designated as the Releasee, the receipt whereof is acknowledged, has remised, released, and forever discharged, and by these Presents does remise, release, and forever discharge the said Releasee of and from all debts, obligations, reckonings, promises, covenants, agreements, contracts, endorsements, bonds, specialties, controversies, suits, actions, causes of actions, trespasses, variances, judgements, extents, executions, damages, claims or demands, in law or in equity, which against the said Releasee, the Releasor ever had, now has or hereinafter can, shall, or may have, for upon or by reason of any matter, cause or think, whatsoever, from the beginning of the world to the day of date of these Presents.

More particularly, this release is given and accepted with specific reference to all matters of whatsoever kind and character in any undertaking whatsoever relating to or arising out of the work of construction under a contract dated **September 1, 2011** between the Borough of New Providence, in the County of Union, as party of the first part, and **CMS Construction, Inc.**, as contractor pursuant to plans and specifications for **Downtown Streetscape Phase 2 Banner Pole Project**.

This acknowledges the following statement between the parties,

| | |
|---------------------------|--------------|
| Total Construction Cost | \$ 24,554.56 |
| Paid by Previous Payments | \$ 22,099.10 |
| Retainage | \$ 2,455.46 |

Wherever in this instrument any Party shall be designated or referred to by name of general reference, such designation is intended to and shall have the same effect as if the words "heirs, executors, administrators, personal or legal representatives, successors and assigns" had been inserted after each any every designation, and all the terms, covenants and conditions herein contained shall be for and shall inure to the benefit of and shall bind the respective parties hereto, and their heirs, executors, and administrators, personal and legal representatives, successors and assigns respectfully.

In all references herein to any parties, persons, entities or corporations, the use of any particular gender or the plural of singular number is intended to include the appropriate gender or number as the text of the within instrument may require.

IN WITNESS WHEREOF, the said Releasor has hereunto set his hand and caused these presents to be signed by its proper officer this 12 day of 12, 2011.



attest: MARIA PEREIRA SECRETARY