

RESOLUTION
of the
BOROUGH OF NEW PROVIDENCE
Resolution No. 2018-294

Council Meeting Date: 11-26-2018

Date Adopted: 11-26-2018

TITLE: RESOLUTION AUTHORIZING AGREEMENT FOR INSTALLATION AND MAINTENANCE OF SOLAR POWERED PEDESTRIAN CROSSING SIGNAL BETWEEN THE BOROUGH OF NEW PROVIDENCE AND THE COUNTY OF UNION AT MOUNTAIN AVENUE AND MAPLE STREET

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

BE IT RESOLVED by the Mayor and Council of the Borough of New Providence, in the County of Union and State of New Jersey, that they do hereby approve and authorize an agreement between the County of Union and the Borough of New Providence, in the form attached hereto, and they do further authorize and direct the Mayor and Borough Clerk to execute same on behalf of the Borough of New Providence.

APPROVED, this 26th day of November, 2018.

RECORD OF VOTE

	AYE	NAY	ABSENT	NOT VOTING
GENNARO	X			
GEOFFROY	X			
KAPNER	X			
MADDEN	X			
MUÑOZ	X			
ROBINSON	X			
MORGAN			TO BREAK COUNCIL TIE VOTE	

I hereby certify that the above resolution was adopted at a meeting of the Borough Council held on the 26th day of November, 2018.

Wendi B. Barry, Borough Clerk

**AGREEMENT BETWEEN THE COUNTY OF UNION AND THE BOROUGH OF NEW PROVIDENCE
FOR THE INSTALLATION OF A SOLAR POWERED ILLUMINATED PEDESTRIAN CROSSING SIGN
AT THE INTERSECTION OF MOUNTAIN AVENUE AND MAPLE STREET**

THIS AGREEMENT is made and entered into as of this _____ day of _____, 2018 (the "Agreement") between the **COUNTY OF UNION**, a public body corporate and politic of the State of New Jersey (the "County"), located at the Union County Administration Building, 10 Elizabethtown Plaza, Elizabeth, New Jersey 07207 and the **BOROUGH OF NEW PROVIDENCE**, a municipal corporation of the State of New Jersey (the "Borough"), having its principal office at 360 Elkwood Avenue, New Providence, New Jersey 07974, collectively referred hereinafter as the "Parties".

WITNESSETH:

WHEREAS, the County controls and maintains Mountain Avenue which is designated as County Route 622; and

WHEREAS, the Borough controls and maintains Maple Street; and

WHEREAS, the Borough requested that the County install a solar powered illuminated pedestrian crossing sign (hereinafter the "Sign"); and

WHEREAS, in discharge of their public duties pursuant to N.J.S.A. 39:4-120.1, the Parties agreed that the County will install the Sign at the intersection of Mountain Avenue and Maple Street; and

WHEREAS, the Parties also agreed that the Sign would increase safety in the neighborhood; and

WHEREAS, the Borough will be responsible for the ownership, operation and maintenance of the Sign once installed; and

WHEREAS, the County adopted Resolution #2018-_____ and the Borough adopted Resolution #2017-262 duly authorizing their proper officials to enter into and execute this Agreement; and

WHEREAS, the Parties hereby desire to set forth their rights and responsibilities with respect to the Sign under this Agreement.

NOW, THEREFORE, in consideration of the mutual promises, covenants, agreements and other considerations between the Parties, the Parties do hereby mutually covenant and agree as follows:

I. PARTIES' RESPONSIBILITIES:

1.01. The County, in discharge of its public duties, pursuant to N.J.S.A. 39:4-120.1, will install a traffic control device, specifically a solar powered illuminated pedestrian crossing sign at the intersection of Mountain Avenue and Maple Street (hereinafter the "Sign").

1.02. The Borough will provide access to the County, secure and convey any easements and/or right of ways and relocate any and all utilities, at its own cost and expense, as necessary to complete the installation of the Sign under this Agreement.

1.03. The Borough will provide and pay for Police Traffic Officers and Police vehicles as required during installation of the Sign.

1.04. The Borough will obtain any and all applicable permits and approvals required for the Sign.

1.05. Once the Sign is installed, the County will notify the Borough of same and the County will have no responsibility whatsoever regarding the ownership, operation and maintenance of the Sign. Borough assumes sole responsibility for same.

1.06. The Borough shall be responsible to maintain the Sign in good working order. The Borough will provide electricity to the Sign, if required, at its sole cost and expense. Once installed, the Borough will be responsible for any and all costs or expenses associated with the Sign. The Borough will also inspect, and perform routine maintenance of the Sign at such times and in a manner consistent with the Borough's inspection and routine maintains of its traffic signs and/or warning signs. Routine maintenance will be defined as all repair and maintenance of the Sign, including, but not limited to, the replacement of light bulbs or any other equipment required to operate the Sign.

1.07. The Borough must notify the County of any and all changes or modifications to the Sign at any time. Said changes or modifications must be approved, in writing, by the County.

II. GENERAL TERMS:

2.01. **Formal Approvals.** This Agreement and any amendments hereto, shall be subject to the formal approval by the Union County Board of Chosen Freeholders and the Borough's Council.

2.02. **Term.** This Agreement shall commence upon full execution by the County and the Borough and terminate when the Sign is removed.

2.03. **Termination.** Either party may terminate this Agreement at any time upon giving thirty (30) days written notice to the other Party unless the Parties mutually agree to a shorter time period.

2.04. **Indemnification.** The Borough of New Providence shall indemnify, save, defend, and hold harmless the County, its Board of Chosen Freeholders, officers, agents, employees, contractors, and servants and each and every one of them, against and from all suits, claims, and costs of every kind and description and from all damages to which the County or any of its officials, officers, agents, employees, contractors or servants may be put by reason of injury to person or property resulting from the negligence of the Borough or any of its officials, officers, agents, employees, contractors or servants in the performance of the Borough's responsibilities, or through any negligent act or omission on the part of the Borough or any of its officials, officers, agents, servants or contractors, under this Agreement, to the extent permitted pursuant to the provisions of the New Jersey Tort Claims Act, N.J.S.A. 59:1-1 et. seq. and the New Jersey Contractual Liability Act, N.J.S.A. 50:13-1 et. seq. This section shall survive the termination of this Agreement.

2.05. **Authorizations.**

(a) The Parties represent and warrant that:

(i) They are fully authorized to enter into this Agreement;

(ii) They have taken all necessary and internal legal actions to duly approve the making and performance of this Agreement and that no further or other internal approval is necessary;

(iii) The making and performance of this Agreement will not violate any provisions of law or of their respective articles of incorporation, charter, code or bylaws.

(b) The Parties have read this entire Agreement and know the contents hereof, that the terms hereof are contractual and not merely recitals, and that they have signed this Agreement of their own free act; and in making this Agreement, they have obtained the advice of legal counsel. Both Parties to this Agreement acknowledge their respective authority to enter into this Agreement and confirm that each Party has adopted a resolution authorizing entry into this Agreement pursuant to N.J.S.A. 40A:65-5(a).

2.06. Waiver. No term or provision of the Agreement shall be deemed waived and no breach consented to unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. The waiver of any such provision shall not be a waiver of the provision itself or a waiver or consent to any subsequent breach.

2.07. Entire Agreement. This Agreement constitutes a single integrated written contract expressing the entire agreement between and among the Parties relating to the subject matter of this Agreement. No promises, inducements or considerations have been offered or accepted except as set forth herein. This Agreement supersedes any prior oral or written agreements, understanding, discussions, negotiations, offers or judgment, or statements concerning the subject matter hereof. No amendment, modification or addendum shall be effective unless in writing dated subsequent to the date hereof and executed by all of the Parties. The requirement for such a writing shall apply to any waiver of the requirement or a written modification pursuant to this Section and this is an essential term of this Agreement.

2.08. Changes and modifications. The Parties may from time to time during the term of the Agreement make changes, extensions of time or other modifications to the Agreement. Such modifications shall only be made in writing and by mutual agreement. Any such changes shall be agreed to by the Director of the Division of Engineering.

2.09. Force Majeure. Neither party shall be liable for any damages for failure to perform its obligations under this Agreement if such failure arises out of causes beyond the control and without the fault or negligence of either party. Such causes may include, but are not restricted to terroristic acts, acts of God, fires, floods, war, riot, insurrection, accidents, epidemics, quarantine restrictions, freight embargoes, industrial disturbances and unusually severe weather. When such a cause arises, either party shall notify the other immediately in writing of its failure to perform, describing the cause of failure and how it affects performance, and the anticipated duration of the inability to perform.

2.10. Severability. If any clause, provision or section of this Agreement shall be ruled invalid by any court of competent jurisdiction, the invalidity of such clause, provision or section shall not affect any of the remaining provisions hereof.

2.11. Notices. All notices, requests, demands, and other communications pursuant to this Agreement shall be in writing and shall be deemed to have been duly given if delivered by a nationally recognized overnight courier (e.g., Federal Express, UPS, Airborne Express, etc.) or if mailed simultaneously by regular mail and certified mail, return receipt requested, postage prepaid, to the addresses shown below unless said addresses shall be changed by notice given pursuant to this Agreement, or by fax or email.

(a) Notices to the County shall be given to:

Division of Engineering
2325 South Avenue
Scotch Plains, NJ 07076
Attn: County Engineer

with a copy of the notices sent to:

Office of the County Counsel
UC Administration Building – 5th Floor
10 Elizabethtown Plaza
Elizabeth, NJ 07207
Attn: County Counsel

(b) Notices to the Borough of New Providence shall be given to:

Borough of New Providence
360 Elkwood Avenue
New Providence, NJ 07974
Attn: Wendi Barry, Borough Clerk

with a copy of the notices sent to:

Borough of New Providence
360 Elkwood Avenue
New Providence, NJ 07974
Attn: Douglas Marvin, Borough Administrator

2.12. **Governing Law.** This Agreement shall be governed under the law of the State of New Jersey.

[SIGNATURES TO FOLLOW]

IN WITNESS WHEREOF, the Parties hereto have set their hands and seals the day and year first above written.

ATTEST:

COUNTY OF UNION

JAMES E. PELLETTIERE, CLERK
Union County Board of Chosen Freeholders

EDWARD T. OATMAN
County Manager

APPROVED AS TO FORM:

ROBERT E. BARRY, ESQ.
County Counsel

ATTEST:

BOROUGH OF NEW PROVIDENCE

WENDI B. BARRY
Borough Clerk

AL MORGAN
Mayor

APPROVED AS TO FORM:

PAUL RIZZO, ESQ.
Borough Attorney