

Mr. O'Neil offered the following Resolution and moved on its adoption:

R-10-157

**RESOLUTION AUTHORIZING TERMINATION OF, AND
RELEASE FROM, ESCROW OF REMAINING BALANCE OF
CONTRACT FUNDS FOR NEW MUNICIPAL FIREHOUSE
PROJECT**

WHEREAS, the Governing Body of the Borough of Highlands (the "Borough") by Resolution R-04-179 adopted September 15, 2004 awarded a contract for the construction of a new municipal firehouse at Miller Street and Shore Drive (the "Firehouse") to M & R Mechanical Contractors, Inc. ("M & R") for an amount not to exceed \$1,665,000.00; and

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

WHEREAS, during the course of construction of the Firehouse, the Governing Body of the Borough by Resolutions 06-34 dated February 1, 2006, 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 of the Contract from \$1,665,000.00 to \$1,779,734.62; and

WHEREAS, the construction official of the Borough issued a Certificate of Occupancy for the Firehouse on May 31, 2007 at which time the work was deemed substantially complete; and

WHEREAS, on or about the date of issuance of the Certificate of Occupancy the Borough had paid M&R the aggregate sum of \$1,657,089.60 and withheld the balance of the aggregate contract lump sum of \$122,645.02 on account of retainage, uncorrected deficiencies in the work and an amount left for completion; and

WHEREAS, M & R failed and refused to correct deficiencies and otherwise complete its work on the Firehouse and 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; and

WHEREAS, a final notice to correct the deficiencies in the work on the Firehouse including, but not limited to the removal and replacement of the exterior concrete apron, was issued to M&R on May 9, 2008; and

WHEREAS, despite such final notice M&R continued to refuse and failed to correct the deficiencies in its work and the Governing Body of the Borough by Resolution R_____ dated _____, 2008 canceled the Contract to the extent of

the monies retained by the Borough in escrow for and on account of claims of the Borough against M & R in the sum of \$122,645.02; and

WHEREAS, the Borough subsequently advertised pursuant to the Local Public Contracts Law, N.J.S.A. 40A:11-1 et. seq., advertised for sealed bids to remove and replace the exterior concrete apron to the Firehouse and awarded a contract for such work to the responsible qualified low bidder Jads Construction Company, Inc. (“Jads”); and

WHEREAS, the removal and replacement of the exterior concrete apron to the Firehouse was successfully completed by Jads and the cost of such work was paid from the monies retained by the Borough on account of its claims against M & R; and

WHEREAS, in June 2009 the Borough received a letter from an attorney representing Amboy Bank (f/k/a Amboy National Bank) advising that M & R had defaulted under a certain revolving credit note and by reason of such default Amboy Bank, in accordance with the terms of a certain General Security Agreement executed by M & R in favor of Amboy Bank, demanded payment of all amounts due and owing by the Borough to M & R. The Borough replied by advising that the Governing Body had terminated the Contract with M & R and that there no longer was any monies due and owing by the Borough to M & R. Subsequent to such response no further communication has been received from or on behalf of Amboy Bank; and

WHEREAS, although the statute of limitations on a potential claim by M & R against the Borough for breach of the Contract has not elapsed and despite numerous threats of litigation against the Borough by M & R, no such litigation appears to have been commenced to date.

NOW, THEREFORE, BE IT RESOLVED by the Governing Body of the Borough of Highlands that the proper Borough officials be, and they hereby are, authorized and directed to terminate and release from escrow the remaining unpaid balance of the Contract sum in the amount of \$ _____ from and to apply the aforesaid sum for and against the budget of the Borough for its current fiscal year.

Seconded by Mr. Francy and adopted on the following Roll Call Vote:

ROLL CALL:

AYES: Mr. O’Neil, Mr. Francy, Mayor Little

NAYES: None

ABSENT: Mr. Nolan, Ms. Kane

ABSTAIN: None

DATE: July 21, 2010

CAROLYN CUMMINS, BOROUGH CLERK

I hereby certify this to be a true copy of the Resolution adopted by the Governing Body of the Borough of Highlands on July 21, 2010.

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