

CITY OF VINELAND

RESOLUTION NO. 2019- 323

RESOLUTION AMENDING RESOLUTION 2019-78, A RESOLUTION AUTHORIZING THE EXECUTION OF AN AGREEMENT BY AND BETWEEN THE CUMBERLAND COUNTY IMPROVEMENT AUTHORITY, MILLVILLE NEW JERSEY, THE COUNTY OF CUMBERLAND, BRIDGETON NJ AND THE CITY OF VINELAND FOR THE EXPANSION AND CONSTRUCTION OF BURNS AVENUE.

WHEREAS, City Council of City of Vineland adopted Resolution 2019-78, a Resolution authorizing an agreement by and between the Cumberland County Improvement Authority (CCIA), the County of Cumberland and the City of Vineland for the construction and expansion of Burns Avenue; and

WHEREAS, the agreement anticipated by Resolution 2019-78 authorized the CCIA to be the project manager and provide project management services for the expansion and construction of Burns Avenue in accordance with the Shared Services Agreement dated October 11, 2016; and

WHEREAS, subsequent to the adoption of Resolution 2019-78 the parties confirmed and agreed that County of Cumberland would be the project manager and further would coordinate with CCIA and the City for disbursement of all City bonds as well as New Jersey Department of Transportation Grants (NJDOT); and

WHEREAS, as a result of the subsequent negotiations the parties confirmed and agreed to execute and amended agreement specifying the duties and obligations of the County and the CCIA, different than that which was attached to Resolution 2019-78.

NOW THEREFORE BE IT RESOLVED by the City Council of the City of Vineland that Resolution 2019-78 be amended so as to approve the multi-party agreement as attached hereto and made a part hereof.

BE IT FURTHER RESOLVED that the Mayor and Clerk are hereby authorized to execute the multi-party agreement as substantially similar to that which is attached hereto and made a part hereof subject to minor changes recommended by City Solicitor.

Adopted:

President of Council

ATTEST:

City Clerk

MULTI-PARTY AGREEMENT

THIS AGREEMENT made as of this ____ day of ____, 2019~~8~~ by and among the CUMBERLAND COUNTY IMPROVEMENT AUTHORITY, a body politic and corporate with offices at 2 N. High Street, Millville, New Jersey 08332 (“Authority”), CUMBERLAND COUNTY, a body politic of the State of New Jersey with an address of 790 E. Commerce Street, Bridgeton, NJ 08302 (“County”), and the CITY OF VINELAND, a political subdivision of the state, with offices located at 640 E. Wood Street, Vineland, NJ 08362 (“City”):

RECITALS

WHEREAS, the City desires to expand Burns Ave., in the City of Vineland, as part of the Lincoln Avenue Redevelopment Project in Vineland, NJ which provides a significant economic and transportation impact to the County; and

WHEREAS, on October 11, 2016, the City and the Authority entered into a Shared Services Agreement regarding the Lincoln Avenue Redevelopment Project and associated Burns Avenue Extension (hereinafter referred to as “the Project”), pursuant to which the Vineland City Council was named as the Redevelopment Entity and the Authority was designated as the Redeveloper/Master Redeveloper for the Project; and

WHEREAS, through the October 11, 2016 Shared Services Agreement (and a prior Agreement incorporated by reference therein), the City engaged the services of the Authority to provide Project Management services to the Project, including the completion of the design work, property acquisition, plans and specifications, contract documents, and construction phase services for the Project; and

WHEREAS, pursuant to the October 11, 2016 Shared Services Agreement, the City and the Authority agreed to equally share costs for acquisition of properties, easements or other property rights for the Project; and

WHEREAS, the October 11, 2016 Shared Services Agreement set forth terms under which the City shall reimburse CCIA for acquisition costs related to the Project; and

WHEREAS, the County was selected to receive funding from the New Jersey Department of Transportation’s (NJDOT) Fiscal Year 2018 Local Freight Impact Fund Program (NJDOT Project No. 2206436) in the amount of \$1,400,000 (“NJDOT Grant”) to assist with costs for the Burns Avenue Extension portion of the Project, defined as the extension of Burns Avenue from Main Road to Lincoln Avenue, which would improve the flow of freight traffic; and

WHEREAS, the terms and conditions of the NJDOT Grant have been issued to Cumberland County (“County”) and whereas the grant requires that the funding be provided to a certified Local Public Agency (“LPA”); and

WHEREAS, the County ~~shall serve as the Project Manager, specifically the Cumberland County Engineer's Office, is currently a certified LPA; and~~

~~WHEREAS, the Authority possesses knowledge, expertise and skills needed to manage the Project in compliance with the terms of the respective Agreements and Grant; and~~

WHEREAS, the parties recognize the benefits and economies to be achieved by utilizing shared services for the performance of services that can be done more efficiently in combination than separately; and

WHEREAS, the City, the County and the Authority desire to enter into this Agreement in order to provide for fiscal agent ~~services by the County~~ and project management services by the ~~County Authority~~ to ensure NJDOT Grant and the proceeds of the \$2,000,000 General Obligation Bonds issued by the City for the Project (the "City Bond Funding") are received and spent appropriately on the Project.

NOW THEREFORE, for and in consideration of the mutual covenants herein, all other good and valuable consideration, and intending to be legally bound hereby, the parties agree as follows:

1. County Responsibilities and Fiscal Agent Services. The County has agreed to receive and disburse according to the terms of the grant agreements and contracts related to the Project ("NJDOT Grant Agreement"), the NJDOT Grant funds in an amount of not less than One Million Four Hundred Thousand (\$1,400,000.00) Dollars for the benefit of the Project. NJDOT Grant funds will be held in a specifically identified County subledger account, to be used exclusively for the Project. The County will take responsibility to disburse the same for professional, engineering and construction costs as directed by the Authority, as project manager, and the City, and pursuant to the terms and requirements of the respective NJDOT Grant Agreements. The parties agree that prior to any City funds are disbursed, all forms of grants and contract funding related to the Project shall be exhausted and depleted to zero.

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The County ~~also agrees to shall~~ facilitate public bidding through the County's bid portal, ~~or release a request for proposals, for the Project pursuant to the County's own public bidding requirements~~ under the Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq. ("LPCL"), ~~and Federal regulations/policies as required by FHWA/USDOT.~~ The ~~County Authority~~ will coordinate with the ~~Authority CME Associates (the "Engineer")~~ and the City in the selection of the successful bidder or successful respondent for the contemplated construction of the Project. The County shall consult with the Authority, and project professionals in and the City in the preparation of the bidding ~~documents/request for proposal documents and the scoring matrix and the conduct of the bidding/proposal selection process.~~

Further, the County acknowledges it has received copies of the NJDOT Grant Agreements agrees to invoice NJDOT for disbursement of the NJDOT grant, under the terms of the NJDOT Grant Agreement. The County shall also coordinate with the Authority and the City for disbursement of City Bond funding, in accordance with the terms of this Agreement. It is anticipated that grant disbursements of the NJDOT Grant will be provided to the County, as

~~grantee and then be used to pay the contractors only all permitted costs as defined in the Grant Agreement. The County will incorporate the necessary terms of all applicable grant agreements into the bidding/request for proposal documents and will comply with all applicable provisions of the respective grant agreements.~~

~~Further, the County agrees to invoice NJDOT, after consultation with the Authority, for disbursement of the NJDOT Grant, under the terms of the NJDOT Grant Agreement. The County shall also coordinate with the Authority and City as necessary for submission of requests for disbursement of the NJDOT Grant Agreement and City Bond Funding. It is anticipated that disbursements of the NJDOT Grant funds will be provided to the County, as grantee, and then forwarded promptly by the County for the costs of the Project as set forth on Exhibit " " attached hereto and made a part hereof (the "Approved Project Costs"). Disbursement requests for all NJDOT Grant and City Bond funding will be submitted on at least a monthly basis during construction, unless otherwise required by the Grant Agreement governing that particular source of funding and/or the City.~~

The County further agrees to maintain its certification as an LPA as required by the NJDOT Grant and to undertake any necessary recertification process required to maintain said LPA status, at its sole cost, for the duration of this Project.

All of the services set forth in this Section shall hereafter be known as the fiscal agent services ("Fiscal Agent Services") that the County is providing at no cost for the benefit of the County, City and the Project.

The City and the Authority agree to indemnify and hold the County free and harmless from any liability (including attorney's fees and court costs) arising out of or in connection with its provision of Fiscal Agent Services under this Agreement, except for liability caused solely by County's negligence or conduct that is knowingly fraudulent, dishonest or that constitutes willful misconduct.

Once construction is completed, the County shall be solely responsible for maintenance of the ~~the Burns Avenue Extension Project~~ The remaining portion of the Main Road and Lincoln Avenue cul de sacs north of Route 55 shall be transferred to the jurisdiction and control of the City of Vineland County per the requirements of the NJDOT Grant and City Bond Financing. ~~The County shall indemnify and hold the City and the Authority free and harmless from any liability (including attorney's fees and court costs) arising out of or in connection with maintenance of Burns Avenue extension.~~

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2. Project Manager Services. ~~The County Authority~~ has agreed to provide project management services ("Project Management Services") ~~to the City for this Project pursuant to the previously approved Shared Services Agreement. Such Project Management Services shall include service as a "Project/Construction Manager" or "Owner's Representative" for the City~~ where the County is the Contract Administrator for the Project and the County is the project manager for the Authority.

~~THE CITY AGREES TO INDEMNIFY AND HOLD THE AUTHORITY FREE AND HARMLESS FROM ANY LIABILITY (INCLUDING ATTORNEY'S FEES AND COURT COSTS) ARISING OUT OF OR IN CONNECTION WITH ITS PROVISION OF PROJECT MANAGER SERVICES UNDER THIS AGREEMENT AND THE SHARED SERVICE AGREEMENT, EXCEPT FOR LIABILITY CAUSED SOLELY BY COUNTY'S AUTHORITY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT THAT IS KNOWINGLY FRAUDULENT, DISHONEST OR THAT CONSTITUTES WILLFUL MISCONDUCT.~~

As Project Manager, the Authority shall attend all Project meetings, shall work with the Engineer on the construction timeline and budget, shall review and comment on the plans and specifications prepared by the Engineer, shall provide general oversight for the City to the contractor and Engineer on the Project, and shall be responsible for inspection of the Project as required by the Grant Agreement and City Bond Financing.

The Authority and City shall cooperate with the County to prepare supporting information for disbursement of City bond funding. The Authority shall be responsible for disbursing Grant Funding to the Authority for making payments to professionals for project related expenses. The Authority will be reimbursed for any payments and advances from City bond financing or other funding provided by the City. shall work with the County and shall prepare, for the County to submit to NJDOT appropriate detailed back-up material for all invoices for advances/draws from the NJDOT Grant. Similarly, the Authority shall work with both the City and the County to prepare and submit to the City, appropriate detailed back up material for all invoices for disbursement of the City Bond Financing. When necessary, the Authority shall be responsible for making payments to professionals for Project related expenses in advance of grant disbursements, with the understanding that the Authority will be reimbursed for any payments it advances from the appropriate source(s) of NJDOT Grant funds or by City Bond Financing. The County and Authority shall submit detailed back-up material for all invoices for disbursement of all funding for the Project and all Parties shall agree on such disbursements prior to payment.

As Project Manager, the County Authority shall submit, after consultation and coordination with the Authority County and City, all financial and performance reports (including, but not limited to, all grant close-out reports), to NJDOT and Bond Trustees. As Project Manager, the County Authority shall store all records related to the Project at its offices and make the same available to NJDOT, the Trustee for the City Bond Financing (the "Trustee") and their agents for inspection for three years after final payment has been received on the respective grant and bond financing.

As Project Manager, the Authority County shall take responsibility for all on-going communications with the NJDOT, FHWA/USDOT and with the City/Bond Trustee(s).

~~The City agrees to indemnify and hold the Authority free and harmless from any liability (including attorney's fees and court costs) arising out of or in connection with its provision of Project Manager Services under this Agreement and the Shared Service Agreement, except for liability caused solely by County's Authority's gross negligence or willful misconduct that is knowingly fraudulent, dishonest or that constitutes willful misconduct.~~

3. ~~City Obligations.~~ The City shall maintain, at its sole cost, the insurances required of it under the NJDOT Grant Agreement. On such insurance policies, the City shall also name the County and Authority as additional insureds as their interests may appear. The City shall also be obligated to provide at its sole cost for each year that the NJDOT Grant proceeds are drawn, an audited financial statement under the Single Audit Act of 1984, P.L. 98-502, and OMB Circulars A-128, A-110 and A-102 as may be required.

The City also agrees to work with the County and Authority in good faith so that the NJDOT Grant can be fully expended for the purpose of completion for the Project, and to

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such end, the City representatives shall be readily available to the County and Authority and shall be timely in all responses related to the Project. ~~The City shall also provide the Authority (and the contractor selected for the work on the Project) with required access to the Project site within in the legal control of the City. The City shall also provide The County (and the general contractor selected for the work on the project) certification and control over the project site under the Uniform Act, (42 USC 4601 et seq. and 49 CFR Part 24).~~

The Authority, ~~the County~~ as well as all professionals and contractors hired to work on the Project, shall have access and right of entry to the Project ~~site duration~~ site for the duration of the Project upon reasonable notice and during normal business hours. Representatives from NJDOT and FHWA/USDOT shall also have right of access to the Project location before, during and after construction upon reasonable notice and during normal business hours.

~~The City shall also provide to the Authority any files, documents, and information that is related to the proposed Project, which the Authority requests. The County (and the general contractor selected for the work on the project) certification and control over the project site under the Uniform Act, (42 USC 4601 et seq. and 49 CFR Part 24).~~

The ~~and the County Parties shall cooperate with each other~~ to prepare and submit all necessary back-up documentation, invoices and paperwork required to receive disbursement of the NJDOT Grant.

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4. Grant Terms;

a. The City, Authority and County have been provided with a copy of the NJDOT Grant Agreement. The County has agreed to serve as LPA and Responsible Party for the purposes of the NJDOT Grant (as such terms are defined in the NJDOT Grant Agreement), assuming the fiscal agent responsibilities set forth above. ~~The Authority has agreed to assume all of the remaining duties of the "Grantee" or "Recipient" under the NJDOT Grant, except as otherwise provided in this Agreement.~~

~~The NJDOT Grant funding will be released to the County upon receipt of NJDOT grant funds and use provide said funding for allowable Project costs including Allowable Project Costs, with the understanding that the use and disbursement of the NJDOT Grant funds shall be administered by all parties in accordance with the terms of the NJDOT Grant Agreement.~~ construction costs with the understanding that the use and disbursement of the grant funds shall be administered in accordance with the terms of the NJDOT grant agreement and shall be disbursed in full prior to the use of City funds.

b. All parties have conferred and reviewed the proposed schedule for the Project, which is provided and made part of this Agreement as Schedule B.

~~c. Each of the City, County and Authority shall provide to NJDOT, a copy of the resolution of their governing body approving this Agreement; a statement of adequacy of the accounting system to be used by the County in form acceptable to NJDOT; and copies of their~~

~~existing general liability insurance policies which shall be endorsed to name NJDOT, as additional insureds as their interests may appear.~~

5. Limited Funding. All of the parties hereto understand and agree that the scope of work to be completed on the Project will be determined by the amount of the NJDOT Grant and City Bond Funding available, as detailed in the budget attached as Schedule B to this Agreement. ~~The County shall consult with The City and shall consult with the Authority in good faith to prioritize the work to be completed and/or reduce the scope of work to be completed, based on upon available fundings and applicable NJDOT Grant and bond regulations. To the extent that the parties cannot agree on a prioritization or reduced scope, then the City, shall be, and hereby is, authorized by all parties hereto to identify the work to be completed.~~

~~As part of the Project scope, a traffic light shall be installed at the intersection of Main Road and Route 55. Funding is expected to be provided by the State of New Jersey; however, if any match is required, the County will be responsible to provide such matching funds.~~

6. Events of Default.

a. Authority Events of Default. For purposes of this Agreement, each of the following events shall constitute an event of default by the Authority (each an "Authority Event of Default"):

i. default in the performance or observance of any of the covenants, obligations, agreements, or conditions of the Authority hereto to be kept, observed, and performed under this Agreement and continuation of such Authority Event of Default after written notice thereof to the County Administrator, c/o Kimberly Wood at 164 West Broad St., Bridgeton NJ 08302, 856-453-2125 Authority by another party hereto for a period of thirty (30) days or any other applicable grace and/or cure period;

ii. any material representation made hereunder which shall be false or misleading in any material respect when made by the Authority; and

iii. the filing of a petition by the Authority in bankruptcy or the filing of a petition in bankruptcy against the Authority which is not dismissed within sixty (60) days after such filing, or if the Authority is adjudged to be bankrupt or determined to be insolvent or if the Authority seeks reorganization or liquidation under any federal or State bankruptcy laws, or if the Authority makes an assignment for the benefit of creditors.

iv. a default under the terms of the Shared Services Agreement between the City and the Authority dated October 11, 2016 and a prior agreement incorporated by reference therein or such portions therein related to the Burns Avenue Extension.

b. County Events of Default. For purposes of this Agreement, each of the following events shall constitute an event of default by the County (each a "County Event of Default"):

i. default in the performance or observance of any of the covenants, obligations, agreements, or conditions of the County hereto to be kept, observed, and performed under this Agreement and continuation of such County Event of Default after written notice

thereof to the County by another party hereto for a period of thirty (30) days or any other applicable grace and/or cure period;

ii. any material representation made hereunder which shall be false or misleading in any material respect when made by the County; and

iii. the filing of a petition by the County in bankruptcy or the filing of a petition in bankruptcy against the County which is not dismissed within sixty (60) days after such filing, or if the County is adjudged to be bankrupt or determined to be insolvent or if the County seeks reorganization or liquidation under any federal or State bankruptcy laws, or if the County makes an assignment for the benefit of creditors.

c. City Events of Default. For purposes of this Agreement, each of the following events shall constitute an event of default by the City (each a "City Event of Default"):

i. default in the performance or observance of any of the covenants, obligations, agreements, or conditions of the City hereto to be kept, observed, and performed under this Agreement and continuation of such City Event of Default after written notice thereof to the City by another party hereto for a period of thirty (30) days or any other applicable grace and/or cure period;

ii. any material representation made hereunder which shall be false or misleading in any material respect when made by the City; and

iii. the filing of a petition by the City in bankruptcy or the filing of a petition in bankruptcy against the City which is not dismissed within sixty (60) days after such filing, or if the City is adjudged to be bankrupt or determined to be insolvent or if the City seeks reorganization or liquidation under any federal or State bankruptcy laws, or if the City makes an assignment for the benefit of creditors.

d. Remedy on Default. Upon the happening and continuance of an Event of Default under this Agreement, and provided that written notice of the Event of Default has been provided to the defaulting party by any non-defaulting party, and the Event of Default has not been cured (or attempted to be cured), any party hereto may proceed to protect and enforce its rights hereunder by taking such action at law or in equity it deems necessary or desirable to enforce the performance and observance of any obligation, agreement or covenant by the defaulting party under this Agreement.

e. Limitation on Waivers.

i. No delay or omission to exercise any right or remedy available upon the happening and continuance of any Event of Default shall impair any such right or remedy or shall be construed to be a waiver thereof, but any such right and remedy may be exercised from time to time and as often as may be deemed appropriate.

ii. In the event any covenant, agreement, or condition contained in this Agreement shall be breached by a party and thereafter waived by another party, such waiver

shall not bind any party that has not waived the breach and shall be limited to the particular breach so waived and shall not constitute a waiver of the same breach on a future occasion.

f. Rights Cumulative. All rights and remedies given or granted to any party hereunder are cumulative, nonexclusive, and are in addition to any and all rights and remedies that such party may have by reason of any law, statute, ordinance, or otherwise.

7. Miscellaneous.

a. Term of Agreement. This Agreement shall terminate, unless agreed to by the parties in writing, upon the satisfaction of all terms and conditions contained in this Agreement by the parties hereto.

b. Notices. Unless otherwise specified herein, all notices, requests or other communications to or upon the respective parties hereto or referred to herein shall be deemed to have been given (a) in the case of notice by letter, when delivered by hand or four (4) days after the same is deposited in the mails, first-class postage prepaid, , and (b) in the case of notice by telecopy, when sent, receipt confirmed, addressed to them as follows, when emailed, when sent to the address below and a read receipt is received from the sender, or at such other address or email address as any of the parties hereto may designate by written notice to the other parties hereto:

If to the Authority: Cumberland County Improvement Authority
Attn: Gerard Velazquez III, President/CEO
2 N. High Street, Millville, New Jersey 08332
Phone: (856) 825-3700
Email: jvelazquez@ccia-net.com

To the County: County of Cumberland
c/o [Gerry C. Seneski, CEO](#) [Joseph Derella,](#)
[Freeholder Director](#)
[164 W. Broad St. 2 N. High Street](#)
[Millville, New Jersey 08332](#) [Bridgeton , NJ 08302](#)
Phone: (856) 453-212534

Email: joedegerryse@co.cumberland.nj.us

To the City: The City of Vineland
Attn: Sandra Forosisky, Director of Economic Dev.
P.O. Box 1508
640 E. Wood Street
Vineland, New Jersey 08362
Phone: (856) 794-4100

Email: sforosisky@vinelandcity.org

c. Amendments. This Agreement may not be amended or modified for any reason without the written consent of the City, Authority and the County.

d. Successors and Assigns. The obligations of the respective parties hereto may not be assigned or delegated to any other person without the consent of the other parties hereto.

e. Heading for Reference Only. Section headings have been inserted in this Agreement as a matter of convenience of reference only, and it is agreed that such section headings are not a part of this Agreement and will not be used in the interpretation of any provisions of this Agreement.

g. No Personal Liability. No covenant, condition or agreement contained in the Agreement, shall be deemed to be the covenant, condition or agreement of any past, present or future elected official, officer, agent or employee of the City, Authority or the County, in their individual capacity, and neither the elected officials, officers, agents or employees of the City, Authority or the County, nor any officials executing this Agreement, shall be liable personally on this Agreement by reason of execution hereof by such person or arising out of any transaction or activity relating to this Agreement.

h. Severability. If any provisions of this Agreement shall be held or deemed to be or shall, in fact, be invalid, inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions, or in all jurisdictions because it conflicts with any provisions of any constitution, statute, rule of public policy, or any other reason, such circumstances shall not have the effect of rendering the provision in question invalid, inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions of this Agreement invalid, inoperative or unenforceable to any extent whatever.

i. Counterparts. This Agreement may be executed in several counterparts, each of which shall be regarded as an original and all of which shall constitute one and the same document.

j. Governing Law. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of New Jersey.

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IN WITNESS WHEREOF, the parties hereto have placed their signature and appropriate seals on the day and year mentioned on the first page of this Agreement.

WITNESS: CUMBERLAND COUNTY
IMPROVEMENT AUTHORITY

NAME: GERARD VELAZQUEZ
TITLE: President/CEO

WITNESS COUNTY OF CUMBERLAND

NAME: ~~GERRY C. SENESKI~~ JOSEPH DERELLA
TITLE: ~~CFO~~ Freeholder Director

WITNESS THE CITY OF VINELAND

NAME: ANTHONY FANUCCI
TITLE: MAYOR