

September 21, 2011
Executive Session

Minutes of **Executive Session** of a Regular meeting of the Board of Commissioners of the Town of West New York, in the County of Hudson, State of New Jersey, held in the Mayor's Conference Room, Municipal Building, West New York, on Wednesday, September 21, 2011.

Present: Commissioners Frias, Rodriguez, Vargas, Wiley and Mayor Roque
Absent: None
Also Present: Town Attorney Julio Morejon, Assistant Town Attorney Joseph DeMarco, Town Administrator Joseph McConnell, Ernest Munoz, Town Engineer Rick Arango and Jennie DelRio and Sarita Alvarado (representatives of Town Clerk's Office)

Note: Minutes were transcribed by Jennie Del Rio as Town Clerk Riccie was absent due to vacation.

Town Attorney Julio Morejon discussed the following matters:

1. Mr. Morejon explained that bids were received in February 2011 for the Verrazano & Donnelly Park Project and contract was awarded to the lowest bidder, Rich Picerno Builders, in February 2011. Litigation was filed and Judge Gallipoli granted contract to Helios Construction. A Motion was then filed to obtain reimbursement of money which was expended by Picerno. Mr. Morejon explained that the claim for reimbursement for materials seems to be legitimate. He further commented that case can be settled for \$120,000 and that the Town would only have to contribute \$26,000. Mayor Roque commented that if the case is settled in a week, a Grand Opening Ribbon Cutting can take place and they can start construction. Town Engineer Rick Arango is present to answer any questions or concerns. Commissioner Frias inquired whether the Town is able to retain the materials paid for. Mayor Roque responded "Yes" it was paid thru Community Development Block Grant (CDBG). Mr. Arango also responded "Yes, materials are being stored by the town including tree grates, wires and whatever other material that was not used will be given to the town." Commissioner Rodriguez asked if there will be any kind of change orders that will be added to this project. Assistant Town Attorney DeMarco answered, "No, no change orders. If by any chance there has to be a change order, you will have to approve it first." Commissioner Rodriguez asked "Do you think there could be something to cause a change order?" Assistant Town Attorney DeMarco responded, "No there is no hidden sewerage or anything to find." Commissioner Rodriguez advised that receipts must be reviewed and inquired as to who would be the Project Manager. Town Engineer Rick Arango responded "me". Commissioner Rodriguez suggested that they have constant communication regarding this project. Town Administrator Joseph McConnell suggested that there may be a way to get the town share of the project funded thru a grant. Assistant Town Attorney DeMarco said that the amount of the new contract is still within the original amount. Town Attorney Morejon said that Helios Construction is willing to contribute some money so that matters could be settled. Town Engineer Rick Arango advised that if all goes well the project should be completed by the end of this year. Town Administrator McConnell said that there is going to be a granite ball waterfall for dedication to Hispanic Culture. Commissioner Rodriguez said that she is looking forward to the completion of this project as she has received numerous communications from the condo owners regarding this matter. Mayor Roque agreed with Town Attorney Julio Morejon regarding settlement proposal and wants to move ahead as he is constantly receiving calls regarding this project.

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Resolution

Re: Approving the settlement of the Matter entitled Helios Construction, Inc.
vs. Town of West New York, Docket No: HUD-L-1865-11

Whereas, publicly bid contracts are in compliance with the fair and open process pursuant to N.J.S.A. 19:44A-20.4 et seq.; and

Whereas, on prior occasion, upon advertisement and pursuant to specifications, the Town solicited bid proposals for Verrazano & Donnelly Park Improvements, pursuant to and in accordance to the contract for Verrazano & Donnelly Park Improvements; and

Whereas, the contract for Verrazano & Donnelly Park Improvements was previously awarded to Rich Picerno Builders, LLC by Resolution #R-32 on 2/16/11; and

Whereas, Helios Construction, Inc. did submit correspondence objecting to the bid of Rich Picerno Builders, LLC, on the basis that information as to a licensed plumber was not provided in the low bidders bid; and

Whereas, subsequent to awarding of the bid to Rich Picerno Builders, LLC a formal challenge to the award was filed by Helios Construction in Superior Court in a matter entitled *Helios Construction, Inc. v. Town of West New York, Docket No. HUD-L-1865-11*; and

Whereas, after hearing the arguments of the parties, the Honorable Maurice Gallipoli issued an opinion dated 5/6/11 wherein it was determined the bid of Rich Picerno Builders, LLC was defective and contained material and non-waivable defects that could not be cured by the Governing Body; and

Whereas, the Court ruled that the town was permitted to award the contract to the next lowest responsive bidder; and

Whereas, on July 20, 2011, by Resolution # 17, the Governing Body, upon consulting with Maser Consulting, P.A. the Town Engineer and the Town Attorney, agreed to award a contract for Verrazano & Donnelly Park Improvements to Helios Construction, Inc., as the bid submitted by the Helios Construction, Inc. as the lowest responsible bid for Verrazano & Donnelly Park Improvements, and the Town has sufficient funding for this award; and

Whereas, the amount due to Helios Construction for the performance of this contract is subject to reduction based upon the Honorable Maurice Gallipoli opinion dated 5/6/11 wherein Rich Picerno Builders, LLC is permitted to seek compensation for work performed and material ordered, the final amount to be determined by the Court; and

Whereas, on or about July 29, 2011, Rich Picerno Builders, LLC, (“Picerno Builders”) filed a Notice of Motion with the Honorable Maurice J. Gallipoli, seeking an order entering judgment in favor of Picerno Builders and against the Town of West New York in the sum of \$175,248.29, for materials purchased and partial performance of the construction contract for Verrazano & Donnelly Park Improvements, awarded February 22, 2011; and

Whereas, on or August 16, 2011, Rich Picerno Builders, LLC, (“Picerno Builders”) filed a Notice of Motion with the Honorable Maurice J. Gallipoli, seeking an order granting Picerno Builders request that the Court reconsider the Order entered May 17, 2011, and permitting Picerno Builders to complete the performance of the construction contract for Verrazano & Donnelly Park Improvements, awarded February 22, 2011; and

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Resolution (Cont.)

Whereas, in an effort to amicably resolve this matter and avoid the cost of a protracted litigation and the delay in the construction of the Verrazano & Donnelly Park Improvements, the Town has agreed to enter into a monetary settlement with Picerno Builders; and

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of The Town of West New York, County of Hudson, New Jersey as follows:

1. Within thirty-days herein, the Town agrees to pay Picerno Builders \$155,000, as follows: \$119, 949.90, for materials previously purchased in accordance with the contract for the construction of Verrazano & Donnelly Park Improvements; re-consignment fee of \$174.00; labor costs of \$4,740.78, and the balance of \$30,135.32, to cover material mark-up costs not to exceed 10%, litigation fees and costs, and work completed by Picerno Builders in partial performance of the contract; and
2. Helios Construction, Inc., agrees to contribute \$8,500 to cover the payment of the total settlement in the amount of \$155,000; and
3. Upon payment of the \$155,000 to Picerno Builders the underlying litigation will be dismissed with prejudice and the Town will not own any further money to Picerno Builders in connection with the contract for the construction of Verrazano & Donnelly Park Improvements; and
4. The Chief Financial Officer's Certification that funds are available shall be on file at the Town and made a part hereof.
5. The Town Clerk shall forward a copy of this Resolution to Picerno Builders and Helios Construction.
6. A Copy of this resolution and the contract when executed shall be kept on file for public inspection in the Office of the Municipal Clerk.

It was regularly moved by Commissioner Rodriguez, seconded by Commissioner Vargas that the foregoing Resolution be approved, was carried by the following vote:

YEAS	- Commissioners Frias, Rodriguez, Wiley, Vargas and Mayor Roque
NAYS	- None
ABSENT	- None

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Motion was made by Comm. Rodriguez, seconded by Comm. Wiley, to **close executive session at 7:13 p.m.**, was carried by the following vote:

YEAS - Commissioners Frias, Rodriguez, Vargas, Wiley and Mayor Roque
NAYS - None
ABSENT - None

Commissioner FiorD' Aliza Frias

Commissioner Caridad Rodriguez

Commissioner Ruben Vargas

Commissioner Count J. Wiley

Mayor Felix E. Roque
Board of Commissioners

Attest: _____
Carmela Riccio, RMC
Town Clerk