



RESOLUTION 20-362

Resolution Authorizing Payment in the Amount of \$22,952.30 to Subcontractor Straight Edge Striping, LLC under Valley Road Improvement Project and Terminating the Improvements to Valley Road Project Agreement with Integrated Construction and Utilities of N.J., LLC

WHEREAS, on or about February 29, 2016, the Municipality of Princeton and Integrated Construction and Utilities of N.J. LLC (“ICUNJ”) executed an agreement for the Improvements to Valley Road Project (referred to as the “Agreement” or “Project”), and the Project has been deemed “substantially complete” since on or about May 19, 2017; and

WHEREAS, the remaining funds on account for this Project, including the retainage, is \$104,679.40; and

WHEREAS, ICUNJ’s subcontractor Straight Edge Striping, LLC (“Straight Edge”) completed work on this Project in 2017, but to date has still not been paid; and

WHEREAS, as a result, Straight Edge filed a lawsuit against ICUNJ in Mercer County and a Notice of Municipal Mechanic’s Lien with the Municipality on or about November 15, 2018; and

WHEREAS, since that time ICUNJ has confirmed that Straight Edge is due and owing payment for its work on the Project but was unable to pay Straight Edge directly due to collective bargaining issues, yet has failed to confirm the amount due to Straight Edge or formally agree to Princeton’s payment directly to Straight Edge; and

WHEREAS, simultaneously with attempting resolve the above, since 2018 the Municipality has been pursuing final completion and acceptance and formal close-out of the

Project with ICUNJ, but the Municipality has been unable to do so because, among other things, ICUNJ has failed to submit the mandatory documentation prerequisite to final close-out and acceptance of the Project in accordance with section 3.11 of the Project's General Conditions, including:

- ICUNJ's affidavit that all payrolls, bills for materials and equipment and other indebtedness, including claims by third parties, connected with the work for which Princeton might, in any way, be responsible, have been paid or otherwise satisfied;
- Consent of surety to final payment;
- Certification that prevailing rates of wages were paid;
- A maintenance bond, to run for a period of two (2) years from the date of Final Completion;
- ICUNJ's Release terminating the Municipality's liability in accordance with section 3.13 of the General Conditions; and
- Manufacturers' warranties for materials; and

WHEREAS, Straight Edge has submitted documentation evidencing that it is due and owing payment in the amount of \$22,952.30 for its work under the Project, and has agreed to resolve its claim for unpaid invoices on the Project in so far as the Municipality is concerned for payment of \$22,952.30 to Straight Edge directly; and

WHEREAS, Straight Edge has also filed with the Municipality a certificate discharging its November 15, 2018 lien claim pursuant to N.J.S.A. 2A:44-142a. (to be held in escrow until

payment is made); and

WHEREAS, as a result of the foregoing, by letter dated October 28, 2020, the Municipal Engineer provided to ICUNJ and its surety company Liberty Mutual Surety/The Ohio Casualty Insurance Company the following:

- Three (3) days' notice pursuant to section 2.37 of the General Conditions that, because ICUNJ has failed to pay subcontractor ICUNJ as required by the Agreement, the Municipality would pay subcontractor Straight Edge the amount of \$22,952.30 directly from the Project's remaining funds; and
- Ten (10) days' notice pursuant to section 2.38(a)3 of the General Conditions that the Municipality intends to terminate the Agreement with ICUNJ because ICUNJ has disregarded and violated provisions of the Contract Documents; and

WHEREAS, the Municipal Engineer has not received a response to its October 28, 2020 written notices and therefore recommends that the Council authorize payment to Straight Edge and exercise its right to terminate the Agreement pursuant to section 2.38(a)3. of the General Conditions.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of the Municipality of Princeton as follows:

1. Based on the reasons set forth in the foregoing "Whereas" clauses, payment to Straight Edge Striping from the funds remaining under the Improvements to Valley Road Project is hereby approved; payment shall be released to counsel for Straight Edge in the amount of \$22,952.30 from the funds under the Project.

2. The February 29, 2016 Agreement between the Municipality and ICUNJ for Improvements to Valley Road Project is terminated, effective November 10, 2020, on the basis of ICUNJ’s default under said Agreement, as specified in the letter and notice dated October 28, 2020 from the Municipal Engineer.
3. The Municipal Attorney, Engineer and Clerk and such other officers, officials and employees as may be appropriate, are herewith authorized to file such claims under Bond No. 015049699 on behalf of the Municipality and take such other steps as may be necessary to ensure satisfactory closeout and final completion of this Project.
4. The Clerk is herewith directed to furnish a certified copy of this Resolution to ICUNJ and Liberty Mutual Surety/The Ohio Casualty Insurance Company (Bond No. 015049699), by certified mail, return receipt requested.

Councilperson	Absent	Present	1 st	2 nd	Yea	Nay	Abstain	Disqualified
Mr. Cohen		X			X			
Ms. Fraga		X		X	X			
Ms. Niedergang		X			X			
Ms. Pirone Lambros		X	X		X			
Ms. Sacks		X			X			
Mr. Williamson		X			X			
Mayor Lempert		X						

I, Delores A. Williams, Municipal Clerk of Princeton, do hereby certify that the above is a true copy of a resolution adopted by the Mayor and Council of Princeton at a meeting held November 9, 2020.



Delores A. Williams, Municipal Clerk