

RESOLUTION NO. 2018 – 141

RESOLUTION OF THE TOWNSHIP OF LITTLE EGG HARBOR, COUNTY OF OCEAN, STATE OF NEW JERSEY, AUTHORIZING EXECUTION OF AN AGREEMENT WITH THE OSBORN ISLAND RESIDENTS ASSOCIATION FOR USE OF DREDGING PERMIT

WHEREAS, the Osborn Island Residents Association holds a Waterfront Development Permit (#1516-11-0012.1 WFD170001) from the New Jersey Department of Environmental Protection for the maintenance dredging within three Areas (A, B and C) of the Osborn Island Lagoon System in Little Egg Harbor Township; and

WHEREAS, the Township and the Osborn Island Residents Association wish to enter into an Agreement, in in the form attached hereto and incorporated herein as Schedule A, whereby the Township, operating under the Osborn Island Residents Association's Waterfront Development Permit, modified as set forth herein, completes the dredging, dewatering and disposal of dredge materials, the cost of which shall be assessed against the real properties benefited by the project as a Special Assessment for Local Improvements under the provisions of N.J.S.A. 40:56-1 et. seq.

NOW, THEREFORE, BE IT RESOLVED, by the governing body of the Township of Little Egg Harbor, County of Ocean, State of New Jersey as follows:

1. That the Mayor and Township Clerk are hereby authorized to execute and attest to, respectively, the Agreement between the Township and the Osborn Island Residents Association, in in the form attached hereto and incorporated herein as Schedule A, whereby the Township, operating under the Osborn Island Residents Association's Waterfront Development Permit, modified as set forth herein, completes the dredging, dewatering and disposal of dredge materials, the cost of which shall be assessed against the real properties

benefited by the project as a Special Assessment for Local Improvements under the provisions of N.J.S.A. 40:56-1 et. seq.

2. That a certified copy of this resolution shall be forwarded to the Township Attorney for distribution to counsel for the Osborn Island Residents Association.

Motion to Approve: Stevens Second: Schlick Roll Call:

Crea	<u>yes</u>
Gormley	<u>yes</u>
Kehm	<u>Absent</u>
Schlick	<u>yes</u>
Stevens	<u>yes</u>

CERTIFICATION

I, **DIANA K. MCCRACKEN, RMC**, Municipal Clerk of the Township of Little Egg Harbor do hereby certify that the foregoing resolution was duly adopted by the Township of Little Egg Harbor Township Committee at a meeting held on the 14th day of June, **2018**.

Diana K. McCracken, RMC
DIANA K. MCCRACKEN, Township Clerk
Little Egg Harbor Township

-Original
6/12/18
LH

AGREEMENT

THIS AGREEMENT is made this 14th day of June, 2018, by and between **THE TOWNSHIP OF LITTLE EGG HARBOR**, a municipal corporation of the State of New Jersey, with its principal offices located at 665 Radio Road, Little Egg Harbor, New Jersey 08087, hereinafter referred to as "Township," and **OSBORN ISLAND RESIDENTS ASSOCIATION**, a _____ of the State of New Jersey, (hereinafter, "OIRA" or "Owner"), with its principal offices located at _____, collectively referred to herein as "the Parties."

WITNESSETH:

WHEREAS, the OIRA holds a Waterfront Development Permit (#1516-11-0012.1 WFD170001) from the New Jersey Department of Environmental Protection for the maintenance dredging within three Areas (A, B and C) of the Osborn Island Lagoon System in Little Egg Harbor Township; and

WHEREAS, the Township and OIRA wish to enter into an Agreement whereby the Township, operating under the OIRA's Waterfront Development Permit, modified as set forth herein, completes the dredging, dewatering and disposal of dredge materials, the cost of which shall be assessed against the real properties benefited by the project as a Special Assessment for Local Improvements under the provisions of N.J.S.A. 40:56-1 et. seq.

NOW THEREFORE, in consideration of the promises, the mutual obligations contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the Parties, the Parties hereto agree as follows:

1. **PROJECT DESCRIPTION:**

Performance of maintenance dredging of a minimum of 16,360 cubic yards of sediment to a project depth of -4.50 MLW within three areas of the Osborn Island Lagoon System of Little Egg Harbor Township or such other specification as required by the New Jersey Department of Environmental Protection (NJDEP) and Army Corps of Engineers (ACOE); dewatering of dredge materials and transportation of dredge materials to a disposal site as approved by the NJDEP and ACOE. The project scope is provided on plans attached hereto as Exhibit A.

2. **OIRA'S RESPONSIBILITIES:**

a. OIRA holds an NJDEP Individual Waterfront Development Permit, issued on June 29, 2012 and extended in February of 2017. OIRA received a modification,

GILMORE & MCNAHAN
A Professional Corporation
COUNSELLORS AT LAW
Allen Street Professional Center
The Allen Street
P.O. Box 1548
Toms River, New Jersey 08254

dated May 22, 2018, of the Permit (#1516-11-0012.1 WFD170001), consisting of an Acceptable Use Determination Amendment for the use of approved NJDEP dredge material disposal sites; a change to the bottom dredge elevation from -4.00 MLW to -4.50 MLW; and the increase in the amount of dredge materials produced from 11,887 cubic yards to 16,362 cubic yards.

b. OIRA has received Army Corps of Engineer approval, dated May 7, 2018, for the maintenance dredging of Osborn Island Lagoon, consistent with the NJDEP Waterfront Development Permit Modification Request described in subsection a. above.

c. The Township and OIRA believe the dredging project will benefit the residents of Osborn Island. While it cannot make a representation on behalf of every member of OIRA or non-member residents, OIRA, as a not-for-profit residents' association, does believe that waterfront residents will benefit from the dredging project and understands that a Special Assessment may be imposed in accordance with the provisions of N.J.S.A. 40:56-1 et seq.

3.

TOWNSHIP RESPONSIBILITIES

a. The Township will prepare bid specifications, advertise and receive bids under the provisions of the Local Public Contracts Law for a contractor to perform the dredging, dewatering and transportation of dredge spoils to an approved NJDEP dredge material disposal site location, including any tipping fees required by the NJDEP and ACOE approved facility. The contractor will be solely responsible for modification of the permit to include any alternative approved NJDEP dredge material disposal site. The Township will enter into a contract with a general contractor experienced in dredging to perform the work under the Modified NJDEP permit and ACOE approval; specifically, that the Contractor must provide at least five references for dredging projects that are either under construction or have been completed within the last three years. The contractor will also be required to restore Kentucky Avenue should such roadway be damaged as a result of the contractor's activities.

b. The Township will fund the modification of OIRA's permit following the award of a contract and the agreement by OIRA to the allocation of costs by assessment. OIRA will submit modification of permit if needed for new AUD as proposed by contractor and Township will reimburse OIRA the amount of \$3100.00 for same (representing \$2600.00 for OIRA's engineering costs in association with review of permit modification and \$500.00 for permit modification application fee).

c. The Township will obtain a Temporary Construction Easement from the property owner of Block 326.217, Lot 27 for use during the duration of the project as a staging/offloading area.

d. The Township will make a good faith effort to secure grants to defray the cost of the project.

e. The Township will comply with the provisions of N.J.S.A. 40:56-1 in allocating the cost of the Project and all associated costs against the real property of the residents of the benefitted area, as listed on Exhibit B attached hereto.

f. The Township shall notify OIRA via email to david.i.fuller@comcast.net and eandrewii@yahoo.com of professional service contracts, permit fees, application fees or other costs associated with the Osborn Island Lagoon System dredging project which will or may be included in the amount to be assessed to the benefitted properties on Osborn Island within ten (10) days of the date on which the contract is fully-executed, or the permit, application or other fee is submitted.

4. **APPROVALS:**

If the contractor is required to seek a modification to the Permit for an alternative dredge disposal site, the permit modification application shall be submitted for review by OIRA's professional prior to submission.

5. **FINANCING OF PROJECT:**

That upon completion of the maintenance dredging the costs of the maintenance dredging, together with all expenses incidental thereto, including the Township's engineering and legal expenses that are incurred by the Township in the course of performance under this Agreement; shall be levied on the properties benefited by the improvement in accordance with the provisions of N.J.S.A. 40:56-1 et seq.

6. **INDEMNIFICATION**

A. To the fullest extent allowable by law, each party shall, for itself, its successors, and assigns, hold harmless, indemnify, defend, protect, and release the other and their officials, officers, employees, agents, and successors and assigns from and against all suits, causes of action, demands, complaints, liabilities, penalties, costs, losses, damages, judgments, expenses or claims, including reasonable attorney's fees, in any form, arising from the gross negligence or willful misconduct of that party or officials, officers, employees, agents, successors or assigns.

B. The parties agree that any contract with contractors, subcontractors, and consultants shall require such contractors, subcontractors, and consultants to defend, indemnify, protect, and save harmless LEHT and OIRA, and release LEHT and OIRA and their officials and employees from and against any suits, claims, demands, or damages of whatever kind or nature arising out of or claimed to arise out of in whole or in part any negligent act, error, or omission of the contractor, subcontractor,

consultant, or their agents, subcontractors, servants, and employees in the performance of any work or professional services on the Project or for the benefit of the Project.

C. LEHT and OIRA shall, as soon as practicable after a claim has been made against either of them, give written notice thereof to the other, along with full and complete particulars of the claim. If the suit is brought against LEHT or OIRA, or any of their agents, servants, or employees, the parties shall expeditiously forward or have forwarded to the other every demand, complaint, notice, summons, pleading, or other process received by or then in their possession or the possession of its representatives.

D. All claims asserted against LEHT shall be subject to the New Jersey Tort Claims Act, N.J.S.A. 59:1-1 et seq., and/or the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 et seq.

7. **TERM**

The NJDEP Permit contemplates the completion of the project by December 31, 2018. This Agreement shall terminate upon the completion of the project, which shall be on or before December 31, 2018 unless the time for uninterrupted dredging is extended beyond December 31, 2018 by the NJDEP.

8. **ASSIGNMENT**

This Agreement shall not be assigned by a Party hereto without the prior written consent of the other Party.

9. **BINDING EFFECT**

All of the terms, conditions, and covenants to be observed and performed by the Parties shall be applicable to and binding upon their several successors and assigns, as the case may be.

10. **SEVERABILITY/WAIVER**

All agreements and covenants contained herein are severable, and in the event any of them shall be held to be invalid by any competent court, this Agreement shall be interpreted as if such invalid agreements or covenants were not contained herein. Should one or more covenants or conditions be waived by a Party, such waiver shall not be deemed to waive or render unnecessary the consent or approval of the waiving Party to or of any subsequent similar act by the other Party.

11. **CHOICE OF LAW**

This Agreement shall be governed by and interpreted in accordance with the Laws of the State of New Jersey and any legal actions filed shall be filed in the courts of the State of New Jersey.

12. **RELATIONSHIP BETWEEN THE PARTIES**

This Agreement is not intended to create, and shall not be construed as creating, a legal form of partnership between the Parties to the Agreement.

13. **ENTIRE AGREEMENT**

This Agreement contains all the terms and conditions agreed upon by the Parties and supersedes all other negotiations, representations, and understandings of the Parties, oral or otherwise, regarding the subject matter.

14. **AMENDMENTS AND MODIFICATIONS**

This Agreement may be amended only by an instrument in writing signed by the Parties and effective as of the date stipulated therein.

15. **ATTACHMENTS**

EXHIBIT A – Waterfront Development Permit

EXHIBIT B – List of Benefitted Properties

EXHIBIT C – List of Contract Documents

16. **FACSIMILE SIGNATURE**

This Agreement may be executed by facsimile signature and a facsimile signature shall constitute an original for all purposes.

17. **AUTHORITY**

By the signatures below, the Parties execute this Agreement and confirm that they are mutually bound by and fully authorized and empowered to enter into and bind their organizations by all provisions contained herein.

IN WITNESS WHEREOF, the Township of Little Egg Harbor and _____
caused this Agreement to be executed on the date above.

WITNESS & ATTEST:

TOWNSHIP OF LITTLE EGG HARBOR

Diana K. McCracken, RMC
DIANA K. McCRACKEN, RMC
Municipal Clerk

By: *R. Gormley*
RAYMOND GORMLEY, Mayor

(Seal)

OSBORN ISLAND RESIDENTS ASSOCIATION

D. H. Gibson 6/12/18

By: *Gary Rizzolo*
GARY RIZZOLO PRES.

James R. Gibson 6/12/18
JAMES R. GIBSON
(Seal) OSBORN ISLAND RESIDENT

By: *Janice E. Gibson 6/12/18*
Janice E. Gibson
Secretary for Osborn Island
Residents Association