

**MINUTES - REGULAR MEETING  
NOVEMBER 9, 2016**

The Regular Meeting of the Borough of Sea Girt Council was called to order by Mayor F. Ken Farrell at 7:30 PM on Wednesday, November 9, 2016, at the Sea Girt Elementary School, Bell Place, Sea Girt. Mayor Farrell asked for a moment of silence to remember two of our residents, Jeffrey Vincent and Mary O'Connor; he then led those in attendance in the Pledge of Allegiance.

The Clerk read the Compliance Statement: this meeting is called pursuant to the provisions of the Open Public Meetings Act, Chapter 231, PL 1975, Section 5: adequate notice of this meeting has been given by posting the Notice on the Borough Bulletin Board and by transmitting the Notice to the Borough's two newspapers, *The Asbury Park Press* and *The Coast Star*, as required by law.

**1. ROLL CALL:**

	<b>Present</b>	<b>Absent</b>
Mayor Farrell	X	
Councilman Foley	X	
Councilman Buonocore	X	
Councilwoman Morris	X	
Council President Fetzer	X	
Councilman Mulroy	X	
Councilman Rotolo	X	

**2. APPROVE MINUTES**

A. **Resolution No. 211-2016:** Approve Minutes, Regular Meeting held October 26, 2016

**UPON MOTION** of Councilperson Buonocore, seconded by Councilperson Mulroy carried, that the Minutes of the Regular Meeting held on October 26, 2016 be and the same are hereby approved as presented.

**Recorded Vote:**

	<b>Aye</b>	<b>Nay</b>	<b>Absent</b>	<b>Abstain</b>
Councilman Foley	X			
Councilman Buonocore	X			
Councilwoman Morris	X			
Council President Fetzer				X
Councilman Mulroy	X			
Councilman Rotolo	X			

**3. OPEN DISCUSSION** (Council is invited to speak on any subject)

Mayor Farrell congratulated all Republican candidates including Councilperson Mulroy, Mike Meixsell and our BOE members.

**4. OLD BUSINESS**

A. **Resolution No. 212-2016:** Approve the proposed Carriage Way Rehabilitation Plan for 2018 implementation

Council President Fetzer commented on the Carriage Way proposal: driveways would be extended by property owner; reconfiguration of the road would eliminate island; the Borough should consider other alternatives to reduce speeding during design phase of the project; parking may not be addressed adequately; final design may need to include "no parking here to end" (from near the tennis courts parking area northward) and that the Borough Engineer should also

submit final plan to Fire Company. for comments/suggestions regarding parking and width of road; he stated that he is in favor of project.

Councilperson Foley questioned if the reconfigured road would essentially overtop the existing island area; he was advised that it would.

Mr. Skidmore, Ocean Avenue, asked if the proposed Resolution regarding Carriage Way to be voted on this evening could be changed or revised by Council; he was advised that it could.

**UPON MOTION** of Councilperson Foley, seconded by Councilperson Buonocore, carried that the following Resolution be and the same is hereby adopted:

**WHEREAS**, the Borough Council of the Borough of Sea Girt, having received recommendations from the Borough Engineer and the Road Committee for the rehabilitation of Carriage Way from Trenton Blvd. north to Philadelphia Blvd., inclusive, and also received public feedback on the plan, has rendered its decision.

**NOW, THEREFORE, BE IT RESOLVED**, by the Council of the Borough of Sea Girt, that the rehabilitation plan for Carriage Way from Trenton Blvd. north to Philadelphia Blvd., inclusive, leaving the roadway unpaved and including other improvements, including but not limited to, the addition of drainage and curbing and the reconfiguration of the road as proposed by the Borough Engineer, is hereby approved and the preparation of final plans and specifications is authorized for implementation in 2018.

**BE IT FURTHER RESOLVED** that a certified copy of this Resolution shall be supplied to Peter R. Avakian, PE, Borough Engineer, for his information and further action.

**Recorded Vote:**

	<b>Ayes</b>	<b>Nays</b>	<b>Absent</b>	<b>Abstain</b>
Councilman Foley	X			
Councilman Buonocore	X			
Councilwoman Morris	X			
Council President Fetzer	X			
Councilman Mulroy	X			
Councilman Rotolo	X			

**5. NEW BUSINESS**

**A. ORDINANCES** – introduction

1. **Ordinance No. 11-2016 – introduction:** The Mayor to read the said Ordinance by Title:

**ORDINANCE NO. 11-2016**

**AN ORDINANCE TO SUPPLEMENT AND AMEND CHAPTER III, POLICE REGULATIONS, SECTION 3-1, NOISE, OF THE BOROUGH CODE OF THE BOROUGH OF SEA GIRT**

**BE IT ORDAINED** by the Borough Council of the Borough of Sea Girt as follows:

**Section 1.** Article 3-1 NOISE, is hereby amended and supplemented as follows:

**3-1.1 Definitions.**

As used in this section:

**Person** shall mean and include the singular and the plural and shall also mean and include any person, firm, corporation, association, club, partnership, society or any other form of association or organization.

**Sound-Amplifying Equipment** shall mean any machine or device for the amplification of the human voice, music or any other sound.

**Sound Truck** shall mean any type of vehicle, car, wagon, carriage or other means of transportation or locomotion, having mounted thereon or attached thereto any sound-amplifying equipment. (Ord. No. 307; Ord. No. 597 § 1)

**Power equipment** shall mean equipment actuated by an additional power source and mechanism other than the solely manual labor used with hand tools.

**Construction equipment** shall mean equipment which may be mobile, semi permanent, or permanent, intended for heavy work such as earthmoving, lifting containers or materials, drilling holes in earth or rock, or concrete or paving application.

**Commercial operator** shall mean anyone performing construction and/or landscaping on a property other than the property owner and/or their immediate family.

**Construction** shall mean the construction, erection, reconstruction, alteration, conversion, demolition, removal, repair, painting or equipping of buildings or structures.

**3-1.2 Noises Prohibited.**

a. The creation of any unreasonably loud, disturbing and unnecessary noises in the Borough is hereby prohibited. There is further prohibited any noise of such character, intensity or duration as is detrimental to the life, health or well-being of any individual.

b. It shall be unlawful for any person to make, continue, or cause to be made or continued, or for any person to permit, allow or suffer on premises in their control, any loud, disturbing or excessive noise or any noise which either annoys, disturbs, injures or endangers the comfort, repose, health, peace or safety of others within the limits of the Borough.

c. No persons shall use, or cause to be used, a sound truck with its sound-amplifying equipment in operation, in the Borough.

(Ord. No. 307; Ord. No. 597 § 2; Ord. No. 601; New)

**3-1.3 Nonexclusive Enumeration of Prohibited Acts.**

a. The following acts, among others, but not by way of limitation, are declared to be loud, disturbing and unnecessary noises in violation of this section but the following enumeration shall not be deemed to be exclusive:

1. ~~Horns, Signaling Devices, etc. The sounding of any horn or signaling device of any~~ automobile, motorcycle, bus or other vehicle on any street or public place of the Borough, except as a danger warning; the creation by means of any horn or signaling device of any unreasonably loud or harsh sound, or the sounding of said horn or signaling device for any unnecessary and unreasonable period of time.

2. Radios, Audio Equipment, etc. The playing of any radio, television, phonograph, musical instrument or any machine or device for the producing or reproducing of sound, in such a manner or with such volume, during the hours after 10:00 p.m. and before 8:00 a.m. so as to unreasonably annoy or disturb the quiet, comfort or repose of persons in any dwelling, hotel or any other type of residence, or to disturb the peace, quiet and comfort of the neighboring inhabitants, or to play or operate the same with louder volume than is necessary for convenient hearing for the person or persons who are in the room or chamber in which such machine or device is operated.

3. Yelling, Shouting, etc. Yelling, shouting, hooting, or singing after the hour of 10:00 p.m. and before 8:00 a.m. or at any time or place, so as to annoy and disturb the quiet, comfort or repose of persons in any office, or in any dwelling, hotel or other type of residence, or of any persons in the vicinity.

4. Use of power equipment not limited to landscaping equipment (including lawn mowers, blowers, edgers, clippers and saws) or construction equipment is regulated during the following times:

i. Property owners and/or their immediate family members are permitted to perform construction or landscaping work between 8:00 a.m. and 6:00 p.m. on weekdays or between 9:00 a.m. and 5:00 p.m. on weekends and the public holidays of New Year's Day, Memorial Day, July 4<sup>th</sup>, Labor Day, Thanksgiving, and Christmas.

ii. Commercial operators are permitted to provide their services between 8:00 a.m. and 6:00 p.m. on weekdays or between 9:00 a.m. and 5:00 p.m. on Saturdays.

iii. Commercial operators are prohibited from providing their services on Sundays or on the public holidays of New Year's Day, Memorial Day, July 4<sup>th</sup>, Labor Day, Thanksgiving, and Christmas. Commercial operators are also prohibited from providing their services on Saturdays between July 1st and Labor Day.

5. Music or other amplified sound emanating from a vehicle which is plainly audible at a distance of fifty (50) feet in any direction from the vehicle.

6. The frequent or habitual howling, barking, meowing or other noise-making by an animal.

b. It shall be presumed that if any of the noises referred to in paragraphs a, 2 and a, 3 of this subsection are emanating from any building, house or yard and are audible to persons passing on the street on which such building, house or yard is located, that such noise or noises disturbs the comfort,

repose and health of others and the peace of the neighborhood. (Ord. No. 307; Ord. No. 597 § 3; Ord. No. 605; Ord. No. 891; New)

**Editor's Note:** Additional noise regulations regarding construction may be found in Chapter XII, Building and Housing.

**Section 4.** All Ordinances or parts of Ordinances inconsistent herewith are hereby repealed, but only to the extent of such inconsistency.

**Section 5.** This Ordinance shall take effect twenty (20) days after adoption and final publication as required by law.

**UPON MOTION** of Councilperson Rotolo, seconded by Councilperson Mulroy, carried, that the said Ordinance as amended be and the same is hereby adopted on first reading, directing the Clerk to post and publish as required as law and setting the date for the public hearing as December 7, 2016.

**Recorded Vote:**

	<b>Ayes</b>	<b>Nays</b>	<b>Absent</b>	<b>Abstain</b>
Councilman Foley	X			
Councilman Buonocore	X			
Councilwoman Morris	X			
Council President Fetzer	X			
Councilman Mulroy	X			
Councilman Rotolo	X			

2. **Ordinance No. 12-2016:** The Mayor to read the said Ordinance by Title:

**ORDINANCE NO. 12-2016**

**AN ORDINANCE TO SUPPLEMENT AND AMEND CHAPTER 12, BUILDING AND HOUSING, POLICE REGULATIONS, SECTION 12.2, ADDITIONAL REGULATIONS, OF THE BOROUGH CODE OF THE BOROUGH OF SEA GIRT**

**BE IT ORDAINED** by the Borough Council of the Borough of Sea Girt as follows:

**Section 1. Article 12-2.2, Additional Regulations is hereby amended and supplemented as follows:**

**a. Definitions:**

1. **Construction** shall mean the construction, erection, reconstruction, alteration, conversion, demolition, removal, repair, painting or equipping of buildings or structures.

2. **Commercial construction** shall mean any construction performed on a property by someone other than the property owner and/or their immediate family.

3. **Building** shall mean a structure enclosed with exterior walls or fire walls, built, erected and framed of component structural parts, designed for the housing, shelter, enclosure and support of individuals, animals or property of any kind.

4. **Structure** shall mean a combination of materials to form a construction for occupancy, use, or ornamentation, whether installed on, above, or below the surface of a parcel of land; provided the word “structure” shall be construed when used herein as though followed by the words “or part or parts thereof and all equipment therein” unless the context clearly requires a different meaning.

5. **Power equipment** shall mean equipment actuated by an additional power source and mechanism other than the solely manual labor used with hand tools.

- b. All building and other permits shall be displayed so as to be visible to Borough officials.
- c. All excavation shall be enclosed with fencing.
- d. All construction sites shall be surrounded by silt fencing.
- e. All construction debris shall be stored in containers.
- f. The abutting street and sidewalk shall be kept free from dirt, sand and other materials.
- g. The abutting sidewalk shall be passable at all times during the period of construction.
- h. Portable toilets shall be placed at the rear of the subject property with the entrance facing the rear. If circumstances preclude placing the portable toilet in the rear yard, the portable toilet shall be positioned in a manner so the door accessing same is facing the rear of the property. All portable toilets must be cleaned and serviced at least once every seven (7) days.
- i. Only one contractor's sign is permitted on the construction site having a maximum size of six (6) square feet and located at least twenty (20) feet behind the front property line. Signs shall not be illuminated.
- j. Construction is permitted during the following times:

1. Construction Hours Permitted.

Monday through Friday—8:00 a.m. to 6:00 p.m.  
Saturday—9:00 a.m. to 5:00 p.m.

No commercial construction shall take place on Sundays or on the public holidays of New Year's Day, Memorial Day, July 4<sup>th</sup>, Labor Day, Thanksgiving, Christmas, but is permitted on those days if done solely by the property owner and/or their immediate family between 9:00 a.m. and 5:00 p.m. Commercial construction is also prohibited on Saturdays between July 1 and Labor Day, but is permitted if done solely by the property owner and/or their immediate family between 9:00 a.m. and 5:00 p.m.

2. Use of Power Tools. The use of power equipment or tools by both commercial operators and property owners for construction, repair or alteration of buildings, landscaping and lawn maintenance is permitted during the following times:

- (a) Mondays through Fridays, (except on the public holidays of New Year's Day, Memorial Day, July 4<sup>th</sup>, Labor Day, Thanksgiving, and Christmas), between the hours of 8:00 a.m. and 6:00 p.m.

(b) On Saturdays between the hours of 9:00 a.m. and 5:00 p.m. (Except the provision of services by commercial operators is not permitted on Saturdays between July 1 and Labor Day)

Individual property owners and/or their immediate family members are permitted to perform construction and/or landscaping work on all Saturdays, Sundays and the public holidays of New Year's Day, Memorial Day, July 4<sup>th</sup>, Labor Day, Thanksgiving, and Christmas between the hours of 9:00 a.m. and 5:00 p.m.

k. Collection of garbage or trash by commercial collectors shall be done only between the hours of 7:00 a.m. and 6:00 p.m. Monday through Saturday.

l. The off-loading and on-loading of track vehicles in the street is prohibited. The contractor must off-load and on-load track vehicles directly on the homeowner's property. In the event that a track vehicle must be off-loaded or on-loaded via a street, the contractor shall be required to place mats or other suitable materials on the street surface and curbing so such surface is not damaged during said off-loading or on-loading.

(Ord. No. 891a-i.; Ord. No. 913; Ord. No. 918; Ord. No. 2007-16; New; Ord. No. 15-2012)

**Section 4.** All Ordinances or parts of Ordinances inconsistent herewith are hereby repealed, but only to the extent of such inconsistency.

**Section 5.** This Ordinance shall take effect twenty (20) days after adoption and final publication as required by law.

**UPON MOTION** of Councilperson Rotolo, seconded by Council President Fetzer, carried, that the said Ordinance as amended be and the same is hereby adopted on first reading, directing the Clerk to post and publish as required as law and setting the date for the public hearing as December 7, 2016.

**Recorded Vote:**

	<b>Ayes</b>	<b>Nays</b>	<b>Absent</b>	<b>Abstain</b>
Councilman Foley	X			
Councilman Buonocore	X			
Councilwoman Morris	X			
Council President Fetzer	X			
Councilman Mulroy	X			
Councilman Rotolo	X			

**B. Resolution No. 213-2016:** c. 159. , 2016 Body Armor Grant (\$1,382.18)

**UPON MOTION** of Councilperson Rotolo, seconded by Councilperson Mulroy, carried, that the following Resolution be and the same is hereby adopted:

**WHEREAS, N.J.S. 40A:4-87** provides that that the Director of the Division of Local Government Services may approve the insertion of any special item of revenue in the budget of any county or municipality when such item shall have been made available by law and the amount was not determined at the time of the adoption of the budget; and,

**WHEREAS**, the Director may also approve the insertion of an item of appropriation for equal amount.

**NOW, THEREFORE, BE IT RESOLVED** that the Borough Council of the Borough of Sea Girt in the County of Monmouth, New Jersey hereby requests the Director of the Division of Local Government Services to approve the insertion of an item of revenue in the budget of the year 2016 in the sum of \$1,382.18 which is now available from the State of New Jersey Division of Criminal Justice, Body Armor Replacement Fund Program in the same amount.

**BE IT FURTHER RESOLVED** that the like sum of \$1,382.18 is hereby appropriated under the caption Body Armor Replacement Fund Program; and,

**BE IT FURTHER RESOLVED** that above is the result of funds received from the State of New Jersey Division of Criminal Justice, Body Armor Replacement Fund Program in the amount of \$1,382.18.

**Recorded Vote:**

	<b>Ayes</b>	<b>Nays</b>	<b>Absent</b>	<b>Abstain</b>
Councilman Foley	X			
Councilman Buonocore	X			
Councilwoman Morris	X			
Council President Fetzer	X			
Councilman Mulroy	X			
Councilman Rotolo	X			

**C. Resolution No. 214-2016:** Verizon Wireless Request for Consent to jointly use facilities located in the public right-of-way for the installation of small network nodes

Verizon representative Mr. Flannery addressed Council's questions and noted that he will return once the exact number and location at which the antennae will be installed is determined by Verizon's engineers.

**UPON MOTION** of Councilperson Buonocore, seconded by Council President Fetzer, carried, that the following Resolution be and the same is hereby adopted:

**WHEREAS**, New York SMSA Limited Partnership d/b/a Verizon Wireless (hereafter "Verizon Wireless") advises that it is a provider of commercial mobile service subject to regulation by the Federal Communications Commission and pursuant to regulations adopted by the Board of Public Utilities, is permitted to jointly use poles lawfully erected in the public right-of way with the consent of the municipality; and

**WHEREAS**, Verizon Wireless is seeking to install small network nodes (antennae) on utility poles or within underground conduits located in the public right-of-way in the Borough of Sea Girt in order to enhance mobile services to the public, and to operate, maintain and repair facilities; and

**WHEREAS**, N.J.S.A. 48:3:18 through 48:3-19 permits municipalities to enter into a Rights-of-Way Use Agreement with a third party provider; and

**WHEREAS**, Verizon Wireless desires to enter into a Rights-of-Way Use Agreement with the Borough of Sea Girt that sets forth the terms of use, occupancy and manner in which Verizon Wireless will utilize the Borough of Sea Girt Rights of ways ("Use Agreement"); and



**WHEREAS**, the Use Agreement shall be effective for an initial (7) year term and contain renewal options; and

**WHEREAS**, annexed hereto is a copy of the Use Agreement to be entered into by and between the Borough of Sea Girt and Verizon Wireless;

**NOW, THEREFORE, BE IT RESOLVED**, by the municipal council of the Borough of Sea Girt, being the governing body thereof, that the Mayor be and hereby is authorized to execute and the Municipal Clerk be and hereby is authorized to witness, the annexed Rights-of-Way Use Agreement between the Borough of Sea Girt and New York SMSA Limited Partnership d/b/a Verizon Wireless.

**Recorded Vote:**

	AYES	NAYS	ABSENT	ABSTAIN
Councilman Foley	X			
Councilman Buonocore	X			
Councilwoman Morris	X			
Council President Fetzer	X			
Councilman Mulroy	X			
Councilman Rotolo	X			

- D. **Resolution No. 215-2016:** Refund overpaid property taxes, Block 64, Lot 6 aka 409 Brooklyn Blvd., Donald Katen, \$5,682.32

**UPON MOTION** of Councilperson Foley, seconded by Councilperson Buonocore, carried, that the following Resolution be and the same is hereby adopted:

**WHEREAS**, there has been an overpayment of third and fourth quarter 2016 property taxes for the property known as Block 64, Lot 6, also known as 409 Brooklyn Boulevard, by the property owner, Donald Katen, and said owner has requested a refund of the overpayment (\$5,682.32).

**NOW, THEREFORE, BE IT RESOLVED** that the refund of overpaid third and fourth quarter 2016 property taxes for the property known as Block 64, Lot 6, also known as 409 Brooklyn Boulevard,, be and the same is hereby refunded to the owner, Donald Katen, in the amount of \$5,682.32.

**BE IT FURTHER RESOLVED** that a certified copy of this Resolution shall be supplied to the Chief Financial Officer and Tax Collector of the Borough of Sea Girt for their information and files.

**Recorded Vote:**

	Aye	Nay	Absent	Abstain
Councilman Foley	X			
Councilman Buonocore	X			
Councilwoman Morris	X			
Council President Fetzer	X			
Councilman Mulroy	X			
Councilman Rotolo	X			

- E. **Resolution No. 216-2016:** Accept proposal for professional services –development of a GIS-based mapping system (part of our 2016 Water-Sewer Utility Capital Program), Leon S. Avakian, Inc. and H2M Associates, not to exceed \$52,000; additional costs for software licensing and annual service fees, not to exceed \$8,000

**UPON MOTION** of Council President Fetzer, seconded by Councilperson Mulroy, carried, that the following Resolution be and the same is hereby adopted:

**WHEREAS**, the Borough of Sea Girt is in need of professional engineering services for the purpose of creating and developing a base map for town-wide infrastructure utilizing a Geographic Information System (GIS) format, leading to the development of other management tools, including but not limited to asset maintenance reporting and future asset management planning as a not-fair and open contract pursuant to the provisions of N.J.S.A. 19:44A-20.4 or 20.5; and,; and,

**WHEREAS**, the firms of Leon S. Avakian, Inc. and H2M Associates have submitted a joint proposal to create and develop a base map for town-wide infrastructure utilizing a Geographic Information System (GIS) format, as follows:

<b>Task I – Base GIS Development</b>	<b>\$38,900.00</b>
<b>Task II – GIS Software Procurement/setup</b>	<b>\$ 8,800.00</b>
<b>Task III – Asset Management Evaluation</b>	<b>\$ 4,300.00</b>
<b>Total Not to Exceed</b>	<b>\$52,000.00</b>

and the Chief Financial Officer has certified that funds are available in the 2016 Water-Sewer Utility Capital Program for this project; and,

**WHEREAS**, the proposed contract may be awarded without competitive bidding in accordance with the Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq., because the contract is for a service performed by a person authorized by law to practice a recognized profession that is regulated by law.

**NOW, THEREFORE, BE IT RESOLVED**, that the Borough Council of the Borough of Sea Girt, does hereby authorize a contract with Leon S. Avakian, Inc. and H2M Associates for the provision of services as described above at the cost not to exceed \$52,000.00 and does hereby authorize the Mayor and Clerk to execute a contract with the parties first listed above for these services.

**BE IT FURTHER RESOLVED** that the Borough Council of the Borough of Sea Girt hereby authorizes the expenditure of up to \$8,000 in additional costs for software licensing and annual service fees for GIS software acquisition as necessary.

**BE IT FURTHER RESOLVED**, that a copy of this resolution shall be published in The Coast Star as required by law within ten (10) days of its passage.

**BE IT FURTHER RESOLVED** that a certified copy of this Resolution shall be supplied to the following for their information and further action, as necessary:

1. The firm of Leon S. Avakian, Inc.;
2. The firm of H2M Associates;
3. The Chief Financial Officer of the Borough of Sea Girt;
4. Michael McArthur, Licensed Water Plant Operator;

**Recorded Vote:**

	<b>Ayes</b>	<b>Nays</b>	<b>Absent</b>	<b>Abstain</b>
Councilman Foley	X			
Councilman Buonocore	X			
Councilwoman Morris	X			
Council President Fetzer	X			
Councilman Mulroy	X			
Councilman Rotolo	X			

- F. **Resolution No. 217-2016:** Improvements to Baltimore Blvd./The Terrace, Change Order No. 1 and final payment of \$66,117.66

**UPON MOTION** of Council President Fetzer, seconded by Councilperson Morris, carried, that the following resolution be adopted:

**WHEREAS**, the Borough Council authorized and awarded a contract to Fernandes Construction, Inc., South River, NJ, on September 23, 2016 for the Project known as Improvements to Baltimore Blvd. and The Terrace in the amount of \$783,935.00.00; and,

**WHEREAS**, the review of final as-built quantities resulted in an increase in material costs by the amount of \$107,647.94 and a decrease in labor and material costs of \$60,698.32, representing a net increase of \$46,949.62 or 5.9%, to a new contract total of \$830,884.62; and,

**WHEREAS**, the Chief Financial Officer has certified to the Borough Council that there are adequate funds available for the purpose of granting this Change Order in accounts 6-01-26-290-027; C04-55-529-505; C-04-55-531-501; C-04-55-537-501; C04-55-542-501 and W-06-55-584-501.

**NOW, THEREFORE, BE IT RESOLVED** by the Borough Council of the Borough of Sea Girt that Final Change Order and Supplemental Agreement No. 1 as referenced above totaling a net increase of \$46,949.62 as an amendment to the contract between Fernandes Construction, Inc., South River, NJ and the Borough of Sea Girt for the Project known as Improvements to Baltimore Boulevard and The Terrace be and the same is hereby approved.

**BE IT FURTHER RESOLVED** that as Fernandes Construction Co. has supplied the required Maintenance Bond in the amount of \$207,721.16; therefore, the final payment due and payable of \$66,117.66 be and the same is hereby approved.

**Recorded Vote:**

	<b>Ayes</b>	<b>Nays</b>	<b>Absent</b>	<b>Abstain</b>
Councilman Foley	X			
Councilman Buonocore	X			
Councilwoman Morris	X			
Council President Fetzer	X			
Councilman Mulroy	X			
Councilman Rotolo	X			

- G. **Resolution No. 218-2016:** Authorize submission of Community Forestry Plan to the New Jersey Forest Service (Shade Tree Commission reviewed and approved plan pursuant to our Grant)

**UPON MOTION** of Councilperson Mulroy, seconded by Councilperson Morris, carried, that the following Resolution be and the same is hereby adopted:

**WHEREAS**, the Borough of Sea Girt received a Green Communities Grant in 2014 for the purpose of having a consultant prepare a Community Forestry Maintenance Plan to the New Jersey Forest Service on behalf of the Borough; and,

**WHEREAS**, the Shade Tree Commission has been working with our consultant, William Brash of Shelterwood Forest Managers, LLC, to complete the said Plan in compliance with the terms and conditions of the awarded to the Borough in 2014; and,

**WHEREAS**, said Plan is now complete and ready to be submitted on our behalf.

**NOW, THEREFORE, BE IT RESOLVED** by the Borough Council of the Borough of Sea Girt that the Community Forestry Maintenance Plan, prepared in consultation with the Borough's Shade Tree Commission, be and the same is hereby approved for submission to the New Jersey Forest Service.

**BE IT FURTHER RESOLVED** that the Mayor be and he is hereby authorized to execute the Plan as required.

**Recorded Vote:**

	<b>Ayes</b>	<b>Nays</b>	<b>Absent</b>	<b>Abstain</b>
Councilman Foley	X			
Councilman Buonocore	X			
Councilwoman Morris	X			
Council President Fetzer	X			
Councilman Mulroy	X			
Councilman Rotolo	X			

**H. Resolution No. 219-2016:** Cancel deferred school taxes (amount to be determined)

**UPON MOTION** of Councilperson Foley, seconded by Councilperson Buonocore, carried, that the following Resolution be and the same is hereby adopted:

**WHEREAS**, under the provisions of statute, when a municipality raises school taxes on a school year basis, an amount of not more than fifty percent of the levy may be deferred to the following year, providing no requisition has been made for such amount or any portion of such amount, and

**WHEREAS**, \$883,000 of the Sea Girt School District tax has previously been deferred; and,

**WHEREAS**, the Mayor and Council of the Borough of Sea Girt desires to cancel the above deferred school district taxes in the amount to be determined.

**NOW, THEREFORE BE IT RESOLVED** by the Mayor and Council of the Borough of Sea Girt, County of Monmouth, that an amount to be determined of deferred Sea Girt School District Tax be and the same shall hereby be cancelled; and

**BE IT FURTHER RESOLVED** that a certified copy of this resolution shall be forwarded by the Municipal Clerk to the Division of Local Government Services, Department of Community Affairs, and the Chief Financial Officer of the Borough of Sea Girt.

**Recorded Vote:**

	<b>Ayes</b>	<b>Nays</b>	<b>Absent</b>	<b>Abstain</b>
Councilman Foley	X			
Councilman Buonocore	X			
Councilwoman Morris	X			
Council President Fetzer	X			
Councilman Mulroy	X			
Councilman Rotolo	X			

**I. Resolution No. 220-2016: Appropriations transfers**

**UPON MOTION** of Councilperson Foley, seconded by Councilperson Buonocore, carried, that the following Resolution be and the same is hereby adopted:

**WHEREAS**, the Local Budget Law (N.J.S.A. 40A:4-1, et seq.) permits the transfer of funds between appropriations during the last two months of the current budget year; and,

**WHEREAS**, the Chief Financial Officer has determined that certain 2016 appropriations of the Borough of Sea Girt require additional funds while other appropriations have an available balance not needed for its original purposes.

**NOW, THEREFORE, BE IT RESOLVED** by the Borough Council of the Borough of Sea Girt that the following appropriations transfers as listed on the schedule shown below be and the same are hereby approved:

<b>BEACH UTILITY:</b>			
Financial Administration	6-09-55-130-028		5,000.00
Engineering, Contractual	6-09-55-165-029	(5,000.00)	
Total Beach Utility		(5,000.00)	5,000.00
<b>WATER UTILITY</b>			
Utilities	6-05-55-502-068	(5,000.00)	
Insurance - General	6-05-55-502-091	(3,500.00)	
Contractual, Legal & Engineering	6-05-55-503-012		8,500.00
		(8,500.00)	8,500.00

ACCOUNT NAME	ACCOUNT NUMBER	FROM	TO
Administration, S/W	6-01-20-100-011	(1,000.00)	
Clerk, S/W	6-01-20-120-010		1,000.00
Legal Fees, Contractual	6-01-20-155-029		60,000.00
Engineering Fees, Contractual	6-01-20-165-029	(40,000.00)	
Planning Board, Contractual	6-01-21-180-029	(15,000.00)	
Insurance, Employee Group	6-01-23-220-000	(27,500.00)	
Insurance, Group Health Opt-Out	6-01-23-220-002	(6,000.00)	
Insurance, Unemployment	6-01-23-225-000	(25,000.00)	
Police, P/T S/W	6-01-25-240-012		15,000.00
Police, Tuition Reimbursement	6-01-25-240-030	(500.00)	
Police, MD fees	6-01-25-240-093		500.00
Monmouth County 911	6-01-25-250-001	(4,000.00)	
OEM Telephone	6-01-25-252-076		500.00
DPW, S/W	6-01-26-290-011	(15,000.00)	
DPW, S/W, P/T	6-01-26-290-012		27,000.00
DPW Maintenance of Equipment	6-01-26-290-026		5,000.00
Recycling Charges	6-01-26-290-107		20,000.00
Vehicle Maintenance, OE	6-01-26-315-201		5,000.00
Total Current Fund		(134,000.00)	134,000.00

**BE IT FURTHER RESOLVED** that a certified copy of this Resolution shall be supplied to the Chief Financial Officer for further action.

**Recorded Vote:**

	Ayes	Nays	Absent	Abstain
Councilman Foley	X			
Councilman Buonocore	X			
Councilwoman Morris	X			
Council President Fetzer	X			
Councilman Mulroy	X			
Councilman Rotolo	X			

**6. ADMINISTRATOR REPORTS/DISCUSSION:** The Administrator reported as follows:

- A. **Neptune and Seaside, Morven Improvement Project:** Replacement of curbs and aprons is underway now through the end of the week; if weather permits, contractor plans to pave at the end of next week (17<sup>th</sup> – 18<sup>th</sup>); punch list items will be addressed after Thanksgiving.
- B. **Dune Grass Planting Project Update:** on behalf of the Council, we thank Lynn Drury for organizing the volunteers and the sixty or so individuals of all ages including residents and non-residents who participated in Phase III of our Dune Restoration Project; the weather was

perfect for the task and the volunteers planted almost 10,000 plugs at Baltimore Blvd., Philadelphia Blvd. and Morven Terrace.

**C. November Sanitation and Recycling pick-up schedule changes:**

Friday, November 11, Veterans' Day, *NO* pick-up; pick up will be on *Thursday, November 10, (Zone 2 recycling and Zone 1 trash)*

Thanksgiving Day and Friday after Thanksgiving: *NO* pick-up; pick-up will be on *Monday, November 28 for Zone 1 or Tuesday, November 29 for Zone 2 (regularly scheduled days)*

**D. Holiday Tree Lighting**, Monday, December 5, entertainment begins at 7:00 PM; meet at The Plaza for the festivities

**7. QPA REPORTS** (of activity since previous Council Meeting): None

**8. COUNCIL REPORTS**

- Councilpersons Foley, Buonocore, Morris, Rotolo and Mulroy had no reports.
- Council President Fetzer reported that the next negotiating session with the Teamsters is scheduled for November 21, 2016, and he hoped to have a full report for Council at the December 7 meeting.
- Mayor Farrell thanked all those who participated in the dune restoration project.

**9. Resolution No. 221-2016:** Payment of bills

**BE IT RESOLVED**, by the Borough Council of the Borough of Sea Girt that the bills be paid as appearing on the attached Bill List date November 4, 2016 in the totals as follows:

CURRENT FUND	\$2,222,115.73
WATER/SEWER OPERATING FUND	\$ 7,959.05
BEACH OPERATING FUND	\$ 1,084.95
TRUST FUND	\$ 14,617.00
RECREATION TRUST FUND	\$ 433.98
GENERAL CAPITAL	\$ 107,159.81
WATER CAPITAL	\$ 108,568.25

**Recorded Vote:**

	Ayes	Nays	Absent	Abstain
Councilman Foley	X			
Councilman Buonocore	X			
Councilwoman Morris	X			
Councilman Fetzer	X			
Councilman Mulroy	X			
Councilman Rotolo	X			

**10. PUBLIC PARTICIPATION ON ANY SUBJECT** (Comments limited to 7 minutes)

Sharon Kregg, Brooklyn Blvd., stated that she is very concerned with the noise issue and recommended that no construction be permitted on any Saturday and that contractors should only be allowed to work from 8am -5pm on any day.

Robert Kregg, Boston Blvd., stated that it is his belief that the majority of the homes now under construction in the Borough are “spec” properties owned by builders or developers and the proposed limitation on Saturday construction from July 1 through Labor Day will not have a detrimental effect on a resident. He also suggested that all portable toilets should be required to be located a minimum of 20 feet off the front property line and that the Borough should require an escrow deposit from all builders.

There being no further business, and **UPON MOTION** of Councilperson Foley, seconded by Councilperson Buonocore, carried, that the meeting be finally and immediately adjourned at 9:30 PM

*Lorraine P. Carafa*

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LORRAINE P. CARAFA, RMC



November 4, 2016  
01:19 PM

BOROUGH OF SEA GIRT  
Bill List By P.O. Number

Page No: 1

P.O. Type: All  
Range: First to Last  
Format: Condensed

Open: N Paid: N Void: N  
Rcvd: Y Held: Y Aprv: N  
Bid: Y State: Y Other: Y Exempt: Y

PO #	PO Date	Vendor	PO Description	Status	Amount	Void Amount	PO Type
15-00913	09/17/15	01352	FERNANDES CONSTRUCTION, INC.	Baltimore Blvd. Imp.	Open	66,117.66	0.00 B
16-00025	01/05/16	00053	VAN WICKLE AUTO SUPPLY	2016 Auto Parts	Open	576.11	0.00 B
16-00029	01/05/16	SBS01	Stewart, Business Systems	2016 Copier Maintenance	Open	158.95	0.00 B
16-00035	01/06/16	00040	MONMOUTH COUNTY TREASURER	Tipping Fees	Open	4,795.99	0.00 B
16-00070	01/15/16	00321	SEABOARD WELDING SUPPLY, INC.	2016 Cylinder rental	Open	14.50	0.00 B
16-00075	01/15/16	00614	Optimum	2016 Service	Open	89.83	0.00 B
16-00076	01/15/16	00614	Optimum	2016 Srv.	Open	12.07	0.00 B
16-00098	01/21/16	01786	TOWNSHIP OF WALL	2016 Court services	Open	14,591.50	0.00 B
16-00099	01/21/16	CLF01	Carton Law Firm	Prosecutor services	Open	953.75	0.00 B
16-00103	01/21/16	00774	BOROUGH OF BRIELLE	Gasoline Interlocal	Open	7,775.81	0.00 B
16-00122	01/29/16	00046	AQUATIC SERVICES, INC.	Labratory testing Services	Open	1,076.00	0.00 B
16-00129	01/29/16	00008	AT&T	2016 Service	Open	59.02	0.00 B
16-00130	01/29/16	AMMM01	Apruzzese, McDermott, Mastro	2016 services	Open	9,541.95	0.00 B
16-00132	02/02/16	00016	JERSEY CENTRAL POWER & LIGHT	Service 2016	Open	2,955.25	0.00 B
16-00133	02/02/16	00016	JERSEY CENTRAL POWER & LIGHT	Service 2016	Open	229.29	0.00 B
16-00134	02/02/16	00016	JERSEY CENTRAL POWER & LIGHT	Service 2016	Open	28.38	0.00 B
16-00135	02/02/16	00016	JERSEY CENTRAL POWER & LIGHT	Service 2016	Open	1,180.54	0.00 B
16-00136	02/03/16	01942	ONE CALL CONCEPTS	2016 Services	Open	67.50	0.00 B
16-00137	02/03/16	00007	VERIZON	Beach Service 2016	Open	358.88	0.00 B
16-00138	02/03/16	00007	VERIZON	2016 Pd & A&E services	Open	299.14	0.00 B
16-00139	02/03/16	00007	VERIZON	2016 Service Library	Open	108.58	0.00 B
16-00140	02/03/16	00007	VERIZON	2016 Service FD	Open	38.57	0.00 B
16-00154	02/04/16	00007	VERIZON	Service 2016	Open	37.74	0.00 B
16-00161	02/04/16	00051	NJ NATURAL GAS CO.	2016 Services	Open	28.49	0.00 B
16-00194	02/22/16	00016	JERSEY CENTRAL POWER & LIGHT	2016 Street lighting	Open	162.68	0.00 B
16-00210	02/24/16	KEK01	The Law Offices of	Legal services, Planning Brd.	Open	182.00	0.00 B
16-00222	02/26/16	00016	JERSEY CENTRAL POWER & LIGHT	Service 2016	Open	125.68	0.00 B
16-00238	03/04/16	00643	FEDERAL EXPRESS CORP.	2016 Shipping Services	Open	62.08	0.00 B
16-00242	03/04/16	00349	VERIZON WIRELESS	2016 Cell phone services	Open	236.54	0.00 B
16-00257	03/14/16	CROSS01	Cross Over Networks	IT services 2016	Open	2,117.18	0.00 B
16-00291	03/21/16	MTG01	Material Transport Group LLC	Recycle Brush	Open	390.00	0.00 B
16-00316	03/30/16	00964	A'S GARDEN & HOME CENTER	Misc. Supplies	Open	6.97	0.00 B
16-00348	04/07/16	00233	Copy Center Inc.	ID C9599, copier maintenance	Open	113.92	0.00 B
16-00378	04/18/16	PLN01	PineLands Nursery & Supply	American Dune Grass	Open	7,625.00	0.00 B
16-00407	04/22/16	01607	TREASURER, STATE OF NEW JERSEY	UCC Training Fees	Open	1,847.07	0.00 B
16-00458	05/01/16	AWCC01	United Cleaning Contractors, In	window cleaning	Open	160.00	0.00 B
16-00460	05/13/16	H2M	H2M Associates, Inc.	Site Remediation LSRP	Open	2,954.65	0.00 B
16-00461	05/13/16	H2M	H2M Associates, Inc.	R996-2016, Water/Waste Water	Open	1,825.00	0.00 B
16-00537	06/07/16	00045	SEA GIRT BOARD OF ED	School Tax 2nd 1/2 2016	Open	368,735.00	0.00 B
16-00542	06/08/16	01338	WINNER FORD	2017 Police Interceptor	Open	24,761.60	0.00 B
16-00543	06/08/16	01338	WINNER FORD	Additional features	Open	1,305.00	0.00 B
16-00645	07/05/16	00002	COUNTY OF MONMOUTH - COUNTY	2nd 1/2 Half 2016 County Tax	Open	1,516,952.78	0.00 B
16-00646	07/05/16	00003	COUNTY OF MONMOUTH - LIBRARY	2nd Half 2016 Co. Library Tax	Open	108,226.03	0.00 B
16-00647	07/05/16	00680	COUNTY OF MON. - OPEN SPACE	2nd half 2016 Co. Open Space	Open	90,606.97	0.00 B
16-00654	07/07/16	KEK01	The Law Offices of	Estate of M Reid, 511 Phili	Open	238.00	0.00 B
16-00790	08/18/16	FF001	Firefighter One	Engine 44-74 testing	Open	1,445.00	0.00 B
16-00791	08/18/16	FF001	Firefighter One	Engine 44-75 testing	Open	1,745.00	0.00 B
16-00843	09/07/16	MWCRI01	Monmouth Wire and Computer	Electronic Recycling 2016	Open	1,037.14	0.00 B
16-00846	09/08/16	01092	ALL AMERICAN TURF, INC.	Small engine repair	Open	298.70	0.00 B
16-00855	09/12/16	URN01	Urner Barry	Custom printed forms	Open	880.00	0.00 B

Total Purchase Orders:	85	Total P.O. Line Items:	0	Total List Amount:	2,411,522.15	Total Void Amount:	0.00
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16-00096	Guardian Life Ins	Nov	343.13
16-00097	Horizon Dental	Nov.	2,425.57
16-00982	FRANCOTYP_Postalia Inc.		
	postage		444.00
	State of New Jersey health Benefits		47,203.92
	Total		2,461,938.77

Totals by Year-Fund							
Fund Description	Fund	Budget Rcvd	Budget Held	Budget Total	Revenue Total	G/L Total	Total
		2,222,115.73					
CURRENT FUND	6-01	<del>2,171,699.11</del>	0.00	2,171,699.11	0.00	0.00	2,171,699.11
WATER OPERATING	6-05	7,959.05	0.00	7,959.05	0.00	0.00	7,959.05
BEACH OPERATING	6-09	1,084.95	0.00	1,084.95	0.00	0.00	1,084.95
TRUST OTHER	6-25	14,617.00	0.00	14,617.00	0.00	0.00	14,617.00
BOARD OF RECREATI	6-26	433.98	0.00	433.98	0.00	0.00	433.98
Year Total:		2,195,794.09	0.00	2,195,794.09	0.00	0.00	2,195,794.09
GENERAL CAPITAL	C-04	107,159.81	0.00	107,159.81	0.00	0.00	107,159.81
WATER CAPITAL	W-06	108,568.25	0.00	108,568.25	0.00	0.00	108,568.25
Total Of All Funds:		<del>2,411,522.15</del> 2,461,938.77	0.00	2,411,522.15	0.00	0.00	2,411,522.15

## **RIGHTS-OF-WAY USE AGREEMENT**

THIS RIGHTS-OF-WAY USE AGREEMENT ("Use Agreement") is dated \_\_\_\_\_, 2016 (the "Effective Date"), and entered into by and between the Borough of Sea Girt ("Borough"), a New Jersey Borough corporation, having its address at 321 Baltimore Boulevard, Sea Girt, NJ 08750 and New York SMSA Limited Partnership d/b/a Verizon Wireless ("Verizon Wireless") with offices located at One Verizon Wireless Way, Mail Stop 4AW100, Basking Ridge, NJ 07920, a provider of commercial mobile service subject to regulation by the Federal Communications Commission.

### **RECITALS**

WHEREAS, Verizon Wireless advises that, pursuant to *N.J.S.A. 48:3-18*, the New Jersey Public Utilities Act permits any company (not necessarily public utilities) to jointly use poles that have been lawfully erected in the public right-of-way and also stipulates that if the requesting company is not itself a franchised utility, as is the case with Verizon Wireless, the consent of the municipality is required pursuant to *N.J.S.A. 48:3-19*; and

WHEREAS, pursuant to such authority granted by the New Jersey Public Utilities Act, Verizon Wireless and its successors and assigns may locate, place, attach, install, operate and maintain facilities within Public Rights-of-Way provided there is the consent of the municipality; and

WHEREAS, Verizon Wireless proposes to place its telecommunication facilities aerially on utility poles or in underground conduit in the Public Rights-of-Way within the Borough for the purpose installing small network nodes (antennae), mounted on utility or light poles which

are lawfully erected in public right-of-way.

WHEREAS, it is in the interest of the Borough and its citizenry for the Borough to grant consent to Verizon Wireless to make use of such poles.

WHEREAS, the consent granted herein is for the non-exclusive use of said poles within the Borough for the purpose of installing small network nodes (antennae), mounted on utility or light poles which are lawfully erected in public right-of-way.

NOW, THEREFORE, in consideration of the mutual covenants and obligations hereinafter set forth, the Borough and Verizon Wireless and its successors and assigns hereby agree to and with each other as follows:

**Section 1. Definitions**

- a. "BPU" is the New Jersey Board of Public Utilities.
- b. "Verizon Wireless" is the grantee of rights under this Use Agreement and is known as Verizon Wireless, its successors and assigns.
- c. "Borough" is the grantor of rights under this Use Agreement and is known as the Borough of Sea Girt, State of New Jersey.
- d. "Public Utility" means any public utility defined in N.J.S.A. 48:2-13.
- e. "Public Rights-of-Way" means the space in, upon, above, along, across, over, and through any public land, road, street or highway of the Borough, including lands with public utility facilities as the same now or hereafter may exist, that are under the jurisdiction of the Borough. This term shall not include Borough, state, or federal rights-of-way or any property owned by any person or agency other than the Borough, except as provided by applicable Laws or pursuant to an agreement between the Borough and any such person or agency.
- f. "Utility Pole" means, in addition to its commonly accepted meaning, any wires or cable connected thereto and any replacement thereof which are similar in construction and use

## **Section 2. Grant of Consent.**

The Borough hereby grants Verizon Wireless its Borough consent for the non-exclusive use of the utility poles within the Borough for the purpose installing small network nodes (antennae), mounted on utility or light poles which are lawfully erected in public right-of-way.

## **Section 3. Public Purpose.**

It is deemed to be in the interest of the Borough and its citizenry, particularly including commercial and industrial citizens, for the Borough to grant consent to Verizon Wireless to make use of the utility poles within the Borough for this purpose.

## **Section 4. Scope of Use Agreement.**

Any and all rights expressly granted to Verizon Wireless under this Use Agreement, which shall be exercised at Verizon Wireless's sole cost and expense, shall be subject to the prior and continuing right of the Borough under applicable laws to use any and all parts of the utility poles exclusively or concurrently with any other person or persons, and shall be further subject to all deeds, easements, dedications, conditions, covenants, restrictions, encumbrances, and claims of title of record which may affect such utility poles and such Public Rights-Of-Way. Nothing in this Use Agreement shall be deemed to grant, convey, create or vest in Verizon Wireless a real property interest in land, including any fee, leasehold interest, easement, or any other form of interest or ownership.

The Borough hereby authorizes and permits Verizon Wireless to enter upon the Public Rights-of-Way and to attach, install, operate, maintain, remove, reattach, reinstall, relocate and replace small network nodes (antennae), in or on Utility Poles owned by public utility companies, or others, by Verizon Wireless located within the Public Rights-of-Way as may be permitted by the property owner, as the case may be.

Verizon Wireless agrees that, prior to exercising any of its rights under this Agreement, it will notify the Borough seven (7) days in advance as to the exact location and specificity as to the services to be performed at such location in advance of providing such services and obtain Borough approval from the Borough Administrator prior to commencing such activity.

Verizon Wireless agrees that any underground conduits to be accessed by it pursuant to the terms of this Agreement shall be returned to its original condition and such restoration shall be subject to approval by the Borough Engineer, which approval shall not be unreasonably withheld.

Verizon Wireless shall be required, at its own expense, to obtain all necessary permits and approvals as required by applicable law and regulations.

Verizon Wireless shall comply with any and all applicable safety requirements related to the services it will provide.

Verizon Wireless shall be responsible for the cost of and the repair of any damage to any real property or personal property occurring as a result of its performing its services pursuant to this Agreement.

Verizon Wireless shall provide the Borough with five (5) day notice prior to commencing construction of any node, and notice of construction completion with "as-built" plans submitted to the Borough Engineer within five (5) days of completion.

Verizon Wireless agrees that in the event that a street closure or traffic control services are required by the Borough Police or any other activity of Verizon Wireless that requires the services of any Borough personnel or professional staff, including but not limited to attorney services, then in that event Verizon Wireless shall be responsible to pay the Borough fees for the actual services provided by the Borough.

Verizon Wireless acknowledges that the Borough may require Verizon Wireless to relocate one (1) or more of its equipment installations. Verizon Wireless, shall at the Borough's direction, relocate such equipment at Verizon Wireless's sole cost and expense, whenever the Borough reasonably determines that the relocation is needed for any of the following purposes: (a) if required for the construction, completion, repair, relocation or maintenance of a Borough project; (b) the equipment is interfering with or it adversely affecting proper operation of the light poles; or (c) to protect or preserve the public health or safety. If Verizon Wireless shall fail to relocate any equipment as requested by the Borough within thirty (30) days after receiving notice, the Borough shall be entitled to relocate the equipment at Verizon Wireless's sole cost and expense without further notification to Verizon Wireless except in the event of an emergency, in which case the equipment must be relocated immediately.

#### **Section 5. Compliance with Ordinance**

Verizon Wireless shall comply with all applicable existing ordinances of the Borough as may be amended from time to time and with all future ordinances as may be enacted to the extent such ordinances are consistent with state and federal law.

#### **Section 6. Duration of Consent**

The non-exclusive Borough consent granted herein shall expire ~~twenty-seven (7)~~(20) years from the Effective Date of this Use Agreement. The parties hereto may, at the end of such term, agree to extend this Agreement for two (2) additional ~~five~~ seven (5 7 year periods provided that seven (5 (7) year additional term is approved by separate resolution of the Borough.

#### **Section 7. Indemnification**

Verizon Wireless, its successors, assigns, sub-contractors, agents, servants, officers, em-



employees, designees, guests and invitees, hereby indemnify, defend and hold harmless the Borough, its successors and assigns, elected officials, officers, employees, servants, contractors, designees and invitees from and against any and all personal injury and property damage claims, demands, suits, actions at law or equity or otherwise, judgments, arbitration determinations, damages, liabilities, decrees of any person(s) or entities claiming to be or being harmed as a result of Verizon Wireless actions under this Use Agreement and costs in connection therewith except to the extent attributable to the acts or omissions of the Borough, its agents, employees or independent contractors. This indemnification shall specifically include, but not be limited to, any and all costs, reasonable attorneys' fees, expert fees, court costs and any other expenses that may be incurred by the Borough in connection with any and all claims, demands, suits, actions at law or equity or otherwise and/or arbitration proceedings which may arise in connection with Verizon Wireless activities pursuant to the rights granted in this Use Agreement.

#### **Section 8: Notices**

All notices or other correspondence required or permitted to be given in connection with this Use Agreement shall be in writing and delivered personally, by telecopy, by overnight carrier service or by registered or certified mail to the parties at the following addresses:

To Verizon Wireless at:                      Verizon Wireless,  
New York SMSA Limited Partnership  
d/b/a Verizon Wireless  
180 Washington Valley Road, Bedminster, NJ 07921  
Attention Network – Real Estate

To the Borough at:                              The Borough of Sea Girt  
321 Baltimore Boulevard  
Sea Girt, NJ 08750  
Attn: Borough Clerk and Business Administrator

## **Section 9. Liability Insurance**

Verizon Wireless shall at all times maintain a commercial general liability insurance policy with a combined single amount of at least Five Million Dollars (\$5,000,000.00) covering liability for bodily injury (including death), and property damage arising out of the construction and operation contemplated herein, including personal and advertising injury. Said policies of insurance shall indicate that the Borough is included as an additional insured as their interests may appear under this agreement and that such insurance is primary and non-contributory.

Prior to the commencement of any work pursuant to this Use Agreement, Verizon Wireless shall file with the Borough Certificates of Insurance with blanket additional insured endorsement evidencing the coverage provided by said general liability policies. Said insurance shall be reviewed and reasonably approved by Borough Clerk and Business Administrator prior to Verizon Wireless exercising any of its rights pursuant to this Agreement.

The Borough shall notify Verizon Wireless within thirty (30) days after the presentation of any claim or demand to the Borough, either by suit or otherwise, made against the Borough on account of any of Verizon Wireless or its sub-contractors, agents, employees, officers, servants, designees, guests and invitees, activities pursuant to the rights granted in this Use Agreement.

## **Section 10. Assignment.**

Verizon Wireless may not assign this Use Agreement without the written consent of the Borough, which consent shall not be unreasonably withheld or delayed, except that this Use Agreement may be assigned by Verizon Wireless to its principal, affiliates, subsidiaries or any entity which acquires all or substantially all of assets in the market defined by the FCC in which the Borough is located without any consent from the Borough. In the event of such assignment, Verizon Wireless shall continue to be liable for any and all of its actions or the

actions of its assigns under this Use Agreement.

**Section 11. Successors and Assigns.**

The terms and conditions herein contained shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto.

**Section 12. Governing Law.**

This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of New Jersey. In the event of litigation, venue shall be laid in Monmouth County, New Jersey.

**Section 13. Incorporation of Prior Agreements.**

This Agreement contains the entire understanding of the parties hereto with respect to the subject matter hereof, and no prior other written or oral agreement or undertaking pertaining to any such matter shall be effective for any purpose.

**Section 14. Modification of Agreement.**

This Agreement may not be amended or modified, nor may any obligation hereunder be waived orally, and no such amendment, modification or waiver shall be effective for any purpose unless it is in writing and signed by the party against whom enforcement thereof is sought.

**Section 15. Invalidity.**

If any provision hereof shall be declared invalid by any court or in any administrative proceedings, then the provisions of this Agreement shall be construed in such manner so as to preserve the validity hereof and the substance of the transaction herein contemplated to the extent possible. The headings are provided for purposes of convenience of reference only and are not intended to limit, define the scope of or aid in interpretation of any of the provisions hereof.

#### **Section 16. Counterparts.**

This Agreement may be executed and delivered in several counterparts, each of which, when so executed and delivered, shall constitute an original, fully enforceable counterpart for all purposes.

#### **Section 17. Security and Performance Bonds.**

Verizon Wireless shall post a Five (\$5,000) cash bond as security for reimbursement to the Borough for the services of its in-house and professional staff within twenty days of the date of adoption of the Resolution approving such Agreement. Any funds remaining after the payments to the Borough, its staff and/or professionals, shall be refunded to Verizon Wireless within ninety (90) days after final payments are issued.

Verizon Wireless shall also provide the Borough, at least sixty (60) days before the commencement of any activity pursuant to this Agreement a performance bond in the amount of Five Thousand Dollars (\$5,000.00) to ensure faithful performance of its services pursuant to this Agreement. The cost of said bond shall be at the sole expense of Verizon Wireless. The bond shall remain in place for the duration of this Agreement and any extended periods granted by consent of the parties. Said bond shall be released only upon a resolution of the Borough after receipt of confirmation that said bond should be released from the Borough Engineer.

#### **Section 18. Independent Contractor.**

Verizon Wireless is and will perform its Services as an independent contractor. Nothing in this Agreement shall be construed so as to render Verizon Wireless an employee, agent, representative, joint venturer or partner of the Borough, and Verizon Wireless shall not hold itself out to others in such capacity. Verizon Wireless shall not enter into any contracts, agreements or other obligations with any other parties which bind, or are intended to bind, the Borough. Veri-

zon Wireless shall have no authority to bind the Borough to contracts or to incur any other obligations on behalf of the Borough, and any such contracts or obligations entered into or incurred by Verizon Wireless shall be void.

**Section 19. Confidentiality.**

During the course of this Agreement, each party may be given access to proprietary or confidential information of the other, including, but not limited to, business policies and systems which is marked as confidential or proprietary ("Confidential Information"). Each party shall hold Confidential Information of the other party in confidence, treating such Confidential Information with no less care than it treats its own, and shall not disclose such Confidential Information to any third party or use such Confidential Information for any purpose other than as contemplated by this Agreement. Upon termination of this Agreement, or sooner if requested by either party, each party shall return all Confidential Information of the other party in its possession, without retaining copies of such Confidential Information. This section shall not apply to information that (i) is in the public domain, (ii) is required to be disclosed by law or legal process, (iii) is independently developed by or on behalf of the receiving party without any use of Confidential Information of the disclosing party, (iv) was acquired by a party from other than the other party prior to the time of its disclosure by the disclosing party as shown by files of the receiving party in existence at the time of disclosure, and at a time when the receiving party was under no obligation to the disclosing party to keep such information confidential, or (v) is received by a party from a third party under no obligation to keep such information confidential.

**Section 20. Default/Termination.**

In the event either party defaults in the performance of any of its covenants or obligations

hereunder and such default continues for a period of sixty (60) days after written notice thereof from the non-defaulting party (unless the nature of the event takes longer to cure and the defaulting party commences a cure within the time period and diligently pursues it thereafter), the non-defaulting party may thereafter terminate this Agreement by written notice to the defaulting party.

**Section 21.**

Failure of either party to insist upon the strict performance of any of the provisions of this Agreement shall not be construed as a waiver of any subsequent default or breach of the same or similar nature.

IN WITNESS WHEREOF, this Use Agreement has been executed as of the date set forth below.

New York SMSA Limited Partnership  
d/b/a Verizon Wireless  
By Cello Partnership, Its General Partner

\_\_\_\_\_  
Dated: \_\_\_\_\_

Borough of Sea Girt

NAME & TITLE: \_\_\_\_\_  
F. Ken Farrell, Mayor

ATTEST:

\_\_\_\_\_  
LORRAINE P. CARAFA, RMC  
Municipal Clerk

Dated: \_\_\_\_\_