



UNION COUNTY IMPROVEMENT AUTHORITY

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Resolution No. 51-2015

Date: July 8, 2015

**RESOLUTION OF THE UNION COUNTY IMPROVEMENT AUTHORITY
 AUTHORIZING THE EXECUTIVE DIRECTOR AT HIS DISCRETION TO
 EXECUTE A TAKEOVER AGREEMENT WITH FIDELITY AND
 DEPOSIT COMPANY OF MARYLAND AND ZURICH AMERICAN
 INSURANCE COMPANY FOR THE CONSTRUCTION OF THE NEW
 UNION COUNTY FAMILY COURT BUILDING AT CHERRY STREET,
 ELIZABETH, NEW JERSEY.**

APPROVED AS TO FORM:
 Lisa M. da Silva, RMC
 Clerk of the Authority

Lisa M. da Silva

APPROVED AS TO SUFFICIENCY OF FUNDS
 YES NO NONE REQUIRED
 UNION COUNTY IMPROVEMENT AUTHORITY

[Signature]

	PRESENT	ABSENT	AYE	NAY	ABSTAIN	MOTION	SECOND
<i>Bornstad</i>	✓		✓				
<i>D'Elia</i>	✓		✓				✓
<i>Hines</i>		✓					
<i>Hockaday</i>	✓		✓				
<i>Salerno, Secretary</i>	✓		✓				
<i>Tomko, Treasurer</i>		✓					
<i>Vollero</i>		✓					
<i>Rountree, Vice Chair</i>	✓		✓			✓	
<i>Scutari, Chairman</i>	✓		✓				

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ELIZABETH, NEW JERSEY.**

WHEREAS, the Union County Improvement Authority (the "Authority") has been duly created by ordinance of the Union County Board of Chosen Freeholders as a public body corporate and politic of the State of New Jersey pursuant to and in accordance with the County Improvement Authorities Law, constituting Chapter 183 of the Pamphlet Laws of 1960 of the State, as amended and supplemented from time to time (the "Act"); and

WHEREAS, the Authority has entered into a Shared Services Agreement dated November 1, 2011 with the County of Union (the "County"), pursuant to the Uniformed Shared Services and Consolidation Act, N.J.S.A. 40A:65-1, *et seq.*, in which the County has requested that the Authority assist it with the design, financing, management and construction of a new Family Court Building and Parking Deck for the Superior Court, County of Union (the "Project") in Elizabeth, New Jersey, and the Authority has agreed to undertake all actions necessary to implement the Project; and

WHEREAS, in or about February 2013, the Authority published a notice of bids pursuant to New Jersey Local Public Contracts Law, N.J.S.A. 40A:11-1 *et seq.* for the Construction of the Project (the "Project Services"), and on March 13, 2013, it received eleven (11) for the Project Services, all of which were over budget; and

WHEREAS, on June 12, 2013, the Authority awarded a contract (the "Contract") for the construction of the new Union County Family Court Building to APS Contracting Inc. as the lowest responsible bid, exclusive of the deduct alternate, in accordance with N.J.S.A. 40A: 11-1 *et seq.*; and

WHEREAS, APS Contracting Inc. has failed to perform in accordance with the terms and conditions of the Contract documents; and

WHEREAS, APS Contracting Inc.'s failure to perform has jeopardized the timely completion of the Project; and

WHEREAS, the Authority authorized the Executive Director to use his discretion to terminate the Contract with APS Contracting Inc. in accordance with the terms and conditions of the Contract; and

WHEREAS, the Authority authorized the Executive Director to work with the Construction Manager, the Architect and legal counsel to take all actions necessary and convenient to complete the Project as expeditiously as possible; and

WHEREAS, on or about April 30, 2015, the Executive Director terminated the Contract with APS in accordance with terms and conditions of the Contract; and

WHEREAS, in accordance with the Contract, Fidelity and Deposit Company of Maryland and Zurich American Insurance Company ("Surety") issued a Performance/Payment/Warranty Bond, identified as Bond No. PRF8359373, dated June 24, 2013, on behalf of APS in connection with the Project (the "Bond"); and

WHEREAS, the Authority requested that the Surety complete all physical and administrative work relating to the Project in accordance with its obligations under the Bond; and

WHEREAS, the Authority and Surety have negotiated a Takeover Agreement in which Surety shall receive payment in accordance with the terms of the Contract to complete all physical and administrative work relating to the Project.

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of the Authority that:

1. the Executive Director is hereby formally authorized and directed to execute the Takeover Agreement between the Authority and Surety for the completion of the Project, contingent upon the Surety delivering to the Authority a fully executed Takeover Agreement which contains identical language to the Takeover Agreement attached hereto as Exhibit A within five (5) days of July 10, 2015.
2. In absence thereof, the Executive Director is hereby authorized and directed to file any and all necessary complaints with the New Jersey Department of Insurance and or any other appropriate agency.
3. In absence thereof, the Authority's legal counsel is hereby authorized and directed to prepare a complaint against APS Contracting, Inc. and the Surety for all damages in connection with the Project, compensatory and or punitive.
4. this resolution shall take effect immediately.