03-R-0963

A SUBSTITUTE RESOLUTION BY THE PUBLIC SAFETY AND LEGAL ADMINISTRATION COMMITTEE

A RESOLUTION AUTHORIZING [i] THE SETTLEMENT OF A CONSTRUCTION CLAIM AND LAWSUIT BY BALFOUR BEATTY CONSTRUCTION, INC. AGAINST THE CITY OF ATLANTA, FULTON COUNTY, GEORGIA AND THE ATLANTA-FULTON COUNTY WATER RESOURCES COMMISSION RELATING TO PHASE II CONSTRUCTION AT THE NORTH AREA TREATMENT PLANT IN THE TOTAL AMOUNT OF $1.9 MILLION; [ii] THE CITY TO FUND $905,000 OF THE SETTLEMENT AMOUNT PURSUANT TO THE TERMS OF ITS JOINT VENTURE AGREEMENT WITH THE COUNTY; [iii] THE CITY ATTORNEY TO EXECUTE ANY NECESSARY SETTLEMENT AGREEMENT TO EFFECTUATE THE SETTLEMENT; AND [iv] FOR OTHER PURPOSES.

BACKGROUND:

On June 30, 1998, Balfour Beatty Construction, Inc. ("BBCI") filed a Request for Equitable Adjustment ("REA") under a construction contract ("Contract") for Phase II (the "Project") of the North Area Treatment Plant ("Plant") owned and operated by a Joint Venture between the City and the County known as the Atlanta-Fulton County Water Resources Commission ("AFCWRC");

The Project is owned by the AFCWRC and was constructed by Balfour Beatty Construction Inc. (BBCI);

The Project involved the construction of improvements to the Plant to increase capacity from 45 MGD to 90 MGD;

The major elements of the Project included the construction of a new flocculation/settling basin building with associated process equipment, a new filter building with associated process equipment, two new concrete clearwells, new high service pumps and variable frequency drives, new yard piping and underground pipe tunnels, and the installation, coordination, and implementation of a new controls software program to control the entire Plant;

The Project also included significant site work, landscaping and improvements to the existing grounds that include an entry water feature, stream and fountain;

The REA, as later supplemented, sought a total of $14.464 million in additional compensation as a result of, among other things, delays to the Project, differing site conditions, purported scope changes, acceleration, etc.;

Balfour filed a lawsuit against the City, County and AFCWRC, in Fulton Superior Court, seeking payment of the REA;

In November 2001, Balfour, after extensive discovery, decided that the REA, as supplemented, had no merit, abandoned the REA and provided a new claim (the "L&S Claim") that was prepared by Lovett Silverman Construction Consultants, Inc.;

The L&S Claim sought $5.985 million in additional compensation under the Contract;

The AFCWRC hired AW Hutchison & Associates, Inc. ("AWH") to analyze the REA and L&S Claim from a merit and entitlement perspective;

AWH's analysis determined that BBCE was potentially entitled to approximately $1,291,221 in additional compensation under the REA/L&S Claim, after offset of damages owed by BBCI to the AFCWRC;

After several years of litigation and further discovery, the parties, after extensive settlement discussions, have agreed to settle the lawsuit for $1.9 million, based upon, among other things, an analysis of litigation risk, and the consideration that the cost to complete discovery in the case, file dispositive motions and go to trial would far exceed the difference between AWH's recommendation and the $1.9 million settlement amount;

According to the Joint Venture Agreement between the City and the County, they are required to share equally in the settlement, except as to the REAL&S Claim component associated with a stop work order ("DSD Shutdown") issued during the Project because BBCI was allegedly violating soil erosion control laws;

The Joint Venture Agreement provides that the County will pay two-thirds and Atlanta will pay one-third of any claim monies associated with the DSD Shutdown; AWH has valued this claim component at $270,000;

Accordingly, the City is responsible for $90,000 and the County is responsible for $180,000 of this claim component under the Joint Venture Agreement;

Therefore, the City and County have agreed to fund the settlement as follows: [i] City-$905,000; and [ii] County-$995,000;

The City has determined that it is desirable and in its best interests to settle the REA/L&S Claim and the lawsuit and to pay its share of the settlement amount of $905,000;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF ATLANTA, GEORGIA, that the City Attorney is authorized to settle the case of Balfour Beatty Construction, Inc. v. the City of Atlanta, Fulton County, Georgia and the Atlanta-Fulton County Water Resources Commission; Case No. 98CV-2275, Superior Court of Fulton County, Georgia, in the total amount of $1.9 million and to fund its share of that settlement amount of $905,000;

BE IT FURTHER RESOLVED THAT the Chief Financial Officer is authorized to pay to Fulton County, as the Financial Agent for the AFCWRC under the Joint Venture Agreement, a total sum of $905,000 to be paid from Account No. 2J01 529017 Q69J10019999 such that the County may, in turn, issue a check to BBCI in the total amount of $1.9 million, on behalf of the AFCWRC, the City and the County, in exchange for BBCI's execution and delivery to the City, County and AFCWRC of a Settlement Agreement and a filed Notice of Voluntary Dismissal With Prejudice dismissing the lawsuit;

BE IT FURTHER RESOLVED THAT the City Attorney is authorized, on behalf of the City, to execute the Settlement Agreement with BBCI;

BE IT FURTHER RESOLVED THAT the Settlement Agreement will not be binding upon the City and the City will incur no liability under it, as an individual Defendant and a Joint Venturer in Defendant, the AFCWRC, until it has been executed by the Mayor, attested to by the Municipal Clerk, approved by the City Attorney as to form, duly executed by BBCI, the County and the AFCWRC and delivered to the parties.

AMENDMENT FORM

Committee:	CD/HR	Page Number (s)	2
Ordinance I.D. #		Section (s)	2nd Further Be Resolved
Resolution I.D. #	03-R-0889	Paragraph	

That the second BE IT FURTHER RESOLVED be amended as follows:

By deleting the cost center ***Y53P1089A59A*** and inserting in lieu thereof the cost center ***Y46P1089A58A.***

Date: 07/01/03

Initials: _____