

AN ORDINANCE BY

*Doug Alexander v.c.m. Coj*

AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT WITH 5R CONSTRUCTORS, LLC FOR CONTRACT FC-7242-00, FIFTH RUNWAY, FOR THE SUPPLY AND PLACEMENT OF THE EMBANKMENT FOR THE 5<sup>TH</sup> RUNWAY AT HARTSFIELD ATLANTA INTERNATIONAL AIRPORT IN THE AMOUNT OF \$350,000,000.00 AS ESTIMATED UTILIZING UNIT PRICES; WITH A PROVISION FOR A BONUS IN THE AMOUNT OF \$10,000,000.00 TO BE PAID 5R CONSTRUCTORS, LLC, SHOULD IT SUCCEED IN COMPLETING THE EMBANKMENT ON OR BEFORE NOVEMBER 20, 2004 OR WITHIN THIRTY (30) DAYS AFTER COMPLETION OF INTERSTATE 285 STRUCTURE WORK. ALL CONTRACTED WORK TO BE PAID FROM THE FOLLOWING FUND ACCOUNT CENTERS: 2H21 574001 R21E0903AB47 (\$9,998,300.00), 2H21 574001 R21E0506AB48 (\$14,603,182.00), 2H21 574001 R21E05069999 (\$35,398,518.00), 2H27 574001 R21E0903AB47 (\$3,332,766.67), 2H27 574001 R21E0506AB48 (\$4,867,727.33), AND 2H27 574001 R21E050693CG (\$291,799,506); AND FOR OTHER PURPOSES.

**WHEREAS**, the City of Atlanta has undertaken a capital improvement program to facilitate the expansion and improvement of Hartsfield Atlanta International Airport in accordance with the Airport Master Plan; and

**WHEREAS**, as the centerpiece of the Airport Master Plan the 5<sup>th</sup> Runway is critically important to the State of Georgia and to the Nation; and

**WHEREAS**, the Federal Aviation Administration has issued an affirmative Record of Decision approving the extension of the 5<sup>th</sup>, Runway by 3,000 feet to a full length commercial runway of 9,000 feet; and

**WHEREAS**, in early 2000, the City issued a Request For Proposals for the supply and transport of the earth fill material required for a 6,000 foot runway, and received two proposals; and

**WHEREAS**, in early 2000, the City planned to issue a separate Request for Proposals for the placement of the earth fill material required for a 6,000 foot runway; and

**WHEREAS**, the City rejected the proposals for earth fill material supply and transport due to concerns arising from the utilization of a placement contractor different

from the supply and transport contractor, such as increased risk of claims, delays in schedule, and significant cost overruns resulting from having to handle the earth fill material twice; and

**WHEREAS**, the City completed the design for the 6,000 foot Runway in early 2001 and issued a Request for Proposals FC-7242-00, Fifth Runway Site Preparation Phase I for the supply, transport and placement of 14.5 million cubic yards of compacted earth fill material. The City's procurement method and Request for Proposals for Site Preparation Phase I were approved by the Federal Aviation Administration; and

**WHEREAS**, the City planned to issue a separate Request for Proposals for Fifth Runway Site Preparation Phase II for the supply, transport and placement of an additional 8.2 million cubic yards of compacted earth fill material for the site preparation work for construction of the earthen embankment for the 3,000 foot extension of the 5<sup>th</sup> Runway; and

**WHEREAS**, on June 13, 2001, the City received one proposal for Site Preparation Phase I. The proposal was submitted by 5R Construction, LLC; and

**WHEREAS**, 5R Constructors, LLC is a limited liability corporation of the State of Georgia, consisting of C.W. Mathews Contracting Co., Inc., APAC-Georgia, Inc., and Michael Thrasher Trucking Co.; and

**WHEREAS**, the same companies, either as 5R Constructors, LLC or in joint venture with other contractors have over a period of years, as successful low bidders, built a reputation for delivering critical construction projects ahead of schedule and under budget; and

**WHEREAS**, in order to satisfy itself of the fairness of the proposal the City pursuant to a solicitation for FC-1842-00, engaged the services of Odebrecht Construction, Inc., to evaluate the proposal, independently develop an estimate of cost, and assist in the discussions with 5R Constructors, LLC; and

**WHEREAS**, the Airport Use Agreement between the City's Hartsfield Atlanta International Airport and the various Airlines requires approval of all capital expenditures affecting rates and charges which the City may assess, and therefore requires concurrence of the Airlines to proceed with award of the contract for the construction of the 5<sup>th</sup> runway; and

**WHEREAS**, the Airlines independently retained the firm of A.W. Hutchison & Associates, LLC to determine of the fairness of the 5R Constructors, LLC proposal and to provide advice with respect to discussions between and among the City, the Airlines, and 5R Constructors, LLC; and

**WHEREAS**, during the negotiations the City and the Airlines determined that the use of a conveyor allows earth fill material to be transported at a lower price and in quantities that permit the 5<sup>th</sup> Runway to be completed within the scheduled time frame, and minimizing air pollution, noise pollution, roadway deterioration, and traffic impacts. Specifically, A.W. Hutchison & Associates, LLC estimated that delivering the earth fill material from locations too distant to utilize a conveyor system would cost approximately \$67,000,000 more than transport by conveyor from the 5R borrow sources for hauling costs alone for Phases I and II combined. This amount does not include costs related to the delay caused by trucking, such as time related construction costs, lost profits, and dramatic financial losses that would be suffered by the City, the airlines, and the public; and

**WHEREAS**, the City determined that 5R Constructors, LLC controls the only earth fill material borrow source that contains sufficient earth fill material for Phase I or Phase II or both from which a conveyor belt system can reasonably transport earth fill material; and

**WHEREAS**, the conveyor system will be constructed as the first component of Site Preparation Phase I. To require the construction of a second delivery system requires the unnecessary duplication of services. This delivery system duplication would add significant additional costs to Site Preparation Phase II. The same analysis applies to the purchase of the necessary heavy equipment and mobilization expenses. Lastly, contractors proposing to transport the earth fill material by truck will assume much higher costs than a contractor transporting by conveyor, and will require significantly more time to complete the contract. It is estimated by A.W. Hutchison & Associates, LLC that, if the material is transported by dump truck rather than conveyor, the overall project will suffer delays of up to two years; and

**WHEREAS**, all relevant facts show that no other contractor could successfully compete for Phase II against the contractor awarded Phase I, and therefore, the City determined that it is in the City's best interest to negotiate Phase II while it had bargaining power with the potential Phase I contractor. Accordingly, the City negotiated Site Prep Phase II along with Site Prep Phase I.

**WHEREAS**, the site preparation work for construction of the earthen embankment for the full length commercial runway of 9,000 feet, (Site Preparation Phases I and II) will require a total of 27 million cubic yards of uncompacted earth fill material; and

**WHEREAS**, the Executive Committee representative of the Airlines has concurred with the simultaneous award for Site Prep Phases I and II; and

**WHEREAS**, in a letter dated October 1, 2001, the Federal Aviation Administration concurred with the award of Site Prep Phases I and II to 5R Constructors, LLC, finding that the solicitation and subsequent negotiations for earth fill material are consistent with the

requirements of applicable federal regulations. The regulations cited by the Federal Aviation Administration set forth procurement procedures that must be utilized by federal grant recipients, including competitive bidding requirements and exceptions thereto.

**WHEREAS**, Federal, State and City law exempt sole source procurements from competitive bidding requirements. Upon careful review and consideration of the foregoing facts, evaluations, and analysis, and application of the relevant ordinances, state and federal laws the City has determined that, once Site Preparation Phase I is awarded to a contractor, Site Preparation Phase II constitutes a sole source procurement and may be awarded without a competitive process; and

**WHEREAS**, the City having completed an exhaustive review and analysis of the proposal, and concluded discussions with 5R Constructors, LLC, has reached an agreement that is fully supported by the Executive Committee representative of the Airlines, meets the requirements of the Federal Aviation Administration, and permits the 5<sup>th</sup> Runway to be completed in May 2005, at significant cost and time savings to the City; and

**NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF ATLANTA, GEORGIA, that**

Section 1. That the City of Atlanta Purchasing Agent is hereby instructed to declare Site Preparation Phase II a sole source.

Section 2. That the Mayor be and hereby is authorized to accept a best and final proposal from and execute Contract FC 7242-00 with 5R Constructors, LLC, for supply and placement of earthen embankment for the Fifth Runway Site Preparation Phase I and Phase II projects, on behalf of the Department of Aviation, for the amount of \$350,000,000.00, as estimated utilizing unit prices, with a provision for a bonus in the amount of \$10,000,000.00 to be paid to 5R Constructors, LLC, should it succeed in completing the embankment on or before November 20, 2004 or 30 days after completion of I-285 structure work.

Section 3. That the costs to the City not to exceed \$360,000,000 shall be paid from the following accounts:

2H21 574001 R21E0903AB47	\$9,998,300.00
2H21 574001 R21E0506AB48	\$14,603,182.00
2H21 574001 R21E05069999	\$35,398,518.00
2H27 574001 R21E0903AB47	\$3,332,766.67
2H27 574001 R21E0506AB48	\$4,867,727.33
2H27 574001 R21E050693CG	\$291,799,506.00

Section 4. That the City Attorney and is hereby directed to prepare an appropriate contractual agreement and supporting contractual documents for execution by the Mayor.

Section 5. That this agreement shall not become binding on the City and the City shall incur no liability upon same until such contract has been executed by the Mayor or his designee and delivered to the contracting party.

Section 6. That all ordinances or parts thereof that are deemed in conflict herewith are hereby waived.

RCS# 3262  
11/05/01  
7:26 PM

Atlanta City Council

Regular Session

01-O-1663

Agreement with 5R Constructors for  
\$350,000,000; Embankment for 5th Runway  
ADVERSED

YEAS: 15  
NAYS: 0  
ABSTENTIONS: 0  
NOT VOTING: 1  
EXCUSED: 0  
ABSENT 0

Y McCarty	Y Dorsey	Y Moore	Y Thomas
Y Starnes	Y Woolard	Y Martin	Y Emmons
Y Bond	Y Morris	Y Maddox	Y Alexander
Y Winslow	Y Muller	Y Boazman	NV Pitts

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01-O-1663

01-0 -1663

(Do Not Write Above This Line)

AN ORDINANCE BY Raymond C. Canty  
 AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT WITH 5R CONSTRUCTORS, LLC FOR CONTRACT FC-7242-00, FIFTH RUNWAY, FOR THE SUPPLY AND PLACEMENT OF THE EMBANKMENT FOR THE 5<sup>TH</sup> RUNWAY AT HARTSFIELD ATLANTA INTERNATIONAL AIRPORT IN THE AMOUNT OF \$350,000.00 AS ESTIMATED UTILIZING UNIT PRICES; WITH A PROVISION FOR A BONUS IN THE AMOUNT OF \$10,000,000.00 TO BE PAID 5R CONSTRUCTORS, LLC, SHOULD IT SUCCEED IN COMPLETING THE EMBANKMENT ON OR BEFORE NOVEMBER 20, 2004 OR WITHIN THIRTY (30) DAYS AFTER COMPLETION OF INTERSTATE 285 STRUCTURE WORK. ALL CONTRACTED WORK TO BE PAID FROM THE FOLLOWING FUND ACCOUNT CENTERS: 2H21 574001 R21E0903AB47 (\$9,998,300.00), 2H21 574001 R21E0506AB48 (\$14,603,182.00), 2H21 574001 R21E05069999 (\$35,398,518.00), 2H27 574001 R21E0903AB47 (\$3,332,766.67), 2H27 574001 R21E0506AB48 (\$4,867,727.33), AND 2H27 574001 R21E050693CG (\$291,799.506); AND FOR OTHER PURPOSES. As Amended

- CONSENT REFER ADVISED BY CITY COUNCIL NOV 05 2001
- REGULAR REPORT REFER
- ADVERTISE & REFER
- 1st ADOPT 2nd READ & REFER
- PERSONAL PAPER REFER

Date Referred 10/01/01  
 Referred To: Transportation  
 Date Referred  
 Referred To:  
 Date Referred  
 Referred To:

Committee \_\_\_\_\_  
 Date \_\_\_\_\_  
 Chair \_\_\_\_\_  
 Referred to \_\_\_\_\_

Committee TRANSPORTATION  
 Date 10/10/01  
 Chair \_\_\_\_\_  
 Action: \_\_\_\_\_  
 Fav, Adv, Hold (see rev. side) \_\_\_\_\_  
 Other: AS AMENDED  
 Members \_\_\_\_\_

Committee TRANSPORTATION  
 Date 10/31/01  
 Chair Cantey  
 Action: \_\_\_\_\_  
 Fav, Adv, Hold (see rev. side) \_\_\_\_\_  
 Other: \_\_\_\_\_  
 Members \_\_\_\_\_  
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Committee \_\_\_\_\_  
 Date \_\_\_\_\_  
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Committee \_\_\_\_\_  
 Date \_\_\_\_\_  
 Chair \_\_\_\_\_  
 Action: \_\_\_\_\_  
 Fav, Adv, Hold (see rev. side) \_\_\_\_\_  
 Other: \_\_\_\_\_  
 Members \_\_\_\_\_

Committee \_\_\_\_\_  
 Date \_\_\_\_\_  
 Chair \_\_\_\_\_  
 Action: \_\_\_\_\_  
 Fav, Adv, Hold (see rev. side) \_\_\_\_\_  
 Other: \_\_\_\_\_  
 Members \_\_\_\_\_  
 Refer To \_\_\_\_\_

FINAL COUNCIL ACTION  
 2nd  1st & 2nd  3rd  
 Readings  
 Consent  V Vote  RC Vote

CERTIFIED  
 NOV 5 2001  
 ATLANTA CITY COUNCIL PRESIDENT  
Richard A. Parker

CERTIFIED  
 NOV 05 2001  
Frank Daughlin  
 MUNICIPAL CLERK

MAYOR'S ACTION