

**A RESOLUTION BY
COUNCILMEMBER**

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE SETTLEMENT AGREEMENTS WITH: [I] MAYES, SUDDERTH & ETHEREDGE, INC., HARRINGTON, GEORGE & DUNN, P.C. AND CONSTRUCTION DYNAMICS GROUP, INC.; [II] WILLIAMS-RUSSELL AND JOHNSON, INC.; AND [III] JORDAN, JONES & GOULDING, INC./DELON, HAMPTON AND ASSOCIATES, CHARTERED J-V, RESOLVING ALL CLAIMS OF THE CITY AGAINST THESE DESIGNERS AND CONSTRUCTION MANAGERS RELATING TO DESIGN AND CONSTRUCTION MANAGEMENT SERVICES PROVIDED IN CONNECTION WITH CONTRACT NO. FC-5264-92; HEMPHILL PUMP STATION AND CLEARWELL IMPROVEMENTS; AUTHORIZING DEPOSIT OF THE PROCEEDS OF THE SETTLEMENT AGREEMENT INTO FUND ACCOUNT CENTER NUMBER 2J21 469116 B00001; TO RESCIND CONFLICTING RESOLUTIONS; AND FOR OTHER PURPOSES.

WHEREAS, on September 26, 1994, the City entered into Contract No. FC-5264-92 (the "Contract"); Hemphill Pump Station and Clearwell Improvements (the "Project"), with Archer-Western Contractors LTD./Capital City Contracting Co., Inc., a joint venture (the "Contractor"); and

WHEREAS, the Scope of Work under the Contract included the construction of improvements to the City's Hemphill Water Treatment Plant, including a new clearwell with a storage capacity of 15 million gallons, transfer piping, butterfly valves and a new high service pump station; and

WHEREAS, during the construction of the Project, it was determined that the existing butterfly valves on the finished water main, which discharges into the new high service pump station, were inoperable; and

WHEREAS, subsequently, a dispute arose between the City, the Contractor, the design engineers for the Project, Jordan, Jones and Goulding, Inc./Delon Hampton and Associates, Chartered-JV ("JJ&G/DHA"), Williams-Russell and Johnson, Inc. ("WRJ"), and the construction managers for the Project, Mayes, Sudderth & Etheredge, Inc./Harrington, George & Dunn, P.C. and Construction Dynamics Group ("MSE/HGD/CDG"), as to the inoperability of the butterfly valves; and

WHEREAS, based upon an evaluation of the Water Treatment Plant and the various remediation alternatives available to the City, it was determined by the City, and its design consultant, Hartman & Associates, Inc, to replace the existing butterfly valves that failed with new valves, construct valve vaults, weld stiffener rings to the steel pipe used in the system and install the necessary appurtenances; and



WHEREAS, the City and the Contractor agreed to a remediation plan for the Project, based upon Hartman's remediation design proposal, and the Contractor agreed to construct the remediation and participate in the resolution of existing issues concerning the Project; and

WHEREAS, accordingly, the City and the Contractor entered into Change Order No. 3 to the Contract, which provided for the Contractor's construction of the remediation for the Project; and

WHEREAS, the Contractor also agreed to contribute \$3.2 million of its own funds towards payment of the costs of the remediation; and

WHEREAS, the City has asserted certain claims against the designers and construction managers for the Project, concerning the inoperable butterfly valves and the need for the remediation; and

WHEREAS, the City Attorney has undertaken an exhaustive review of the law and the facts related to this contract and believes that it is desirable and in the best interests of the City to execute Settlement Agreements with the designers and construction managers reflecting the terms of the settlements;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF ATLANTA, that the Mayor is authorized to execute, on behalf of the City, Settlement Agreements with Mayes, Sudderth & Etheredge, Inc., Harrington, George & Dunn, P.C., Construction Dynamics Group, Inc., Williams-Russell and Johnson, Inc. and Jordan, Jones & Goulding, Inc./Delon, Hampton And Associates, Chartered J-V in settlement of all claims asserted by the City against these designers and construction managers reflecting the following settlement terms:

1. MSE/HGD/CDG shall pay or cause to be paid to the City the sum of Four Hundred Fifty Thousand Dollars (\$450,000.00) within twenty (20) days of the City's approval and execution of the Settlement Agreement.
2. WRJ shall pay or cause to be paid to the City the sum of Five Hundred Thousand Dollars (\$500,000.00) within twenty (20) days of the City's approval and execution of the Settlement Agreement.
3. JJ&G/DHA shall pay or cause to be paid to the City the total sum of One Million Eight Hundred Thousand Dollars (\$1,800,000), as follows:
 - a. The sum of Seven Hundred Thousand Dollars (\$700,000) within twenty (20) days of the City's approval and execution of the Settlement Agreement;
 - b. The sum of Two Hundred Twenty Thousand Dollars (\$220,000) on August 1, 2002;
 - c. The sum of Two Hundred Sixty Thousand Dollars (\$260,000) on August 1, 2003;

- d. The sum of Three Hundred Thousand Dollars (\$300,000) on August 1, 2004; and
- e. The sum of Three Hundred Twenty Thousand Dollars (\$320,000) on August 1, 2005;

said sums to be paid to and deposited in Fund Account Center Number 2J21 469116 B00001.

BE IT FURTHER RESOLVED that the City Attorney is directed to prepare and finalize the Settlement Agreements with the designers and construction managers for execution by the Mayor, to be approved as to form by the City Attorney.

BE IT FURTHER RESOLVED that the Settlement Agreements will not become binding upon the City, and the City will incur no liability under them, until each has been executed by the Mayor, attested to by the Municipal Clerk, executed and attested to by respective designers and construction managers and delivered to them.

BE IT FINALLY RESOLVED, that all resolutions in conflict herewith are hereby rescinded.

Revised 11/5/01 3:21:15 PM

A true copy,

Thonda Daughin Johnson
Municipal Clerk, CMC

ADOPTED by the Council
APPROVED by the Mayor

NOV 19, 2001
NOV 27, 2001

RCS# 3305
11/19/01
5:35 PM

Atlanta City Council

Regular Session

01-R-1903

Execute settlement agreements for
Hemphill Pump Station & Clearwell
ADOPT

YEAS: 8
NAYS: 2
ABSTENTIONS: 0
NOT VOTING: 3
EXCUSED: 0
ABSENT 3

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

01-R-1903

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(Do Not Write Above This Line)

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APPROVED BY:
SUSAN PEASE LANGFORD,
CITY ATTORNEY

ABORTED BY
NOV 19 2001

COUNCIL

- CONSENT REFER
- REGULAR REPORT REFER
- ADVERTISE & REFER
- 1st ADOPT 2nd READ & REFER
- PERSONAL PAPER REFER

Date Referred 11/5/01

Referred To: Public Safety & LA

Date Referred 11/19/01

Referred To:

Date Referred

Referred To:

First Reading

Committee _____
Date _____
Chair *C. I. Mandy*
Referred to _____

Committee *Public Safety*
Date *19 NOV 01*
Chair *McGuffin*
Action: *Fav. Adv, Hold (see rev. side)*
Other: _____
Members *[Signature]*
Refer To _____

Committee _____
Date _____
Chair _____
Action: _____
Other: _____
Members _____
Refer To _____

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

CERTIFIED

CERTIFIED
NOV 19 2001
[Signature]
COUNCIL PRESIDENT PROTREM

CERTIFIED
NOV 19 2001
[Signature]
MUNICIPAL CLERK

MAYOR'S ACTION

APPROVED
NOV 23 2001
[Signature]
MAYOR