

CITY COUNCIL  
ATLANTA, GEORGIA

A RESOLUTION

03-R-2165

BY THE PUBLIC SAFETY COMMITTEE

**A RESOLUTION AUTHORIZING THE FULL AND COMPLETE SETTLEMENT OF ALL CLAIMS OF AMERICAN FOOD MANAGEMENT, INCORPORATED, IN THE CASE OF AMERICAN FOOD MANAGEMENT INC. VS. CITY OF ATLANTA ET. AL, CIVIL ACTION NUMBER: 2002-CV-62403, FILED IN THE FULTON COUNTY SUPERIOR COURT; TO AWARD CATERING AND CONCESSIONS CONTRACT TO AMERICAN FOOD MANAGEMENT, INC. FOR A PERIOD OF THREE YEARS WITH TWO ONE YEAR EXTENSION OPTIONS; AND FOR OTHER PURPOSES.**

**WHEREAS**, on December 4, 2002 , the Plaintiff, American Food Management, Inc. (“AFM”) filed a Petition for Interlocutory and Permanent Injunction, Petition for Mandamus, and Complaint for Attorneys Fees and Expenses of Litigation in the Fulton County Superior Court, case number 2002-cv-62403 (the “Suit”); and

**WHEREAS**, the Suit was filed against the City of Atlanta (the “City”), Karl McCray in his official capacity as Acting Commissioner of the Department of Parks and Recreation, Felicia Strong Whitaker, in her official capacity as the Director of the Bureau of Purchasing and Real Estate, John Doe No. 1 Evaluator from the Department of Parks and Recreation, and John Doe No. 2 Evaluator from the Office of Contract Compliance. The Suit alleged that the Defendants arbitrarily and capriciously scored proposals submitted in response to a Request for Proposals for Catering and Concession Services at the Boisfeuillet Jones Atlanta Civic Center, FC-7436-02 (the “RFP”); and

**WHEREAS**, on January 6, 2003, Defendants filed a Memorandum in Opposition to Plaintiff’s Motion for Interlocutory Injunction, Permanent Injunction, Petition for Mandamus and Attorneys Fees; and

**WHEREAS**, on June 10, 2003 the Court conducted a bench trial on the merits of the Suit at which the Court received testimony from witnesses for both parties, reviewed a number of documents, and heard oral arguments from counsel; and

**WHEREAS**, the Court ruled that the actions of the City and the other Defendants were arbitrary, capricious and unreasonable; and

**WHEREAS**, the Court further ruled that the City was permanently restrained and enjoined from awarding the contract for Catering and Concession Services at the Boisfeuillet Jones Atlanta Civic Center to any entity other than AFM, and that AFM was entitled to injunctive relief; and

**WHEREAS**, after the June 10, 2003 hearing, but prior to the Court's issuing a Final Order including Finding of Facts and Conclusions of Law, the parties entered into settlement negotiations; and

**WHEREAS**, AFM has agreed to dismiss all of the claims set forth in the Suit, including but not limited to its claim for over \$100,000 of attorneys' fees, in exchange for being awarded the contract for Catering and Concession Services at the Boisfeuillet Jones Atlanta Civic Center, pursuant to the terms set forth in the RFP and other terms detailed below; and

**WHEREAS**, by this settlement, the City would admit no liability or wrongdoing; and

**WHEREAS**, the Department of Parks, Recreation and Cultural Affairs supports this settlement; and

**WHEREAS**, the Department of Law has advised that it is in the City's best interest to enter this settlement, and therefore recommends the same.

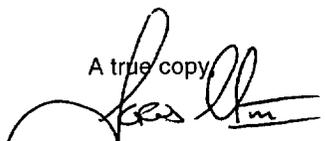
**NOW THEREFORE, IT IS RESOLVED BY THE COUNCIL OF THE CITY OF ATLANTA, GEORGIA** as follows:

**Section 1:** The Mayor be and is hereby authorized to enter into an appropriate contractual agreement, on behalf of the City, with American Food Management, Inc., for FC-7436-02, Catering and Concession Services at the Boisfeuillet Jones Atlanta Civic Center, (the "Contract"), where said Contract shall include the provisions contained in Section 2 below. The Director of the Department of Procurement be and is hereby directed to prepare the Contract for execution by the Mayor, to be approved as to form by the City Attorney.



**Section 2:** The City Attorney be and is hereby authorized to enter an agreement, on behalf of the City and all other Defendants in the Suit, to settle all claims set forth in the Suit, pursuant to the following terms:

- A. The Contract shall be awarded to AFM.
- B. The City and AFM shall be bound by the terms of the RFP, except where the terms listed below conflict with the RFP, in which case the City and AFM shall be bound by the terms listed below.
- C. Consistent with the terms of the RFP, the Contract shall last for three years with two one-year options for renewal by mutual agreement of the parties.
- D. The contract will become effective on January 1, 2004.
- E. The Contract will provide AFM with the exclusive right to sell merchandise at the Boisfeuillet Jones Atlanta Civic Center.
- F. The Contract will provide that AFM is the sole concessionaire and will hold the liquor license for the Boisfeuillet Jones Atlanta Civic Center.
- G. AFM will adhere to the same financial terms and conditions during the term of the Contract as proposed by AFM in its proposal in response to the RFP, which include among other things, a minimum guaranteed annual rent of \$36,000.000, 15% of revenue generated from catering sales, 25% of all merchandise income per month up to \$15,000.00 and 35% of all merchandise income per month above \$15,000.000.
- H. The Contract will allow the City to offer prospective clients the ability to chose among four approved caterers in addition to the preferred caterer, AFM.
- I. The City shall not pay any damages to AFM.
- J. AFM will waive its claims for attorneys fees, punitive damages and expenses of litigation.
- K. AFM will dismiss the Suit in its entirety with prejudice.

A true copy  
  
Deputy Clerk

**ADOPTED** by the City Council  
**APPROVED** by the Mayor

December 1, 2003  
December 9, 2003

RCS# 5190  
12/01/03  
5:15 PM

Atlanta City Council

Regular Session

CONSENT I

CONSENT I EXCEPT: 1698,1851,1852,1881,  
1309,2087,1719,1845,2164,  
ADOPT

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

Y Smith	Y Archibong	Y Moore	Y Mitchell
Y Starnes	Y Fauver	Y Martin	Y Norwood
Y Young	Y Shook	Y Maddox	Y Willis
Y Winslow	Y Muller	Y Boazman	NV Woolard

CONSENT I

			12-01-03 Council Meeting
ITEMS ADOPTED ON CONSENT	ITEMS ADOPTED ON CONSENT	ITEMS ADVERSED ON CONSENT	ITEMS ADVERSED ON CONSENT
1. 03-O-1875	42. 03-R-1830	81. 03-R-2030	122. 03-R-2071
2. 03-O-1876	43. 03-R-1849	82. 03-R-2031	123. 03-R-2072
3. 03-O-1965	44. 03-R-2120	83. 03-R-2032	124. 03-R-2073
4. 03-O-2153	45. 03-R-2121	84. 03-R-2033	125. 03-R-2074
5. 03-O-1376	46. 03-R-2122	85. 03-R-2034	126. 03-R-2075
6. 03-O-1963	47. 03-R-2125	86. 03-R-2035	127. 03-R-2076
7. 03-O-1841	48. 03-R-2160	87. 03-R-2036	128. 03-R-2077
8. 03-O-1377	49. 03-R-2000	88. 03-R-2037	129. 03-R-2078
9. 03-O-1837	50. 03-R-2001	89. 03-R-2038	130. 03-R-2079
10. 03-O-1880	51. 03-R-2002	90. 03-R-2039	131. 03-R-2080
11. 03-O-1896	52. 03-R-2003	91. 03-R-2040	132. 03-R-2081
12. 03-O-1897	53. 03-R-2126	92. 03-R-2041	133. 03-R-2082
13. 03-O-1898	54. 03-R-2127	93. 03-R-2042	134. 03-R-2083
14. 03-O-1888	<b>Items Adversed on consent</b>	94. 03-R-2043	135. 03-R-2084
15. 03-O-2108	55. 03-R-2004	95. 03-R-2044	136. 03-R-2085
16. 03-O-2142	56. 03-R-2005	96. 03-R-2045	137. 03-R-2086
17. 03-O-2143	57. 03-R-2006	97. 03-R-2046	138. 03-R-2087
18. 03-O-2144	58. 03-R-2007	98. 03-R-2047	139. 03-R-2088
19. 03-O-1899	59. 03-R-2008	99. 03-R-2048	140. 03-R-2089
20. 03-O-2146	60. 03-R-2009	100. 03-R-2049	141. 03-R-2090
21. 03-R-2110	61. 03-R-2010	101. 03-R-2050	142. 03-R-2091
22. 03-R-2111	62. 03-R-2011	102. 03-R-2051	143. 03-R-2128
23. 03-R-2112	63. 03-R-2012	103. 03-R-2052	144. 03-R-2129
24. 03-R-2113	64. 03-R-2013	104. 03-R-2053	145. 03-R-2130
25. 03-R-2114	65. 03-R-2014	105. 03-R-2054	146. 03-R-2131
26. 03-R-2115	66. 03-R-2015	106. 03-R-2055	147. 03-R-2132
27. 03-R-2116	67. 03-R-2016	107. 03-R-2056	148. 03-R-2133
28. 03-R-2139	68. 03-R-2017	108. 03-R-2057	
29. 03-R-2140	69. 03-R-2018	109. 03-R-2058	
30. 03-R-2154	70. 03-R-2019	110. 03-R-2059	
31. 03-R-2166	71. 03-R-2020	111. 03-R-2060	
32. 03-R-2117	72. 03-R-2021	112. 03-R-2061	
33. 03-R-2158	73. 03-R-2022	113. 03-R-2062	
34. 03-R-2156	74. 03-R-2023	114. 03-R-2063	
35. 03-R-2165	75. 03-R-2024	115. 03-R-2064	
36. 03-R-2118	76. 03-R-2025	116. 03-R-2065	
37. 03-R-2119	77. 03-R-2026	117. 03-R-2066	
38. 03-R-2124	78. 03-R-2027	118. 03-R-2067	
39. 03-R-2150	79. 03-R-2028	119. 03-R-2068	
40. 03-R-2152	80. 03-R-2029	120. 03-R-2069	
41. 03-R-2159		121. 03-R-2070	

03-R-2165  
 (Do Not Write Above This Line)

A RESOLUTION

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Jerry DeLoach  
 Deputy City Attorney

ADOPTED BY  
 DEC 0 1 2003  
 COUNCIL

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

Date Referred  
 Referred To:  
 Date Referred  
 Referred To:  
 Date Referred  
 Referred To:  
 Referred To:

First Reading

Committee \_\_\_\_\_  
 Date \_\_\_\_\_  
 Chair \_\_\_\_\_  
 Referred To \_\_\_\_\_

PSLA Committee

11/24/03  
 Chair

Action  
 Fav, Adv, Hold (see rev. side)  
 Other

Members

E. J. Martin

Refer To

Committee

Date

Chair

Action  
 Fav, Adv, Hold (see rev. side)  
 Other

Members

Refer To

Committee

Date

Chair

Action  
 Fav, Adv, Hold (see rev. side)  
 Other

Members

Refer To

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

DEC 0 1 2003

ATLANTA CITY COUNCIL PRESIDENT  
 Robert W. Henderson

DEC 0 1 2003

MAYOR'S ACTION

DEC 0 9 2003

MAYOR