

A RESOLUTION

05-R-_____

BY THE PUBLIC SAFETY AND LEGAL ADMINISTRATION COMMITTEE

A RESOLUTION AUTHORIZING THE SETTLEMENT OF ALL CLAIMS OF THE CITY OF ATLANTA AGAINST TENSAR EARTH TECHNOLOGIES, INC. AND THE TENSAR CORPORATION IN THE CASE OF CITY OF ATLANTA V. TENSAR EARTH TECHNOLOGIES, INC., ET AL., IN THE SUPERIOR COURT OF FULTON COUNTY STATE OF GEORGIA, CIVIL ACTION FILE NO. E-27267, IN THE AMOUNT OF \$300,000.00; AUTHORIZING SAID PAYMENT TO BE PAID TO FUND 2J01(WATER AND WASTE WATER REVENUE FUND) 469101 (RECOVERY OF ERRONEOUS PAYMENTS) B00001 (REVENUE CENTER); AUTHORIZING THE CHIEF FINANCIAL OFFICER TO ACCEPT THE SETTLEMENT AMOUNT; AND FOR OTHER PURPOSES.

WHEREAS, *City of Atlanta v. Tensar Earth Technologies, Inc. et al.*, is a case that arose from a wrongful death action filed by the estate of Viktorya Vaynshteyn, and her husband and child against Tensar Earth Technologies, Inc., its parent company, The Tensar Corporation (collectively Tensar Companies), the City of Atlanta (City), and several other defendants; and

WHEREAS, all defendants except the Tensar Companies settled with the Vaynshteyn estate and her husband and child; and

WHEREAS, in 1996, a trial was held on the estate's claims against the Tensar Companies and on a cross-claim asserted by the City against the Tensar Companies for contribution and a jury found in favor of the Tensar Companies, but the court granted a new trial; and

WHEREAS, subsequent to the 1996 trial, the City settled with the estate, and in 1997, the case proceeded on the City's contribution claim against the Tensar Companies; and



WHEREAS, in the 1997 case, the City asserted that the Tensar Companies were liable to the estate under theories of negligence and products liability and the case survived summary judgment and went to trial; and

WHEREAS, in the 1997 case, a jury found in favor of the City, and the trial court entered judgment on the jury's verdict and then calculated an award for the City; and

WHEREAS, the City appealed the award and the Tensar Companies appealed the verdict and award; and

WHEREAS, the Court of Appeals heard the appeal and, in April 2004, reversed the judgment entered upon the jury's verdict, vacated the City's award, and remanded the case back to the trial court for a new trial; and

WHEREAS, the Court of Appeals reasoned that the trial court failed to allow the Tensar Companies to put forth evidence of its alleged intervening cause defense; and

WHEREAS, the City and the Tensar Companies participated in a court-ordered mediation on March 8, 2005; and

WHEREAS, the Tensar Companies agreed to pay \$300,000.00 in full settlement of all the City's claims against it; and

WHEREAS, the City Attorney has engaged in extensive review of the facts and the law and has determined that the monies needed to continue to assert its contribution claim in court and the potential financial loss should the Tensar Companies obtain a defense verdict is in excess of the settlement amount; and

WHEREAS, the settlement of the case of *City of Atlanta v. the Tensar Earth Technologies, Inc. et al.* shall not be deemed to be an admission of liability or wrongdoing on the part of the City of Atlanta, or any current or former employee or agent of the City of Atlanta; and

WHEREAS, the City Attorney considers it to be in the best interest of the City to accept the amount of \$300,000.00 to settle all claims with the Tensar Companies.



THE COUNCIL OF THE CITY OF ATLANTA, GEORGIA hereby ordains as follows:

SECTION 1. The City Attorney is hereby authorized to settle the case of *City of Atlanta v. the Tensar Earth Technologies, Inc., et al.* in the amount of Three Hundred Thousand Dollars (\$300,000.00).

SECTION 2. Said payment is to be paid to Fund 2J01 (Water and Waste Water Fund) 469101 (Recovery of Erroneous Payments) B00001 (Revenue Center). Payment shall be in the form of a check in the amount of \$300,000.00, payable to the City of Atlanta. Such payment shall be in full consideration of the dismissal of all claims against the Tensar Companies.

A true copy,


Municipal Clerk

ADOPTED by the City Council
APPROVED by the Mayor

March 21, 2005
March 25, 2005

RCS# 6559
3/21/05
2:26 PM

Atlanta City Council

Regular Session

CONSENT I

CONSENT I PG 4-16 EXCEPT
05-R-0499 04-O-2111
ADOPT

YEAS: 13
NAYS: 0
ABSTENTIONS: 0
NOT VOTING: 1
EXCUSED: 0
ABSENT 2

Y Smith	Y Archibong	Y Moore	Y Mitchell
Y Starnes	Y Fauver	B Martin	Y Norwood
Y Young	Y Shook	Y Maddox	Y Willis
Y Winslow	Y Muller	B Sheperd	NV Borders

CONSENT I

(Do **05** write Above **0524** line)

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Date Referred
 Referred To: **ADOPTED BY**
 Date Referred **MAR 21 2005**
 Referred To: **COUNCIL**
 Date Referred
 Referred To:

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

First Reading
 Committee _____
 Date _____
 Chair _____
 Referred To _____

PSLA Committee
 Date **3/15/05**
 Chair *[Signature]*
 Action
 Fav, Adv, Hold (see rev. side)
 Other
 Members
[Signature]
 Refer To

Committee _____
 Date _____
 Chair _____
 Action
 Fav, Adv, Hold (see rev. side)
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Committee _____
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 Chair _____
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 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
 Consent V Vote RC Vote

CERTIFIED
 MAR 21 2005

CERTIFIED
 MAR 21 2005

MAYOR'S ACTION

[Signature]