

**A SUBSTITUTE ORDINANCE
BY FINANCE EXECUTIVE COMMITTEE**

07-O-2524

AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO AMENDMENT NO. 2 TO CONTRACT FC-7646-03, WEST AREA CSO STORAGE TUNNEL AND PUMPING STATION WITH ATLANTA CSO CONSTRUCTORS, JOINT VENTURE ON BEHALF OF THE DEPARTMENT OF WATERSHED MANAGEMENT TO PROVIDE FOR ADDITIONAL TIME FOR COMPLETION OF THE PROJECT; AND FOR OTHER PURPOSES.

WHEREAS, the City of Atlanta ("City") Department of Watershed Management entered into an agreement with Atlanta CSO Constructors, Joint Venture on June 1, 2004 for FC-7646-03 ("Agreement") for the construction of the West Area CSO Tunnel, including among other things, a storage and conveyance system, consisting of approximately 44,700 linear feet of excavated tunnel via a tunnel boring machine (TBM), 24 feet in diameter, three flow intake shaft structures, four 35" diameter construction shafts, 85 million gallons per day (MGD) submersible type pump station and emergency overflow tunnel, shaft and open channel (the "West Area CSO Tunnel Project"); and

WHEREAS, the West Area CSO Tunnel Project is required, pursuant to the Combined Sewer Overflow ("CSO") Consent Decree, Civil Action File No. 1:95-CV-2550-TWT, which set an original deadline of November 7, 2007; and

WHEREAS, due to a material failure of the TBM, among other factors, the City requested and was granted an extension to complete the West Area CSO Tunnel Project with a new completion deadline of November 4, 2008, pursuant to a letter from the U.S. Environmental Protection Agency, dated July 5, 2007; and

WHEREAS, in light of the time extension granted by the Consent Decree parties for the completion of the West Area CSO Tunnel Project, the Commissioner of the Department of Watershed Management and the Chief Procurement Officer recommend Amendment No. 2 to Contract FC-7646-03 to extend the time to complete the work required under the Agreement.

THE CITY COUNCIL OF THE CITY OF ATLANTA, GEORGIA, HEREBY ORDAINS as follows:

Section 1.

That the Mayor is hereby authorized to enter into Amendment No. 2 to Contract FC-7646-03, West Area CSO Storage Tunnel and Pumping Station with Atlanta CSO Constructors, Joint Venture on behalf of the Department of Watershed Management to provide an additional 435 days to complete the West Area CSO Tunnel Project or until such time that the Project is complete in accordance with the Agreement terms.

Section 2. That the term of the Agreement shall be amended, pursuant to Amendment Agreement No. 2, to include an additional 435 days to complete the West Area CSO Tunnel Project or until such time that the Project is completed in accordance with the Agreement terms.

Section 3. This ordinance, nor the Amendment Agreement No. 2, shall not constitute a waiver of the City's rights to access liquidated damages in accordance with the terms and conditions of the Agreement; and furthermore, this Ordinance, nor the Amendment Agreement No. 2, shall entitle the Contractor to additional compensation as a result of the time extension without further appropriate authorization and approval by the City.

Section 4.

That the Chief Procurement Officer, in consultation of the City Attorney, be and is hereby directed to prepare an appropriate contractual agreement for execution by the Mayor.

Section 5.

That the contractual agreement shall not become binding upon the City and the City shall incur no liability upon the same until such agreement has been executed by the Mayor and delivered to the contracting parties.

Section 6.

That all ordinances or parts of ordinances in conflict herewith are hereby waived to the extent of the conflict, specifically including Article X of the Real Estate and Procurement Code to the extent that such applies to this ordinance.

AN ORDINANCE

BY



AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO AMENDMENT AGREEMENT NO. 2 TO CONTRACT FC-7646-03, WEST AREA CSO STORAGE TUNNEL AND PUMPING STATION WITH ATLANTA CSO CONSTRUCTORS, JOINT VENTURE ON BEHALF OF THE DEPARTMENT OF WATERSHED MANAGEMENT TO PROVIDE FOR ADDITIONAL TIME FOR COMPLETION OF THE PROJECT; THAT ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH, SPECIFICALLY INCLUDING ARTICLE X, OF THE PROCUREMENT AND REAL ESTATE AND CODE, ARE HEREBY WAIVED TO THE EXTENT THAT SUCH APPLIES; AND FOR OTHER PURPOSES.

WHEREAS, the City of Atlanta ("City") Department of Watershed Management entered into an agreement with Atlanta CSO Constructors, Joint Venture on June 1, 2004 for FC-7646-03; and

WHEREAS, FC-7646-03, Construction of West Area CSO Storage Tunnel includes construction of the CSO tunnel storage and conveyance system consisting of approximately 44,700 linear feet of tunnel boring machine (TBM) excavated, 24feet in diameter deep rock tunnel, 3 flow intake shaft structures, 4-35 diameter construction shafts, 85 million gallons per day (MGD) submersible type pump station and emergency overflow tunnel, shaft and open channel (the "Project"); and

WHEREAS, the Project is required by the City's Consent Decree with the Georgia Environmental Protection Division, the U.S. Environmental Protection Agency, and the Upper Chattahoochee Riverkeeper; and

WHEREAS, completion of the Project will require an additional period of 435 days or a completion date in accordance with the contract terms; and

WHEREAS, the Commissioner of the Department of Watershed Management and the Chief Procurement Officer recommend Amendment No. 2 to Contract FC-7646-03 to grant an additional 435 days or a completion date in accordance with the contract terms.

THE CITY COUNCIL OF THE CITY OF ATLANTA, GEORGIA, HEREBY ORDAINS as follows:

Section 1.

That the Mayor is hereby authorized to enter into Amendment No. 2 to Contract FC-7646-03, West Area CSO Storage Tunnel and Pumping Station with Atlanta CSO Constructors, Joint Venture on behalf of the Department of Watershed Management to provide an additional 435 days or a completion date in accordance with the contract terms.

Section 2.

That the Chief Procurement Officer is hereby directed to prepare an appropriate Amendment Agreement for execution by the Mayor.

Section 3.

That the Amendment Agreement shall not become binding upon the City and the City shall incur no liability upon the same until such agreement has been executed by the Mayor and delivered to the contracting parties.

Section 4.

That all ordinances or parts of ordinances in conflict herewith, specifically including Article X, Of The Procurement And Real Estate And Code, are hereby waived to the extent that such applies.