



City of Newark

City Hall
920 Broad Street
Newark, New Jersey 07102

Legislation Text

File #: 15-2142, Version: 1

Dept/ Agency: Law

Action: () Ratifying (X) Authorizing () Amending

Purpose: Settlement of Civil Litigation

Docket No.: American Arbitration Case No.: 01-15-0003-4617

Claimant: LVI Demolition Services Inc. f/k/a LVI/Mazzocchi Wrecking Inc.

Claimant's Attorney: Peckar & Abramson, P.C., Alan Winkler, Esq.

Attorney's Address: 70 Grand Avenue, River Edge, New Jersey 07661

Settlement Amount: \$107,267.74

Funding Source: City of Newark, Department of Engineering Budget 2017

Additional Comments:

Payment of Retainage from Contract #19-2007 Demolition of DouglasHarrison Homes, Buildings 1 through 12.

WHEREAS, on or about July 14, 2009, pursuant to Resolution 7R4-a(S), the Municipal Council authorized the award of Contract #19-2007 to LVI/ Mazzocchi Wrecking Inc., now known as LVI Demolition Services, Inc., ("LVI") for the Demolition of the Douglas Harrison Homes, Buildings 1 through 12, (the "Demolition Project") for a total amount not to exceed \$5,494,000.00; and

WHEREAS, pursuant to Contract #19-2007 Article 6.2 and N.J.S.A. 40A:11-16.3, the City deducted and retained a two percent (2%) retainage from all payments to LVI under Contract #19-2007 totaling \$107,267.74; and

WHEREAS, LVI subcontracted with Prime Environmental Services, Inc., 358 Broadway, Newark, New Jersey 07104, ('Prime'), to perform asbestos removal services and removal of garbage on the Demolition Project; and

WHEREAS, work under Contract #19-2007 did not include the removal of garbage from the Demolition Project site; and

WHEREAS, during the course of the work performed under Contract #19-2007, LVI submitted a total of four (4) Change Work Order Requests: two (2) were accepted, one (1) was denied and one (1) for the amount of \$328,252.15 relating to garbage removal from the Demolition Project site, remained unresolved ("Unresolved Change Order Request"); and

WHEREAS, LVI submitted to the City the Unresolved Change Work Order Request on or about November 11, 2010, after Prime allegedly performed the garbage removal; and

WHEREAS, on or about April 15, 2011, Prime filed with the City a Mechanic's Lien against LVI in the amount of \$1,262,004.46 for the services it subcontracted to LVI for Contract #19-2007; and

WHEREAS, pursuant to N.J.S.A. 2A:44-1 et seq., the City was prohibited from releasing payments to LVI on Contract #19-2007(R) pending resolution of Prime's Mechanic's Lien against LVI; and

WHEREAS, on or about May 4, 2011, LVI issued to the City a Discharge of Mechanic's Lien Claim Bond Number SU110597 in accordance with N.J.S.A. 2A:44-130 for the City to release the funds to which Prime's Mechanic's Lien attached; and

WHEREAS, on or about September 27, 2011, the City issued a Stop Work Order to LVI for the Demolition Project, as work under Contract #19-2007 was complete; and

WHEREAS, , the Unresolved Change Work Order Request remained outstanding and pending at the time the Demolition Project under Contract #19-2007 was completed ; and

WHEREAS, the work performed by LVI under Contract #19-2007 was completed to the satisfaction of the Director of the Department of Engineering, and;

WHEREAS, the Parties desire to amicably resolve this matter, and have agreed that it is in the best interests of both Parties to enter into this Settlement Agreement for disbursement of the 2% retainage in the amount of \$107,267.74 ("Settlement Sum") to LVI in total settlement of all claims and issues between the Parties pertaining to Contract #19-2007; and

WHEREAS, as a part of this settlement, LVI waives and will not pursue any action for, or claims arising from or relating to the Unresolved Change Order Request in the amount of \$328,252.15; and

WHEREAS, the Director of the Department of Finance has certified that there are adequate, legally appropriate funds available to pay the Settlement Sum; and

WHEREAS, the Parties have agreed to amicably settle the matter by the lump sum payment by the City of Newark for retainage in the amount of One Hundred Seven Thousand Two Hundred Sixty-Seven Dollars and Seventy-Four Cents (\$107,267.74) ("Settlement Sum"), in exchange for the execution of a Settlement Agreement and General Release as a full and complete settlement of any and all of LVI Demolition Services, Inc. formerly known as LVI/MAZZOCCHI WRECKING INC.'s claims arising from Contract #19-2007, including any and all claims for costs and attorneys' fees; and

WHEREAS, the within Settlement Agreement and General Release neither admits nor should be construed as an admission of liability or violation of law, statute or regulation or a breach of any duty by the City of Newark, its agents, officers and/or employees whatsoever and is entered into to resolve this matter and prevent the incurring of additional costs and fees; and

WHEREAS, LVI Demolition Services, Inc. formerly known as LVI/MAZZOCCHI WRECKING INC. acknowledges and agrees that the operation and effectiveness of the Settlement Agreement and General Release and the payment of the Settlement Sum are contingent upon the approval by the Municipal Council; and

WHEREAS, the City of Newark has determined that it is in the best interest of the taxpayers to avoid the cost, expense, delay and uncertainty of litigation.

NOW, THEREFORE, BE IT RESOLVED BY THE MUNICIPAL COUNCIL OF THE CITY OF NEWARK, NEW JERSEY, THAT:

1. The Corporation Counsel is hereby authorized on behalf of the City of Newark to negotiate and execute a Settlement Agreement and Release and any other documents, sufficient in form and content to the Corporation Counsel, and to take whatever actions are necessary to effectuate the terms of the within resolution and settlement of this matter pursuant to the terms contained in the within Resolution.

2. The Municipal Council of the City of Newark hereby authorizes the payment by check made payable to LVI Demolition Services, Inc. and mailed to LVI Demolition Services, Inc.'s attorneys, Peckar & Abramson, P.C., 70 Grand Avenue, River Edge, New Jersey 07661, in the amount of One Hundred Seven Thousand Two Hundred Sixty-Seven Dollars and Seventy-Four Cents (\$107,267.74) ("Settlement Sum") in consideration of and pursuant to the terms and conditions contained in the Settlement Agreement and release annexed hereto.

3. In exchange for the execution of the Settlement Agreement and General Release by LVI Demolition Services, Inc., acceptable in form to Corporation Counsel, and after passage of this resolution and upon receipt by the Corporation Counsel and the Director of Finance for the City of Newark of any and all other documents deemed necessary, the Director of Finance of the City of Newark is hereby authorized to issue a check made payable to LVI Demolition Services, Inc. in the amount of One Hundred Seven Thousand Two Hundred Sixty-Seven Dollars and Seventy-Four Cents (\$107,267.74).

4. The within settlement and resolution neither admits nor should it be construed as an admission of liability or violation of any law, statute or regulation or a breach of any duty by the City of Newark, its agents, officers and/or employees whatsoever and is entered into based upon recommendations of counsel and to eliminate all risks and future litigation costs.

5. Attached hereto is a Certification of Funds issued by the Director of Finance for the City of Newark, which states that there are available sufficient, legally appropriated funds of One Hundred Seven Thousand Two Hundred Sixty-seven Dollars and Seventy-four Cents (\$107,267.74) for the purpose set forth herein above and which state that the line appropriation of the office budget which shall be charged is the Department of Engineering, Fund: 045, Department ID: 007, Project: 07BS0, Budget Year: B2007, Account# 94710.

6. A fully executed copy of the Settlement Agreement and Release shall be filed in the Office of the City Clerk by the Director of the Department of Engineering.

STATEMENT

This resolution authorizes the Corporation Counsel to enter into a Settlement Agreement and General Release with LVI Demolition Services, Inc. formerly known as LVI/MAZZOCCHI WRECKING INC. to resolve all claims raised in American Arbitration Case No.: 01-15-0003-4617, concerning Contract #19-2007 Demolition of Douglass Harrison Homes, Buildings 1 through 12, in the amount of One Hundred Seven Thousand Two Hundred Sixty-seven Dollars and Seventy-four Cents (\$107,267.74).

