



Legislation Text

File #: 23-1822, Version: 1

Dept/ Agency: Law

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

Purpose: Settlement of Civil Litigation

Docket No.: Not Applicable

Claimant: APS Designs, Inc., 433 West 34th Street, Unit 2G, New York, New York 10001

Claimant's Attorney: Not Applicable

Settlement Amount: \$81,375.00

Funding Source: 2007 Budget/Department of Economic and Housing Development/NW045, Dept. 007, Div/Proj 07A00, Activity: A, Account #94710, Budget Ref: B2007

Additional Information:

This Resolution and Settlement Agreement resolves all outstanding invoices for the costs associated with APS Designs, Inc., providing design services associated with a three dimensional art sculpture at Mulberry Commons Park during the period of November 1, 2022 through April 18, 2023.

WHEREAS, the City of Newark (the "City") desired to commission a public art project for the Mulberry Commons Park ("Park") that will reflect the people, spirit and future of the City and add an artistic component to the Park; and

WHEREAS, the City wished to obtain the design, construction and installation of a three-dimensional artistic structure ("Artistic Structure") for the Park; and

WHEREAS, the design and installation of such Artistic Structure is the performance of goods or services that are original and creative in character in a recognized field of artistic endeavor and thus considered a Professional Service, pursuant to N.J.S.A. 40A:11-2(6); and

WHEREAS, pursuant to the Local Public Contracts Law, N.J.S.A. 40A:11-5(1)(a)(i), Professional Services are exempt from the requirements of public bidding; and

WHEREAS, APS Designs, Inc., 433 West 34th Street, Unit 2G, New York, New York 10001 ("APS") provided the City with the exact design, construction, and installation of a three-dimensional Artistic Structure for the Park; and

WHEREAS, the City wished to enter into a Professional Services Contract with APS, for an amount not to exceed Five Hundred Thousand Dollars and Zero Cents (\$500,000.00), for a one year term, commencing upon the issuance of a Notice to Proceed; and

WHEREAS, on November 1, 2022, the City issued APS a notice to proceed with the Artistic Structure; and

WHEREAS, this Contract is for an amount over \$17,500.00 and was awarded pursuant to a "non-fair and open process", in accordance to N.J.S.A. 19:44A-20.5, and as an exception to public

bidding, pursuant to N.J.S.A. 40A:11-5(1)(a)(i); and

WHEREAS, Local Public Contracts Law (N.J.S.A. 40A:11-1 et seq.) requires that notice of the award of contracts for “Professional Services” without public bidding must be published in a local newspaper; and

WHEREAS, this Contract is in compliance with the State Pay to Play, which was adopted by the Municipal Council on June 22, 2021, pursuant to N.J.S.A. 19:44A-20; and

WHEREAS, the City of Newark disapproved the contract on April 18, 2023; and

WHEREAS, the City of Newark has agreed to settle certain claims raised by Claimant, that Claimant is owed money related to the Scope of Services and work performed under the disapproved contract; and

WHEREAS, to avoid the expense and inconvenience of litigation, to encourage, support and promote local Newark-based residents, companies, developers and contractors to participate in local and/or community-based projects, and without any admission of fault or liability by any Party, the Parties have agreed to resolve their differences amicably pursuant to the terms set forth in a Settlement Agreement; and

WHEREAS, the Parties have agreed to settle the matter for payment by the City of Eighty-One Thousand Three Hundred Seventy-Five Dollars and Zero Cents (\$81,375.00) (“Settlement Payment”), in exchange for Claimant’s execution of this Settlement Agreement and General Release as a full and complete release of the Claim, including any claims for attorney’s fees; and

WHEREAS, as part of this Settlement Agreement and General Release, the City agrees to pay Claimant the Settlement Payment under the Settlement Agreement within ten (10) days of the full execution of the Settlement Agreement; and

WHEREAS, this Settlement Agreement and General Release 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, 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, the City has determined that it is in the best interest of the taxpayers to settle and avoid the cost, expense, delay and uncertainty of litigation; and

WHEREAS, the Acting Director of the Department of Finance has certified that there are adequate, appropriated monies available to pay the settlement.

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

1. The Mayor and/or his designee, the Corporation Counsel, is authorized, on behalf of the City of Newark to 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 authorizes the payment of a check made payable to APS Designs, Inc., 433 West 34th Street, Unit 2G, New York, New York 10001, in an amount not to exceed, Eighty-One Thousand Three Hundred Seventy Five Dollars and Zero Cents (\$81,375.00) for the costs APS Design, Inc. incurred with the Project, during the period of November 1, 2022 through April 18, 2023. The check shall be mailed to APS Designs, Inc., 433 West 34th Street, Unit 2G, New York, New York 10001, or wire transferred to an account in accordance with accurate information provided by the vendor, as consideration of and pursuant to the terms and conditions contained in the Settlement Agreement and Release annexed hereto. This Settlement Sum shall be paid immediately upon receipt of all necessary documents required by the Acting Finance Director to process payment.

3. In exchange for the execution by APS Designs, Inc., of the Settlement Agreement and Release, acceptable in the form to the Corporation Counsel and after passage of this resolution and upon receipt by the Corporation Counsel and the Acting Director of Finance of any and all other documents deemed necessary, the Acting Director of Finance is hereby authorized to issue the check made payable to APS Designs, Inc.

4. The settlement and resolution does not admit 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, its agents, officers and/or employees whatsoever and is entered into based upon recommendations of the Corporation Counsel and to eliminate all risks and future litigation costs.

5. Attached hereto is a Certification of Funds in the amount of Eighty-One Thousand Three Hundred Seventy-Five Dollars and Zero Cents (\$81,375.00) from the Acting Director of Finance and the line appropriation of the official budget which shall be charged is NW045/Dept.: 007/Div/Proj.:07A00/Activity: A/Account #:94710/Budget Ref:B2007.

6. The Corporation Counsel shall file a fully executed copy of the Settlement Agreement and Release in the Office of the City Clerk.

STATEMENT

This Resolution authorizes the Corporation Counsel to resolve claims, of outstanding invoices for APS Designs, Inc., 433 West 34th Street, Unit 2G, New York, New York 10001, without the need and expense of civil litigation. This resolution and Settlement Agreement resolves all outstanding invoices for the costs associated with APS Designs, Inc., for the costs APS Design, Inc. incurred with the Project in an amount not to exceed \$81,375.00. In return, APS Designs, Inc., agrees to waive all claims against the City, including attorneys' fees.