

AN ORDINANCE 2010-08-05-0666

AUTHORIZING EXECUTION OF A RELEASE AND SETTLEMENT AGREEMENT WITH RURAL ELECTRIC, INC. IN THE AMOUNT OF \$540,000.00 FOR SETTLEMENT IN CONNECTION WITH THE AIRFIELD LIGHTING UPGRADE PROJECT AT SAN ANTONIO INTERNATIONAL AIRPORT.

* * * * *

WHEREAS, on September 11, 2008, by Ordinance No. 2008-09-11-0780, the City of San Antonio ("City") awarded a construction contract in the amount of \$2,023,673.11 to Rural Electric, Inc. ("Rural") for construction services in connection with the Airfield Lighting Upgrade Project at San Antonio International Airport; and

WHEREAS, Rural and the City agreed to scope changes but were unable to reach agreement on the associated technical specifications and pricing changes; and

WHEREAS, after failed negotiation attempts regarding the scope of changes the City terminated the contract with Rural; and

WHEREAS, the City and Rural were unable to agree to termination costs and proceeded to mediation resulting in the attached Release and Settlement Agreement with agreed to costs of \$540,000.00; and

WHEREAS, it is necessary to execute the Release and Settlement Agreement, appropriate funds, and authorize payment; **NOW THEREFORE**,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. The City Manager or her designee is authorized to execute the Settlement and Release Agreement with Rural Electric, Inc. in the amount of \$540,000.00 for the Claim.

SECTION 2. Payment in the amount not to exceed \$540,000.00 in SAP Fund 51099000, Airport Capital Projects, SAP Project Definition 33-00148, Airfield Electrical & Lighting Upgrade, is authorized to be encumbered and made payable to Rural Electric, Inc. for a settlement agreement.

SECTION 3. The financial allocations in this Ordinance are subject to approval by the Chief Financial Officer, City of San Antonio. The Chief Financial Officer may, subject to concurrence by the City Manager, or the City Manager's designee, correct allocation to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund

KRH
8/5/10
Item No. 22

Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

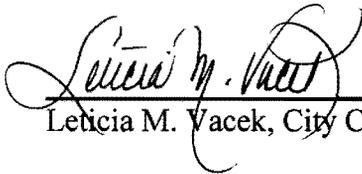
SECTION 4. This Ordinance shall take effect immediately upon passage by eight (8) affirmative votes; otherwise it shall be effective ten (10) days after its passage.

PASSED AND APPROVED this 5th day of August, 2010.



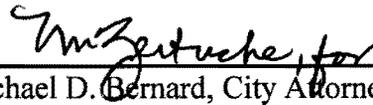
M A Y O R
Julián Castro

ATTEST:



Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:



Michael D. Bernard, City Attorney



Request for
**COUNCIL
 ACTION**

City of San Antonio



Agenda Voting Results - 22

Name:	6, 8, 9A, 9B, 10, 15, 16, 17, 18, 19, 20A, 20B, 20C, 20D, 21, 22, 23, 24, 25						
Date:	08/05/2010						
Time:	10:03:53 AM						
Vote Type:	Motion to Approve						
Description:	An Ordinance authorizing a settlement agreement with Rural Electric, Inc. for \$540,000.00, associated with the Airfield Lighting Upgrade Project at the San Antonio International Airport. [Pat DiGiovanni, Deputy City Manager; Frank Miller, Director, Aviation]						
Result:	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Julián Castro	Mayor		x				
Mary Alice P. Cisneros	District 1		x				
Ivy R. Taylor	District 2		x				
Jennifer V. Ramos	District 3		x				x
Philip A. Cortez	District 4		x				
David Medina Jr.	District 5		x				
Ray Lopez	District 6		x				
Justin Rodriguez	District 7		x			x	
W. Reed Williams	District 8		x				
Elisa Chan	District 9		x				
John G. Clamp	District 10		x				

ATTACHMENT

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT is entered into this 18th day of June, 2010, to be effective on the date hereinafter set forth, by and between City of San Antonio ("COSA or Owner"), and Rural Electric, Inc, ("Rural" or "Contractor") (each referred to as a "Party or collectively as "Parties")

WITNESSETH

WHEREAS, Owner and Contractor entered into an agreement (the "Contract") for the Airfield Lighting Upgrade Project at San Antonio International Airport for the Owner (the "Project"); and

WHEREAS, the Contract was Terminated for Convenience of the Owner on June 1, 2009; and

WHEREAS, the Parties have been unable to agree on the final termination payment due Contractor under the terms of the Contract; and

WHEREAS, the Parties agreed to mediate their disagreements for the purpose of avoiding the time, expense, and uncertainty of continued formal dispute resolution, and to buy peace; and

WHEREAS, the Parties have reached an agreement on a compromise;

NOW, THEREFORE, for and in consideration of these premises, the releases and consideration to be exchanged, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged and confessed, the Parties have agreed and do hereby agree as follows:

AGREEMENTS

1. Owner agrees to pay to Contractor as full and final termination costs, and full and final payment under the Contract, the sum of \$525,000.00. Such payment shall be made within 30 days of the Effective Date (as hereinafter defined) of this Settlement Agreement.
2. With the exception of the obligations undertaken by the Parties hereto, all Parties mutually, fully, and finally release each other of and from any and all claims, causes of action, or demands which any of the Parties has or may have against the other, whether known or unknown, liquidated or contingent, and whether arising under the Contract, any other contracts between any of the Parties in connection with the Project, in tort, or at law; provided, however:

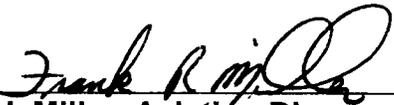
- a. Owner does not release any manufacturers of equipment or component parts of the work on the Project from any of manufacturer's warranties applicable thereto; and
 - b. Contractor shall deliver, FOB Contractor's yard in La Vernia, Texas the manhole structure components manufactured by Oldcastle. City shall make arrangements to pick up the components within a reasonable time following the Effective Date of this Settlement Agreement; and
 - c. Title to all material on site or in the ground at the Project is and shall remain in the name of Owner.
3. This Settlement Agreement is made and entered into to compromise disputed claims, to avoid the time, expense, and uncertainty of continued litigation, and to buy peace. No Party admits to any fault or wrongdoing.
4. The releases provided herein shall bind the Parties, their successors, assigns, and legal representatives and shall inure to the benefit of the Parties, their insurers, excess insurers, sureties, consultants, co-developers, officers, partners, shareholders, employees, directors, experts, attorneys, subcontractors, suppliers, consultants, and sub-consultants.
5. This Settlement Agreement constitutes a single, integrated, written contract expressing the entire understanding and agreement between the parties and the terms of the Settlement Agreement are contractual and not merely recitals. There is no other agreement, written or oral, expressed or implied, between the parties with respect to the subject matter of this Settlement Agreement and the parties declare and represent that no promise, inducement or other agreement not expressly contained in this Settlement Agreement has been made by any other Party, counsel for any other Party, or by the Mediator conferring any benefit upon them.
6. All Parties have been represented by counsel. Although the form of Settlement Agreement was initially proposed by the Mediator, the final Settlement Agreement is the result of joint drafting efforts and negotiation of the Parties and their counsel and shall not be construed more favorably for or against any Party.
7. The costs of Mediation and escrow shall be paid one half by each Party.
8. In the event of any dispute regarding the interpretation or alleged breach of this Settlement Agreement, the Parties will attempt to negotiate a resolution. In the event that such negotiations fail, the parties will, prior to initiating litigation or adversary proceedings, seek to resolve the dispute

through mediation with Mediator or another mediator acceptable to all Parties. In the event that mediation does not bring about a resolution, either Party may bring an action hereon in San Antonio, Bexar County, Texas in the same manner allowed under the Contract.

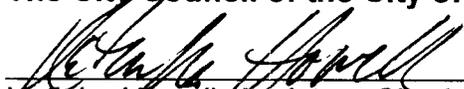
9. This Settlement Agreement is performable in Bexar County, Texas and shall be construed under the laws of the State of Texas.
10. This Settlement Agreement may be executed in any number of counterparts and each of such counterparts, including facsimile copies thereof, shall for all purposes be deemed to be an original.
11. Contractor warrants and represents that it has the authority and power to sign this Settlement Agreement and bind Contractor to the terms hereof.
12. Owner's representative at mediation signing below does so to evidence his support for the terms of this Settlement Agreement with the expectation that it will be approved by the Owner's City Council. This Settlement Agreement is not, however, binding on Owner unless and until Owner's City Counsel has approved same. This Settlement Agreement shall be effective and binding on the Parties as of the date (the "Effective Date") of approval of same by the Owner's City Council. In the event that Owner's City Council does not approve this Settlement Agreement by 5PM on August 6, 2010, this Settlement Agreement will be null, void, and of no further force and effect, as if it had not been executed in the first instance.

SIGNED the day and year first above written.

**Recommended to the City Council for the
City of San Antonio (A recommendation
only to the City Council. This Settlement Agreement is
not binding without approval of the City Council
of the City of San Antonio)**

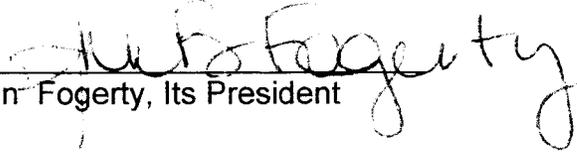
By 
Frank Miller, Aviation Director

**Recommended as to form (A recommendation
Only to the City Council, not binding without approval of
The City Council of the City of San Antonio):**


Katinka Howell, Assistant City Attorney

AGREED:

Rural Electric, Inc.

By 
Ann Fogerty, Its President

Approved as to form:


William Sommers, Counsel for Rural Electric, Inc.

To be executed upon approval by the City Council of the City of San Antonio on or before August 6, 2010, and to be effective as of such date if approved by the City Council of the City of San Antonio.

City of San Antonio

By _____
Sheryl L. Sculley, City Manager

date: _____

Its _____

Approved as to form:

Katinka Howell, Assistant City Attorney