HOUSING AUTHORITY
of the County of Los Angeles
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Commissioners

Carlos Jackson
Executive Director

December 5, 2006

Honorable Board of Commissioners
Housing Authority of the
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, California 90012

Dear Commissioners:

APPROVE SETTLEMENT WITH EDWIN G. BOWEN, INC. RELATIVE TO CONSTRUCTION CLAIMS ARISING OUT OF HARBOR HILLS COMMUNITY CENTER AND CHILD CARE CENTER (4) (3 Vote)

IT IS RECOMMENDED THAT YOUR BOARD:

1. Find that the Housing Authority's entering into a Settlement Agreement to resolve JDJ CONSTRUCTION v. BOWEN AND BOWEN v. Housing Authority (Cross Complaint), Los Angeles Superior Court Case No. YC049474, for construction of the Harbor Hills Community Center and Child Care Center located at 1876 and 1874 Palos Verdes Drive North in the City of Lomita (the Project), is exempt from the California Environmental Quality Act (CEQA), as described herein, because it will not have the potential for causing a significant effect on the environment.

2. Approve a Settlement Agreement between the Housing Authority, Edwin G. Bowen, Inc. (the Prime Contractor) and JDJ Construction Company (the Subcontractor), for the project described above, under which the Housing Authority will pay $242,500 to the Prime Contractor for costs related to unanticipated entitlement changes and site conditions, and the Prime Contractor will pay $85,000 to JDJ Construction Company for the completion of additional masonry wall work.

3. Authorize the Executive Director to execute the Settlement Agreement, to be effective on the date of Board approval.

4. Authorize the Executive Director to incorporate $242,500 in Capital Funds into the Housing Authority's Fiscal Year 2006-2007 approved budget.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION:

The purpose of this action is to resolve claims in connection with the Project.

FISCAL IMPACT/FINANCING:

There is no impact on the County general fund. The previously approved $3,570,000 for construction costs and $436,924 for contingency expenses have been fully expended. Approval of the proposed settlement using $242,500 in Capital Funds will increase the total project cost to $4,249,424 for the Housing Authority.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS:

On September 25, 2000, your Board approved the award of a construction contract to Edwin G. Bowen Co., Inc. for construction of the Harbor Hills Community Center and Child Care Center in the City of Lomita.

After the project was awarded but before work could begin, the City of Lomita took about one year to identify required land use entitlement changes that resulted in extensive design revisions, re-permitting and additional work. The increased work included site grade changes, parking lot relocation, additional and larger retaining walls, and related site work items. Moreover, during construction, site conditions were encountered that differed from survey documentation, including variations in underground waterline elevations and site grades, which further increased project costs and caused schedule delays.

During construction, Edwin G. Bowen, Inc. submitted change orders for additional costs associated with the above site work. A dispute arose between the Housing Authority staff and the Prime Contractor as to the proper amount of contractual compensation. The Housing Authority declined to pay the additional costs. As a result, JDJ Construction Company filed a suit against Edwin G. Bowen, Inc. for unpaid services, and Edwin G. Bowen in turn filed a cross complaint against the Housing Authority for $640,098, for breach of contract.

The cross complaint was scheduled for jury trial on November 6, 2006. The parties involved in the litigation agreed to mediation in an effort to resolve the $640,098 claim against the Housing Authority prior to the scheduled jury trial. At the mediation on October 12, 2006, a tentative agreement was reached by the parties to resolve all of the above claims for a payment of $242,500 by the Housing Authority to Edwin G. Bowen, Inc. and payment of $85,000 by Edwin G. Bowen, Inc. to JDJ Construction Company. In the event of a jury trial, it is possible that an amount greater than this settlement could be awarded against the Housing Authority.

The Settlement Agreement has been approved as to form by County Counsel and the Housing Authority's outside Counsel, and has been signed by Edwin G. Bowen, Inc. and JDJ Construction Company. On November 29, 2006, the Housing Commission recommended approval of the Settlement Agreement.

ENVIRONMENTAL DOCUMENTATION

This activity is exempt from the provisions of the National Environmental Policy Act (NEPA) pursuant to 24 Code of Federal Regulations, Part 58, Section 58.34 (a)(3), because it involves administrative activities that will not have a physical impact on or result in any physical changes to the environment. The activity is also not subject to the provisions of CEQA pursuant to State CEQA Guidelines 15060(c)(3) and 15378, because it is not defined as a project under CEQA and does not have the potential for causing a significant effect on the environment.

CONCLUSION:

Given the expenses, risk and unpredictable outcome associated with a jury trial, the Housing Authority with the concurrence of County Counsel and outside Counsel believe the proposed settlement of $242,500 is fair and reasonable, and recommends that the legal claims be settled for this amount.

Respectfully submitted,

Bobbette G. Glover
for CARLOS JACKSON
Executive Director

Attachment: 1

SETTLEMENT AGREEMENT

This Settlement Agreement (hereinafter referred to as "Agreement") is entered into between HOUSING AUTHORITY OF THE COUNTY OF LOS ANGELES and COMMUNITY DEVELOPMENT COMMISSION OF THE COUNTY OF LOS ANGELES (collectively "CDC"), J.D.J. CONSTRUCTION CO., INC. ("JDJ") and EDWIN G. BOWEN COMPANY, INC. ("BOWEN"). CDC, J.D.J. and BOWEN shall collectively be referred to herein as "the Parties."

RECITALS

A. This matter arises out of the construction of the new community center and child care center located at 1876 and 1874 Palos Verdes Drive North, Lomita ("the PROJECT").

B. CDC is the Owner of the Project.

C. BOWEN was hired by CDC to serve as the general contractor for construction of the PROJECT.

D. J.D.J. was hired by BOWEN to serve as a masonry subcontractor with respect to construction of the PROJECT.

E. Due to changes in the entitlement process, the scope of services for the PROJECT changed, requiring more and larger masonry walls. J.D.J. claimed it was not paid for masonry work performed for the PROJECT ("Dispute One").

G. During the course of construction for the PROJECT, BOWEN claims it incurred delay damages and was not paid for work performed for the Project ("Dispute Two").

H. J.D.J. filed a Complaint against BOWEN in the Los Angeles County Superior Court (Case No. YC049474) for Dispute One. BOWEN filed a Cross-Complaint against the CDC in the Los Angeles County Superior Court (Case No. YC049474). The lawsuits and all the claims asserted therein shall be collectively referred to as "the Action."

I. CDC, J.D.J. and BOWEN wish to compromise and settle Disputes One and Two and the Action, and all rights, obligations, issues and disputes between each of them with respect to the Disputes One and Two and the Action and wish to avoid the uncertainty, costs and risks involved if the Action is continued.

NOW, THEREFORE, the parties agree as follows:

1. CDC shall make final payment to BOWEN in the sum of $242,500 as full satisfaction of Dispute One and Two and the Action. The check shall be made payable to BOWEN and shall be delivered to the offices of BOWEN's attorneys of record.

2. BOWEN shall make final payment to J.D.J. in the sum of $85,000 as full satisfaction of Dispute One and the Action. The check shall be made payable to J.D.J. and shall be delivered to the offices of J.D.J.'s attorneys of record.

3. BOWEN agrees to do the following: 1) execute a dismissal of the entire Action against CDC with prejudice; 2) execute a Conditional Waiver and Release Upon Final Payment.

4. J.D.J. agrees to do the following: 1) execute a dismissal of the entire Action against BOWEN with prejudice; 2) execute a Conditional Waiver and Release Upon Final Payment.

5. Within twenty (20) days of Los Angeles Board of Supervisors' approval of this Settlement, CDC shall transmit final payment of $242,500 to BOWEN as set forth in paragraph 1. Once BOWEN confirms that the final payment is good funds, BOWEN's counsel shall send the original dismissal documentation identified in paragraph 3 above to CDC's counsel of record, as well as an executed Unconditional Waiver and Release Upon Final Payment, and authorize CDC to record or file said documentation as appropriate.

6. Within ten (10) days after BOWEN receives the settlement draft from CDC, BOWEN shall transmit final payment of $85,000 to J.D.J. as set forth in paragraph 2. Once J.D.J. confirms that the final payment is good funds, J.D.J.'s counsel shall send the original dismissal documentation identified in paragraph 4 above to BOWEN's counsel of record, as well as an executed Unconditional Waiver and Release Upon Final Payment, and authorize BOWEN to record or file said documentation as appropriate.

7. In consideration of the covenants and promises set forth herein:

   a. J.D.J., including its attorneys, agents, servants, representatives, partners, predecessors, successors-in-interest and assigns, and all other persons, forms or corporations with whom it has been, is now or may hereafter be affiliated, do hereby and forever release and discharge BOWEN and CDC and each of their respective successors, subsidiaries, sureties, affiliates, employees, owners, partners, officers, directors, predecessors, assigns, agents, representatives, and attorneys from any and all past, present or

future claims, demands obligations, causes of action, expenses and compensation relating to Dispute One.

b. BOWEN, including its attorneys, agents, servants, representatives, partners, predecessors, successors-in-interest and assigns, and all other persons, forms or corporations with whom it has been, is now or may hereafter be affiliated, do hereby and forever release and discharge J.D.J. and CDC and each of their respective successors, subsidiaries, sureties, affiliates, employees, owners, partners, officers, directors, predecessors, assigns, agents, representatives, and attorneys from any and all past, present or future claims, demands obligations, causes of action, expenses and compensation relating to Dispute Two.

c. CDC, including its attorneys, agents, servants, representatives, partners, predecessors and successors-in-interest and assigns, and all other persons, forms or corporations with whom it has been, is now or may hereafter be affiliated, do hereby and forever release and discharge J.D.J. and BOWEN and each of its successors, subsidiaries, affiliates, employees, owners, partners, officers, directors, predecessors, assigns, agents, representatives, and attorneys from any and all past, present or future claims, demands, obligations, causes of action, expenses and compensation relating to Disputes One and Two, or which are the subject of the Action.

d. The Parties have read and are familiar with Civil Code Section 1542 which reads as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

The Parties expressly agree to waive, relinquish and otherwise abandon any rights under Civil Code Sec. 1542 with respect to the Payment Dispute, the Disputes One and Two, and the Action, except as otherwise stated herein.

8. This Agreement is entered into the spirit of compromise to resolve disputed claims. None of the statements or promises contained in this Agreement shall be construed as any admission of liability for any purpose.

9. No party or any agents nor any related entities have made any statement or representation to any other party regarding any fact relied upon in entering into this Agreement, and each party expressly states that he/it does not rely on any statement, representation, or promise of any other party or any parties agents or related entities in executing this Agreement.

10. Each entity executing this Agreement on behalf of an entity, other than an individual executing this Agreement on his own behalf, represents that he is authorized to execute this Agreement on behalf of said entity.

11. Each party to this Agreement agrees to perform any further acts and execute and deliver any further documents that may be reasonably necessary to carry out the provisions of this Agreement.

12. This Agreement may be executed in counterparts, and all so executed shall constitute one agreement binding on the parties hereto.

13. This Agreement constitutes the final agreement regarding the Payment Dispute and the Action between and among the Parties and this Agreement shall not be amended or modified except in writing signed by each of them.

14. Each party to this Agreement has read the entire Agreement before executing it and has been given the opportunity to seek advice of counsel prior to executing this Agreement. No party to this Agreement shall deny its validity on the basis that the party did not have the advice of counsel.

15. This Agreement shall be interpreted and enforced under the laws of the State of California. Should any dispute arise regarding this Agreement, each party reserves to claim, assert or otherwise seek damages for breach thereof.

16. Should any provision of this Agreement be declared or determined by any court of competent jurisdiction to be illegal, invalid, or unenforceable, the legality, validity, and enforceability of the remaining parts, terms or provisions shall not be affected thereby and said illegal, enforceable or invalid part, term, or provision shall be deemed not to be part of this Agreement.

17. No provision of this Agreement may be waived unless in writing and signed by all parties hereto. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein. This Agreement may be modified or amended only by a written agreement executed by all of the Parties hereto.

18. Each of the parties to this Agreement participated, or had the opportunity to participate, in the preparation of this Agreement; and in the event of an ambiguity, the terms of this Agreement shall not be construed against any party.

19. Each of the parties to this Agreement shall bear their own fees and costs, except as otherwise set forth herein.

20. No party to this agreement may assign their rights or obligations or this written agreement without the express written consent of the other party.

WHEREFORE, the undersigned having read the Agreement and fully understanding it and agreeing to its terms, the parties have executed this Agreement and make it effective on the date(s) listed hereinbelow.

HOUSING AUTHORITY OF THE COUNTY OF LOS ANGELES; COMMUNITY DEVELOPMENT COMMISSIOM OF THE COUNTY OF LOS ANGELES

Dated:_____ By: _____
Carlos Jackson, Executive Director

J.D.J. CONSTRUCTION CO., INC.

Dated:_____ By: _____
Its: _____

EDWIN G. BOWEN, COMPANY, INC.

Dated:_____ By: _____
Its: _____

APPROVED AS TO FORM:

COLLINS, COLLINS, MUIR & STEWART

_____

NICOLE DAVIS-TINKAM
Attorneys for Defendants
COMMUNITY DEVELOPMENT COMMISSION
OF THE COUNTY OF THE LOS ANGELES,
HOUSING AUTHORITY OF THE COUNTY
OF LOS ANGELES

LAW OFFICES OF VANCE, BLAIR & GRADY

_____

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HUNTER, MOLLOY, & SALCIDO LLP

_____

JOHN L. HUNTER
FRANK W. MOLLOY
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EDWIN G. BOWEN COMPANY, INC.