



Legislation Text

File #: R-1617-66, **Version:** 1

RESOLUTION R-1617-66: A RESOLUTION OF THE COUNCIL OF THE CITY OF NORMAN, OKLAHOMA, AND THE NORMAN UTILITIES AUTHORITY AUTHORIZING THE USE OF FUNDING TO PAY THE FINAL PAYMENT TO GARVER ENGINEERS FOR CONSULTING SERVICES ASSOCIATED WITH ADMINISTERING THE RAW WATER LINE CONTRACT K-0607-96 AND TRANSFERRING \$40,467.11 FROM THE RAW WATER LINE PROJECT ACCOUNT TO PAY FINAL PAYMENT TO FELLERS SNIDER LAW FIRM FOR OUTSIDE LEGAL FEES ASSOCIATED WITH ADMINISTERING THE RAW WATER LINE PROJECT, PHASES ONE AND TWO.

BACKGROUND: On July 27, 2010, the Norman Utilities Authority (NUA) awarded a bid to Red Cliff, Inc. of El Paso, Texas and a contract was executed in the amount of \$3,171,711 to lay a new parallel 48-inch raw water line along the last 2.5 miles of an existing 30-inch water line (RWL project). Construction began on September 27, 2010, but Red Cliff was not able to complete the job. Garver Engineering was hired by the NUA to oversee this project. The NUA issued a notice to quit in December of 2012 and eventually another contractor completed the project. Prior to the notice to quit, Red Cliff had made demand for damages and delays in the amount of \$973,972. Garver and City staff's review of these claims did not support payment.

On February 8, 2011, the NUA awarded a bid to Red Cliff, Inc. of El Paso, Texas and a contract was executed in the amount of \$1,472,742 to install raw water supply lines to deliver ground water from new wells to the City's distribution system (2B project). This project was substantially completed in 2012, except that Red Cliff filed supplemental claims against the City in this project in the amount of \$415,143. City staff's review of these claims did not support payment.

Red Cliff's claims on both the RWL project and the 2B project were discussed with the City Council/NUA Trustees in executive session on February 12, 2013. BRB Contractors, Inc. (BRB) was awarded Contract K-1213-129 on February 12, 2013 to complete the Raw Water Line project. BRB completed the job. Council accepted the final project October 22, 2013.

Litigation was filed by Red Cliff asserting damage claims against the NUA on both the RWL project and the 2B project. Fellers Snider Law Firm defended the NUA during the litigation. After a period of protracted litigation, the Council/NUA discussed the case in Executive Session on June 14, 2016. Mediation was held in July of 2016, a settlement agreement was reached, and the settlement of the litigation was again discussed by the NUA/Council in Executive Session on July 19, 2016. Council approved the Settlement of that litigation on July 26, 2016.

In closing out these projects there are outstanding invoices from both Garver and from Fellers Snider that need to be resolved. Resolution R-1617-66 seeks the transfer of funding remaining in the project budgets of RWL and the 2B projects to pay these final costs and finalize the projects.

DISCUSSION: During the litigation settlement process it was clear that it was important to Council members that the litigation be resolved in a manner that did not exceed the amounts awarded to Red Cliff when their bids were accepted for these projects. The Utilities Department has advised that at the time of the Red Cliff litigation settlement was being considered, that \$276,992.06 in retainage was available under the RWL & 2B projects. The retainage represented work performed by Red Cliff for which the City had withheld payment pending resolution of the Red Cliff claims. In addition there were anticipated additional material quantity adjustments in both the RWL and 2B project that totaled \$41,389 and \$66,125 respectively that were not properly documented by Red Cliff and therefore not paid. Outside legal fees paid in defense of the Red Cliff litigation totaled \$228,571.85. After the additional payment to Red Cliff's assignees of \$75,000 to settle that litigation, the remaining allocation in the two contract budgets is \$80,934.21.

As noted above, Garver Engineers were the project consultants that provided additional work since the project was stopped, rebid, and litigated. Outstanding invoices from Garver Engineers on this project total \$95,386.56. Outstanding invoices from Fellers Snider for litigation services in this matter total \$49,173.51. Because these outstanding invoices exceed the amount remaining in the contract budgets for these two projects, Staff has worked with both the Engineering

consultants and the legal consulting firm to reach an agreement to compromise their respective outstanding invoices to achieve a cost of the two projects that are within the funds allocated under the two project contracts with Red Cliff. The consulting firms have agreed that the remaining \$80,934.21 in the contract budgets will be divided equally, or \$40,467.11 to Fellers Snider, and \$40,467.10 to Garver Engineers as a final close out of their invoices for services connected with the Red Cliff contracts on these two projects.

RECOMMENDATION: To accomplish this result, Resolution R-1617-66 directs the transfer of unencumbered funds in the amount of \$40,468 in the Water Fund, Raw Water Lines, Construction (account 031-9356-462.61-01; project WA0051) to use for the final payment to Garver Engineers for consulting services associated with the administration of the Red Cliff RWL contract; and an accompanying transfer of \$40,467.11 from the same account to the General Fund, Outside Legal Account (010-2220-412.40-11), for the final payment to Fellers Snider for legal services associated with the administration of the Red Cliff RWL and 2B contracts.