

5/2/2008

40-R-08

A RESOLUTION

Authorizing the City Manager to Execute a Settlement Agreement with ADT Security Services, Inc.

WHEREAS, on July 9, 2007, the City of Evanston, Cook County, Illinois ("City") issued an invitation to bid (bid number 08-21) for the installation of a fire alarm system at the Robert Crown Center in Evanston, Illinois; and

WHEREAS, on July 24, 2007, ADT Security Services, Inc. ("ADT"), submitted a bid response to the City; and

WHEREAS, on September 10, 2007, the City Council of the City of Evanston, Cook County, Illinois, approved ADT as the lowest responsive and responsible bidder; and

WHEREAS, on October 5, 2007, the City's Purchasing and Contracts Manager informed ADT, via written correspondence, that ADT had been awarded the project in connection with bid number 08-21; and

WHEREAS, thereafter a controversy developed between the parties regarding the nature and existence of any contract between them, and no performance of the work contemplated in bid number 08-21 was undertaken by ADT; and

WHEREAS, the parties now desire to settle the controversy arising between them from bid number 08-21; and

WHEREAS, the parties have reached a proposed settlement, the terms of which are set forth in Exhibit A attached hereto and incorporated herein; and

WHEREAS, it is in the best interests of the citizens of Evanston to enter into said Settlement Agreement,

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EVANSTON, COOK COUNTY, ILLINOIS, AS FOLLOWS:

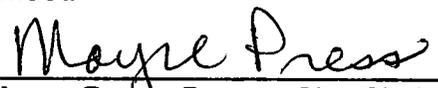
SECTION 1: That the City Manager is hereby authorized to sign and the City Clerk hereby authorized to attest on behalf of the City, a Settlement Agreement between the City and ADT in substantial conformity with the Agreement attached as Exhibit A and incorporated herein by reference.

SECTION 2: That the City Manager is hereby authorized and directed to negotiate any additional conditions of the Agreement as may be determined to be in the best interests of the City.

SECTION 3: That this Resolution 40-R-08 shall be in full force and effect from and after its passage, approval, and publication in the manner provided by law.


Edmund B. Moran, Jr., Mayor Pro Tem

Attest:


Mayre Press, Deputy City Clerk

Adopted: May 27, 2008

SETTLEMENT AGREEMENT

This is an AGREEMENT by and between the City of Evanston, an Illinois municipal corporation ("the City"), and ADT Security Services, Inc. ("ADT").

RECITALS

1. On July 9, 2007, the City issued an invitation to bid (bid number 08-21) for the installation of a fire alarm system at the Robert Crown Center in Evanston, Illinois.
2. On July 24, 2007, ADT submitted a bid response to the City.
3. On September 10, 2007, the City Council approved ADT as the lowest responsive and responsible bidder.
4. On October 5, 2007, the City's Purchasing and Contracts Manager informed ADT via written correspondence that ADT had been awarded the project in connection with bid number 08-21.
5. Thereafter a controversy developed between the parties regarding the nature and existence of any contract between them, and no performance of the work contemplated in bid number 08-21 was undertaken by ADT.
6. The City and ADT now desire to settle the controversy arising between them from bid number 08-21.

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated herein, the promises and mutual covenants and obligations contained herein, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties covenant and agree that the terms of this settlement agreement have been completely read and are fully understood and voluntarily accepted and agreed to for the purpose of making a full and final compromise and settlement related to bid number 08-21. The parties agree as follows:

1. Obligations of the parties.
 - A. Upon receipt of this signed Agreement, the City shall rescind the award of bid number 08-21 to ADT in writing and shall be free to re-advertise the project under a new bid number if it so desires.
 - B. The City will not prevent ADT from bidding on any future projects advertised by the City due to the events surrounding bid number 08-21.
 - C. The City will not make any attempt to collect on the bid bond submitted by ADT in connection with bid number 08-21.

2. Release. The City and ADT do hereby forever remise, release and discharge each other, their former, current and future parents, predecessors, affiliates, subsidiaries, and the former, current and future directors, officers, agents, employees, representatives, whether acting in their individual or official capacities, and all persons acting by, through or in concert with any of them, and all successors and assignees from any and all claims, demands, causes of action, charges, costs, expenses, damages, penalties, liabilities, covenants, agreements, promises, controversies, and judgments, of whatsoever kind or nature, whether arising at law or in equity, whether presently known or unknown or foreseen or unforeseen, whether matured, unmatured, potential or contingent, and whether in tort, in contract or otherwise which the City or ADT now has or may hereafter have against each other, by reason of any act, omission, failure to act, cause, matter or thing whatsoever, based upon, related to or arising out of the subject matter of bid number 08-21.

3. General Conditions.
 - A. Representations and Warranties of Authority. Each party represents that it has the full power and authority to enter into this Agreement, that the execution and delivery thereof will not violate any agreement by which such party is bound or violate any laws, and that this Agreement, as executed and delivered, constitutes a valid and binding obligation of such party, enforceable in accordance with its terms. Each party represents that it is authorized to take all actions under this Agreement.

 - B. No Admission of Liability. The parties acknowledge that this Agreement is being entered in settlement and to avoid further dispute, expense or litigation. The parties agree that neither execution hereof nor performance of any of the provisions of this Agreement shall constitute or be construed as an admission on the part of either party of any liability and nothing herein shall be admissible in any proceeding as an admission of any factual matter against the party.

 - C. Entire Agreement. This Agreement constitutes the entire agreement between the parties, and it is expressly understood and agreed that this Agreement has been freely and voluntarily entered into by the parties with the advice of counsel, who have explained the legal effect of this Agreement. The terms of this Agreement are contractual and not mere recitals. The parties further acknowledge that no representation, inducement, promise or agreement, oral or otherwise, has been made by the other party or anyone acting on behalf of the other party that is not embodied herein. This Agreement may not be altered, modified or otherwise changed in any respect except by writing, duly executed by the parties or their authorized representatives. This Agreement is fully integrated.

 - D. Construction. The parties acknowledge that each party and its counsel have reviewed and revised this Agreement and that no rule of

construction to the effect that any ambiguities are to be resolved against the drafting party shall be employed in the interpretation of this Agreement.

- E. Remedies. The parties retain the full range of legal and equitable remedies to enforce the terms of this Agreement, including injunctive relief and specific performance, to ensure the parties comply with their commitments under this Agreement.
- F. Time of the Essence. Time is expressly declared to be of the essence of this Agreement and of every provision hereof in which time is an element.
- G. Captions. Paragraphs, titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend or describe the scope of this Agreement or any provision thereof.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have executed this Agreement on the date and year written below.

Date: _____, 2008 **CITY OF EVANSTON**

By: _____
Name: Rolanda B. Russell
Title: Interim City Manager

Date: _____, 2008 **ADT SECURITY SERVICES, INC.**

By: _____
Name: _____
Title: _____