

**87-R-09**

**A RESOLUTION**

**Authorizing the City Manager to Execute a Settlement Agreement  
with Scale Construction Inc.**

**WHEREAS**, on February 26, 2007, the City of Evanston, Cook County, Illinois ("City") issued an invitation to bid (bid number 07-46) for the Evanston water utility expansion and renovation project (the "Project"); and

**WHEREAS**, on April 10, 2007, Scale Construction Inc. ("Scale"), submitted a bid response to the City; and

**WHEREAS**, on April 23, 2007, the City Council of the City of Evanston, Cook County, Illinois, approved the award of the Project to Scale; and

**WHEREAS**, on May 10, 2007, a contract was executed between the City and Scale relating to the Project (the "Contract"); and

**WHEREAS**, thereafter a controversy developed between the parties regarding the Contract; and

**WHEREAS**, the parties now desire to settle the controversy arising between them relating to the Contract; 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 Scale 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 87-R-09 shall be in full force and effect from and after its passage, approval, and publication in the manner provided by law.

  
Elizabeth B. Tisdahl, Mayor

Attest:  
  
Rodney Greene, City Clerk

Adopted: November 9, 2009

## SETTLEMENT AGREEMENT

**THIS IS AN AGREEMENT** by and between the City of Evanston, an Illinois municipal corporation (hereinafter "the City"), and Scale Construction Inc. (hereinafter "Scale").

### RECITALS

1. On May 10, 2007, the City and Scale entered into a contract relating to the Evanston Water Utility Expansion and Renovations at the Water Treatment Facility in Evanston, Illinois (hereinafter "the Contract").
2. On December 24, 2008, Scale had substantially completed the scope of work to be completed under the Contract.
3. On November 7, 2008 and July 13, 2009, Scale submitted letters requesting a time extension and additional compensation under the Contract.
4. The Parties met on several occasions to discuss and review the merits of Scale's request for a time extension and additional compensation.
5. The City and Scale now desire to settle the controversy arising between them related to the Evanston Water Utility Expansion and Renovations Contract.

**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 fully understood and voluntarily accepted and agreed to for the purpose of making a full and final compromise and settlement related to the Contract. The parties agree as follows:

1. **Obligations of the parties.**
  - A. Upon receipt of this signed Agreement, the City shall: process all change orders, to bring the final amount of the Contract to two million, six hundred twenty-five thousand, three hundred thirty-eight dollars (\$2,625,338.00); and will extend the final completion date of the Contract to November 9, 2009.
  - B. Subject to the other provisions of this paragraph, final payment shall be made by the City to Scale within thirty (30) days of November 9, 2009.

- C. Scale hereby agrees to submit to the City the following documentation before the City may make final payment to Scale: the final payment application; final waivers of lien from Scale and all subcontractors; certified payrolls from Scale and all subcontractors; and evidence of final, continuing insurance coverage complying with the insurance requirements of the Contract.
  - D. Scale agrees to repair or replace the dented slat on the rollup door in the City's filter shop before final payment is made by the City to Scale.
2. **Release.** The City and Scale 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 Scale 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 the Contract.

Nothing in this paragraph shall in any way hinder the rights of the City with regard to all causes of action which may accrue to the City as a result of any breach of warranty under the Contract by Scale.

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: \_\_\_\_\_, 2009

**CITY OF EVANSTON**

By: \_\_\_\_\_  
Signature:

\_\_\_\_\_  
Printed Name:

\_\_\_\_\_  
Title:

Date: \_\_\_\_\_, 2009

**SCALE CONSTRUCTION INC.**

By: \_\_\_\_\_  
Signature:

\_\_\_\_\_  
Printed Name:

\_\_\_\_\_  
Title: