

ROUTING SLIP CONTRACTS AND AGREEMENTS

Originating Department: Legal

Council Meeting Date: 12/17/2015

Department Contact: Peter Joffrion

Phone # 427-5026

Contract or Agreement: Settlement agreement among the City of Huntsville, the Public Building Author...

Document Name: Resolution authorizing the Mayor to execute a settlement agreement among the City of...

City Obligation Amount:

Total Project Budget:

Uncommitted Account Balance:

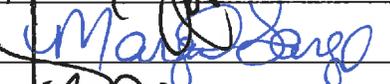
Account Number:

Procurement Agreements

<u>Not Applicable</u>	<u>Not Applicable</u>
-----------------------	-----------------------

Grant-Funded Agreements

<u>Not Applicable</u>	Grant Name: <input type="text"/>
-----------------------	----------------------------------

Department	Signature	Date
1) Originating		<u>12-15-15</u>
2) Legal		<u>12-15-15</u>
3) Finance 		<u>12-15-15</u>
4) Originating		<u>12-15-15</u>
5) Copy Distribution		
a. Mayor's office (1 copies)		
b. Clerk-Treasurer (Original & 2 copies)		

CITY COUNCIL AGENDA ITEM COVER MEMO

Agenda Item Number: _____

Meeting Type: Regular

Meeting Date: Dec 17, 2015

Action Requested By: Legal

Agenda Type: Resolution

Subject Matter:

Settlement agreement.

Exact Wording for the Agenda:

Resolution authorizing the Mayor to execute a settlement agreement among the City of Huntsville, the Public Building Authority, Dawson Building Contractors, Inc; Ruffin Enterprises, Inc, Enhanced Technical Construction, Inc., and Richard M. Hall, in that lawsuit styled "Dawson General Contractors, Inc. vs. The Public Building Authority of the City of Huntsville, etal," in the Circuit Court of Madison County, Alabama.

Note: If amendment, Please state title and number of the original

Item to be considered for: Action

Unanimous Consent Required: _____

Briefly state why the action is required; why it is recommended; what council action will provide, allow and accomplish and; any other information that might be helpful.

Associated Cost: _____

Budgeted Item: _____

MAYOR RECOMMENDS OR CONCURS: _____

Department Head:  _____

Date: 12-17-15

RESOLUTION NO. 15-_____

BE IT RESOLVED by the City Council of the City of Huntsville, Alabama, that the Mayor be, and he is hereby authorized to execute a Settlement Agreement among the City of Huntsville, the Public Building Authority, Dawson Building Contractors, Inc.; Ruffin Enterprises, Inc., Enhanced Technical Construction, Inc., and Richard M. Hall, in that lawsuit styled "Dawson General Contractors, Inc. vs. The Public Building Authority of the City of Huntsville, etal," in the Circuit Court of Madison County, Alabama, on behalf of the City of Huntsville, a municipal corporation in the State of Alabama, which said agreement is substantially in words and figures similar to that certain document attached hereto and identified as "Settlement Agreement and Mutual Release among the City of Huntsville, the Public Building Authority, Dawson Building Contractors, Inc.; Ruffin Enterprises, Inc., Enhanced Technical Construction, Inc., and Richard M. Hall in that lawsuit styled Dawson General Contractors, Inc. vs. The Public Building Authority of the City of Huntsville, etal, in the Circuit Court of Madison County, Alabama consisting of fourteen(14) pages, and the date of December 17, 2015 appearing on the margin of the first page, together with the signature of the President or President Pro Tem of the City Council, and executed copy of said document being permanently kept on file in the Office of the City Clerk-Treasurer of the City of Huntsville, Alabama.

ADOPTED this the 17th day of December, 2015.

President of the City Council
of the City of Huntsville, Alabama

APPROVED this the 17th day of December, 2015.

Mayor of the City of
Huntsville, Alabama

IN THE CIRCUIT COURT OF MADISON COUNTY, ALABAMA

DAWSON BUILDING CONTRACTORS, INC.,)
)
)
 Plaintiff,)
)
 v.) Civil Action No.: 2006-1887-DSP
)
 THE PUBLIC BUILDING AUTHORITY OF)
 THE CITY OF HUNTSVILLE, ALABAMA, *et*)
 al.,)
 Defendants.)

Consolidated With

IN THE CIRCUIT COURT OF MADISON COUNTY, ALABAMA

THE PUBLIC BUILDING AUTHORITY OF)
 THE CITY OF HUNTSVILLE, ALABAMA,)
)
 Plaintiff,)
)
 v.) Civil Action No.: 2006-1943-KKH
)
 DAWSON BUILDING CONTRACTORS, INC.,)
 et al.,)
)
 Defendants.)

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Mutual Release (“Agreement”), consisting of fourteen (14) pages, including signature pages, is lawfully created and executed by and between Ruffin Enterprises, Inc., Enhanced Technical Construction, Inc., and Richard M. Hall (collectively “Ruffin defendants”), The Public Building Authority of the City of Huntsville, Alabama (“PBA”), and Dawson Building Contractors, Inc. (“Dawson”) (collectively “Parties”), the effective date of which shall be the latest date appearing on the signature pages of this Agreement (“Effective Date”).

RECITALS

A. WHEREAS, the PBA undertook to build a detention facility in Huntsville, Alabama; and

B. WHEREAS, Dawson served as the general contractor on the construction project for the detention facility (the "Project") for a portion of time; and

C. WHEREAS, the Ruffin defendants were, or were alleged to be, one of the suppliers of goods and services on the Project; and

C. WHEREAS, a dispute arose regarding the Project among the Parties; and

D. WHEREAS, the dispute resulted in the filing of claims and two lawsuits in Madison County Circuit Court styled as *Dawson Building Contractors, Inc., v. The Public Building Authority of the City of Huntsville, et al.*, Case No. CV-06-1887-LWH and *The Public Building Authority of the City of Huntsville, Alabama, v. 2 WR/Homes-Wilkins Architects, Inc., et al.*, Case No. CV-06-1943 (the "Project Litigation"); and

E. WHEREAS, the Parties wish to resolve the PBA's and Dawson's claims against the Ruffin defendants and the Ruffin defendants' claims against the PBA and Dawson.

WITNESSETH:

NOW, THEREFORE, in consideration of the premises and covenants contained in this Agreement, and other good and valuable consideration, the Parties agree as follows:

1. **Recitals.** The Parties acknowledge, represent, and declare that the recitals set forth above are true and correct to the best of their knowledge and belief.

2. **Payment of Settlement Funds.** In consideration of the mutual release by the PBA, Dawson, and Ruffin defendants, and other good and valuable consideration, as set forth in this Agreement, the total sum of *no greater than* **Two Hundred Twenty-Five Thousand Dollars** and

00/100 (\$225,000.00) (“the Settlement Funds”), the sufficiency of which is expressly acknowledged by the Ruffin defendants, shall be paid by the PBA, or the Settlement Funds shall be paid on its behalf *if, but only if, and only to the extent that*, the PBA recovers damages from the remaining parties in the Project Litigation. Payment of the Settlement Funds shall be made within a reasonable time, but no later than forty-five days after recovery of the Settlement Funds from the remaining parties in the Project Litigation. Such payment shall be by check made payable to _____.

3. City Council Approval Required. The settlement between and among the Parties memorialized by this Agreement is expressly subject to and contingent upon approval by the PBA and the Huntsville City Council (“Council”) at a regularly-scheduled public meeting. As such, the Parties’ obligations under this Agreement shall not be deemed final, operative, binding, or enforceable until such time as the PBA and Council, by majority vote, pass a resolution approving the settlement. In the event the PBA or Council declines to approve the settlement, the Agreement is null and void in all respects.

4. Denial of Liability or Wrongdoing. The Parties understand and agree that this is a settlement and compromise of doubtful and disputed claims and is not to be considered any admission of liability by any of them. To the contrary, it is understood and agreed that each of the Parties generally denies any and all liability to any other of the Parties, and specifically denies the validity of all adverse claims in the Project Litigation.

5. Release.

a. The Ruffin defendants, in consideration of the release by the PBA and Dawson, and the agreement regarding payment *vel non* of the Settlement Funds as herein made, hereby releases, remises, acquits, and forever discharges the PBA, the City of Huntsville, Alabama

("COH"), and Dawson, and, as applicable, each of its employees, co-employees, agents, representatives, and attorneys; each of its boards, authorities, commissions, committees, and departments; each of its elected or appointed officials, supervisors; and each of its liability and other insurance carriers, and any other person or entity acting by or through the PBA, the COH, and/or Dawson, of and from any and all claims, damages, demands, costs, expenses, liabilities, attorneys' fees, actions, causes of action, or suits of any nature whatsoever, whether legal or equitable, that the Ruffin defendants have or may have in their individual or representative or official capacities, whether known or unknown, concealed or hidden, suspected or unsuspected, against the PBA, arising out of or relating to any matter, transaction, practice, policy, event, act, or failure to act that occurred at any time in the past through and including the Effective Date, including, but not limited to, any and all claims and requests for relief that were asserted or could have been asserted in the Project Litigation.

b. The **PBA**, in consideration of the release by the Ruffin defendants, hereby releases, remises, acquits, and forever discharges the Ruffin defendants, and, as applicable, each of their parent, subsidiary, and affiliated companies; each of its predecessors, successors, officers, directors, partners, employees, co-employees, agents, representatives, attorneys, and its liability insurer (but only as to coverage provided to the Ruffin defendants); and each of its sureties on any bond on behalf of the Ruffin defendants, and any other person or entity acting by or through the Ruffin defendants, of and from any and all claims, damages, demands, costs, expenses, liabilities, attorneys' fees, actions, causes of action, or suits of any nature whatsoever, whether legal or equitable, that the PBA has or may have in its individual or representative or official capacities, whether known or unknown, concealed or hidden, suspected or unsuspected, against the Ruffin

defendants arising out of or relating to any matter, transaction, practice, policy, event, act, or failure to act that occurred at any time in the past through and including the Effective Date, including, but not limited to, any and all claims and requests for relief that were asserted or could have been asserted in the Project Litigation.

c. **Dawson**, in consideration of the release by the Ruffin defendants, hereby releases, remises, acquits, and forever discharges the Ruffin defendants, and, as applicable, each of their parent, subsidiary, and affiliated companies; each of its predecessors, successors, officers, directors, partners, employees, co-employees, agents, representatives, attorneys, and its liability insurer (but only as to coverage provided to the Ruffin defendants); and each of its sureties on any bond on behalf of the Ruffin defendants, and any other person or entity acting by or through the Ruffin defendants, of and from any and all claims, damages, demands, costs, expenses, liabilities, attorneys' fees, actions, causes of action, or suits of any nature whatsoever, whether legal or equitable, that Dawson has or may have in its individual or representative or official capacities, whether known or unknown, concealed or hidden, suspected or unsuspected, against the Ruffin defendants arising out of or relating to any matter, transaction, practice, policy, event, act, or failure to act that occurred at any time in the past through and including the Effective Date, including, but not limited to, any and all claims and requests for relief that were asserted or could have been asserted in the Project Litigation.

6. No Assignment of Claims. The Parties expressly represent and warrant that no claims released in this Agreement have previously been assigned to any other person or entity.

7. **Dismissal of Claims on a Pro Tanto Basis.** As soon as practicable, the Parties will take all actions necessary to effect the prompt dismissal, with prejudice, of their claims against each other in the Project Litigation, with costs (including attorneys' fees) taxed as paid.

8. **Attorneys' Fees.** If it becomes reasonably necessary for any of the Parties to retain counsel for the purpose of enforcing or preventing the breach of any provision of this Agreement, including, but not limited to, instituting any action or proceeding to enforce any of its provisions for damages by reason of any alleged breach of any of its provisions, or for a declaration of rights or obligations under it, or for any other judicial remedy, then, if this matter is settled in favor of one or more of the Parties by judicial determination (which term includes arbitration judicially affirmed), the substantially prevailing Party or Parties (whether at trial or on appeal) shall be entitled, in addition to such other relief as may be granted, to be reimbursed by the breaching party for all costs and expenses incurred by it or them, including, but not limited to, reasonable attorneys' fees.

9. **Applicable Law.** This Agreement is deemed created and executed within the state of Alabama, and is to be governed, construed, interpreted, and enforced in accordance with the laws of the state of Alabama.

10. **Binding Agreement.** This Agreement shall be binding upon, and shall inure to the benefit of, the Parties, and, as applicable, their respective heirs, representatives, successors, agents, employees, and/or assigns.

11. **Voluntary Agreement.** The Parties represent and warrant that they have each carefully read this Agreement and completely understand its terms, conditions, and effect. Additionally, each of the Parties represents and warrants that it has signed this Agreement freely and

voluntarily, and that in executing same, it has not been influenced by any person or entity to any extent whatsoever.

12. Independent Advice of Counsel. Each of the Parties represents and warrants that it is deliberately executing this Agreement, and that, in doing so, it is relying solely upon its own judgment, belief, and knowledge, as well as upon the advice and recommendations of its own independently-selected counsel, concerning the terms of this Agreement as well as its rights and duties under it.

13. Interpretation of Agreement. The Parties agree that this Agreement shall be interpreted according to the plain and ordinary meaning of its terms. Additionally, the Parties agree that each of them participated equally in the negotiation and drafting of this Agreement, and consequently, no inference shall be drawn that this Agreement was prepared by any particular party, and no ambiguity shall be construed against any particular party.

14. Entire Agreement. This Agreement constitutes the entire agreement of the Parties, and it supersedes any prior understandings, agreements, or representations by or among the Parties to the Agreement, written or oral, to the extent they related in any way to the subject matter of this Agreement.

15. Severability. If any provision of this Agreement is deemed to be invalid or unenforceable under applicable law, this Agreement shall be considered divisible as to such provision and the same shall thereafter be inoperative; provided, however, the remaining provisions of this Agreement shall be valid and enforceable notwithstanding.

16. Modification. No oral modification of this Agreement shall be deemed valid or enforceable under any circumstances. Instead, all modifications of this Agreement shall be in writing and signed by each of the Parties, or by their respective attorneys.

17. Counterparts. This Agreement may be executed in one or more counterparts. In this event, this Agreement shall not become effective and binding upon the Parties until such time as all of the signatories have signed a counterpart.

18. Further Assurances. The Parties shall execute and deliver any other documents and/or instruments and shall take any other actions as may be reasonably required or appropriate to evidence or carry out the intent and purposes of this Agreement.

19. Paragraph Headings. The paragraph headings contained in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.

SIGNATURES ON SEPARATE PAGES BELOW

IN WITNESS WHEREOF, the PBA has executed this Agreement and caused its name to be subscribed as of the date indicated below.

**THE PUBLIC BUILDING AUTHORITY OF
THE CITY OF HUNTSVILLE, ALABAMA**

By: _____

Its: _____

STATE OF ALABAMA)
COUNTY OF _____)

On this the _____ day of _____, 2015, before me, a notary public, in and for said county and state, personally appeared _____, who being placed under oath, acknowledged to me that he has read and understood the foregoing release; he has the authority to bind the Public Building Authority of the City of Huntsville, Alabama; and he is executing same voluntarily as his own free act.

Notary Public
My Commission Expires: _____

IN WITNESS WHEREOF, the COH has executed this Agreement and caused its name to be subscribed as of the date indicated below.

THE CITY OF HUNTSVILLE, ALABAMA

By: _____

Its: Mayor

STATE OF ALABAMA)
COUNTY OF _____)

On this the _____ day of _____, 2015, before me, a notary public, in and for said county and state, personally appeared Tommy Battle, Mayor of the City of Huntsville, Alabama, who being placed under oath, acknowledged to me that he has read and understood the foregoing release; he has the authority to bind the City of Huntsville, Alabama; and he is executing same voluntarily as his own free act.

Notary Public
My Commission Expires: _____

IN WITNESS WHEREOF, Ruffin has executed this Agreement and caused its name to be subscribed as of the date indicated below.

RUFFIN ENTERPRISES, INC.

By: _____

Its: _____

STATE OF _____)
COUNTY OF _____)

On this the _____ day of _____, 2015, before me, a notary public, in and for said county and state, personally appeared _____, who being placed under oath, acknowledged to me that he has read and understood the foregoing release; he has the authority to bind Ruffin Enterprises, Inc.; and he is executing same voluntarily as his own free act.

Notary Public
My Commission Expires: _____

IN WITNESS WHEREOF, ETC has executed this Agreement and caused its name to be subscribed as of the date indicated below.

**ENHANCED TECHNICAL CONSTRUCTION,
INC.**

By: _____

Its: _____

STATE OF _____)
COUNTY OF _____)

On this the _____ day of _____, 2015, before me, a notary public, in and for said county and state, personally appeared _____, who being placed under oath, acknowledged to me that he has read and understood the foregoing release; he has the authority to bind Enhanced Technical Construction, Inc.; and he is executing same voluntarily as his own free act.

Notary Public
My Commission Expires: _____

Richard M. Hall

STATE OF _____)
COUNTY OF _____)

On this the _____ day of _____, 2015, before me, a notary public, in and for said county and state, personally appeared Richard M. Hall, who being placed under oath, acknowledged to me that he has read and understood the foregoing release, and that he is executing same voluntarily as his own free act.

Notary Public
My Commission Expires: _____

IN WITNESS WHEREOF, Dawson has executed this Agreement and caused its name to be subscribed as of the date indicated below.

DAWSON BUILDING CONTRACTORS, INC.

By: _____

Its: _____

STATE OF _____)
COUNTY OF _____)

On this the _____ day of _____, 2015, before me, a notary public, in and for said county and state, personally appeared _____, who being placed under oath, acknowledged to me that he has read and understood the foregoing release; he has the authority to bind Dawson Building Contractors, Inc.; and he is executing same voluntarily as his own free act.

Notary Public
My Commission Expires: _____