

Agenda Item # ___ C - 6 ___

Village of Royal Palm Beach

Agenda Item Summary

Agenda Item:

Approval and authorization for Mayor to execute a Settlement Agreement with Kimmins Contracting Corporation.

Issue:

The Village opened bids on June 24, 2009 for the Wastewater Treatment Facility Demolition Project, PW0809. Kimmins Contracting Corporation was the lowest responsive, responsible bidder, but it rescinded its bid and filed a declaratory action regarding its bid bond. If approved, the settlement agreement resolves this issue and the civil action will be dismissed. In a companion consent item, the Village will award the bid to the next lowest responsive, responsible bidder.

Recommended Action:

Upon Council review, staff recommends a motion to approve the Settlement Agreement and authorization for the Mayor to execute it.

Initiator:	Village Manager	Agenda	Village Council
Paul L. Webster,	Approved:	Date:	Action:
Director of		August 20, 2009	
Public Works			

Settlement Agreement

Pursuant to discussions between the undersigned parties regarding a civil action for declaratory judgment filed in the Fifteenth Judicial Circuit concerning the forfeiture of a bid bond and styled as “Kimmins Contracting Corp., a Florida corporation vs. Village of Royal Palm Beach, a Florida unit of local government”, the parties, Kimmins Contracting Corp. (“Kimmins”) and the Village of Royal Palm Beach (the “Village”), have agreed to enter into a settlement agreement (the “Agreement”) to provide for the following:

1. The Agreement and all terms and conditions herein are subject to final approval by the Village Council at the August 20, 2009, regular Village Council meeting and final written approval by an officer of Kimmins being provided by August 12, 2009 to the Village prior to this meeting date. If such final approvals of the parties are not obtained, then this Agreement shall be null and void and of no force and effect and the funds paid pursuant to paragraph 3 shall be returned in five (5) business days.
2. The Agreement is intended to resolve all outstanding disputes and issues between Kimmins and the Village and is intended to encompass all issues concerning the bid response for Village Wastewater Treatment Facility Demolition-Project No.PW0809 (the “Bid”) submitted by Kimmins on June 24, 2009 and the bid bond provided in conjunction with the Bid issued by Fidelity and Deposit Company of Maryland (the “Bond”). Upon final approval by the parties, each party to the Agreement releases the other party from and against any and all claims, demands, actions or damages arising out or connected in any way with the Bid or the Bond against Kimmins or Fidelity and Deposit Company of Maryland. Furthermore, each party shall bear its own costs and attorney’s fees connected with the Bid or this Agreement.

Responsibilities of Kimmins:

3. Kimmins shall deliver to the office of the Village Attorney, Corbett & White, P.A., a certified or bank check in the amount of twelve thousand five hundred dollars (\$12,500.00) payable to the Village of Royal Palm Beach, Florida by August 12, 2009. Such monies shall not represent a penalty against Kimmins but as payment to the Village, in part, of additional monies which will be required to help offset the cost to the Village in order to award to the second lowest bidder. Such check shall be kept by the Village Attorney in escrow pending final approval of the Agreement. If the Agreement is not approved, the check for such monies will be delivered back to Kimmins within five (5) business days.

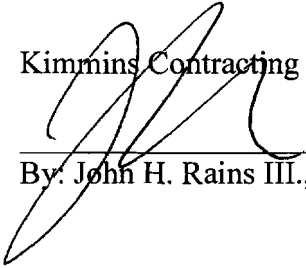
4. Upon final approval of the Agreement by the parties, Kimmins will file for Voluntary Dismissal, with prejudice, of the action referenced hereinabove pursuant to Rule 1.420, Fla.R.Civ.P. by August 28, 2009.

Responsibilities of the Village:

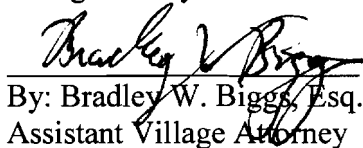
5. Upon final approval of the Agreement by the parties, the Village will return the Bond to Kimmins within five (5) business days and will not make any demand upon such Bond.
6. The Village will proceed to contact the second lowest bidder for the Bid and place this entity's bid response on the agenda for approval at the August 20, 2009 regular Village Council meeting.
7. The Staff and Village Manager shall present this Agreement to Village Council, with recommendation for approval, at the Village Council meeting on August 20, 2009.

WHEREFORE, the foregoing is hereby agreed by the parties this ___ day of August, 2009, being the last day that it has been signed by the parties.

Kimmins Contracting Corp.


By: John H. Rains III., Esq.

Village of Royal Palm Beach


By: Bradley W. Biggs, Esq.
Assistant Village Attorney

Kimmins Contracting Corp.


By: John L. Zemina,

Village of Royal Palm Beach

By: Mayor David A. Lodwick

Attest:

Diane DiSanto, Village Clerk

(SEAL)

JOHN H. RAINS III, P.A.

Attorneys at Law

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John H. Rains, III
Mary M. Clapp

August 10, 2009

RECEIVED

AUG 13 2009

CERTIFIED MAIL: 7005 2570 0001 9736 1627
RETURN RECEIPT REQUESTED

CORBETT AND WHITE, P.A.

Bradley W. Biggs, Esq.
Corbett & White, P.A.
1111 Hypoluxo Road, Ste 207
Lantana, FL 33462

Re: Kimmins Contracting Corp. v. Village of Royal Palm Beach
Our File: 3788-032

Dear Mr. Biggs:

Please find enclosed the original Settlement Agreement signed on behalf of Kimmins Contracting Corp. together with Kimmin' check #273328 in the amount of \$12,500.00 representing settlement proceeds in the above-referenced matter. As agreed, please hold the funds in your trust account until the Settlement Agreement is fully executed and exchanged. Please feel free to contact my assistant, Gayla Arnold, if there are any questions or problems.

Sincerely,


John H. Rains, III
(signed in his absence to avoid delay)

/ga
Enclosure