



BOC Chair

Michael H. Boyce, Chairman

District 2

Item No. 52.

Non-Agenda Item - To be added to the end of the Regular Agenda

Cobb County...Expect the Best!

TO: Rob Hosack, County Manager

FROM: Michael H. Boyce, Chairman

DATE: September 11, 2018

PURPOSE

To authorize settlement of demands and counterdemands, relative to SunTrust Park, with the Atlanta National League Baseball Club, LLC, BRED Co., LLC, Braves Stadium Company, LLC ("BSC"), and Braves Construction Company, LLC, ("BCC") (collectively the "Braves Parties").

BACKGROUND

On May 21, 2018, the Cobb Board of Commissioners provided the Atlanta National League Baseball Club, Inc. with a Notice of Default and Dispute regarding the non-payment of a System Development Fee ("SDF") required by the Official Code of Cobb County, Georgia, Chapter 122-82. Demand was made for full payment of the \$1,486,250 SDF Fee.

Responsive to that demand, the Braves Parties responded on May 30, taking the position that the SDF was not owed and providing a counter demand for \$4,683,300. The counterdemand included a request for reimbursement of \$500,00 in Project Management costs paid on behalf of the County to the County's contractor/consultant, Heery International, Inc. (Further information on this obligation is discussed below.)

The County and Braves Parties subsequently agreed to formally mediate their disputes, but have engaged in advance settlement discussions and have reached an agreement to settle all demands in the manner set forth herein:

- (1) Under the proposed settlement, the Braves Parties will agree to make a full payment of the \$1,486,250 SDF to the Cobb County Water System.
- (2) Under the proposed settlement, the County will agree to a reimbursement in the amount of \$500,000 to the Braves for payment of the County's Project Management costs.
- (3) Under the proposed settlement, the County will be entitled to a credit from the Braves Parties for an outstanding obligation in the amount of \$380,000 in satisfaction of obligations under the Bridge Signage and Maintenance Agreement approved by the BOC on February 14, 2017.

(4) Both the County and the Braves Parties agree to allow a \$380,000 credit to offset the County's obligation for project management costs, for a net payment due from the County to the Braves Parties of \$120,000 under Items (2) and (3) above.

(5) The County will make two installment payments of \$163,408 to the Braves Parties as originally agreed by the BOC on June 13, 2017 in satisfaction of the Transportation and Infrastructure provision of the Development Agreement; said payments shall be made in October 2018 and October 2019.

(6) All other claims and demand of the Braves Parties referenced in the May 30, 2018 dispute notice and demand letter from James Bali of Sams, Larkin, Huff & Balli on behalf of the Braves Parties to Cobb County will be finally resolved without payment or reimbursement.

The resolution of all matters will entail a \$1,486,250 from the Braves Parties to Cobb County and a \$120,000 payment from Cobb County to the Braves Parties.

Additional Background Concerning Heery Consultant Agreement

On September 9, 2014, the Board of Commissioners approved a Consulting Services Agreement with Heery International, Inc. in a not-to-exceed amount of \$1.5 million to serve as the County's representative/project manager.

Of that amount, \$1,352,551 was paid to Heery for services under the agreement, with the final payment made on June 8, 2017. Heery was paid \$1,063,067 from project bond funds (as authorized by the County and Braves Parties' representatives) prior to and after the contractual \$300,000.00 contribution from project funds was satisfied in early 2015. Heery received additional payments totaling \$289,484 directly from the County, as authorized by the BOC on November 22, 2016.

In its May 30, 2018 correspondence, the Braves Parties first made a claim for reimbursement for the payments of more than \$500,000 above and beyond the \$300,000 contribution commitment from the project bond funds.

Based upon a review of the payment history and contract documents, staff has verified that the County's project costs were paid to Heery by the Braves through the project bond fund and recommends the resolution of this claim by payment to the Braves Parties in the demand amount of \$500,000.

IMPACT STATEMENT

N/A

FUNDING

Funding is currently available in the County's Casualty & Liability Fund in the following location:

710-050-8011-6608

RECOMMENDATION

The Board of Commissioners authorize the mutual settlement of demands and counterdemands, relative to SunTrust Park, with the Atlanta National League Baseball Club, LLC, BRED Co., LLC, Braves Stadium Company, LLC ("BSC"), and Braves Construction Company, LLC ("BCC") (collectively the "Braves Parties") in accordance with the terms outlined in this agenda item and as discussed in Executive Session on September 10, 2018 and further authorize the Chairman to execute settlement documents in a form approved by the County Attorney.

ATTACHMENTS

None