

ORDINANCE NO. 2013- 3624

AN ORDINANCE AUTHORIZING THE MAYOR TO EXECUTE ON BEHALF OF THE CITY OF FREMONT A SETTLEMENT AGREEMENT BETWEEN THE CITY AND ARCADIS, US INC., TRUCCO CONSTRUCTION CO., INC., AND H.M. MILLER CONSTRUCTION CO., IN A FORM APPROVED BY THE LAW DIRECTOR, IN CONNECTION WITH CASE NO. 10 CV 1122 FILED IN SANDUSKY COUNTY COMMON PLEAS COURT REGARDING TRUCCO CONSTRUCTION CO., INC.; CASE NO. 12 CV 758 FILED IN SANDUSKY COUNTY COMMON PLEAS COURT REGARDING H.M. MILLER CONSTRUCTION CO.; AND CASE NO. 12 CV 1292 FILED IN SANDUSKY COUNTY COMMON PLEAS COURT REGARDING ARCADIS US, INC.; AND TO EXECUTE ALL DOCUMENTS AND TAKE ACTION AS REQUIRED UNDER THE AGREEMENT, AND DECLARING AN EMERGENCY.

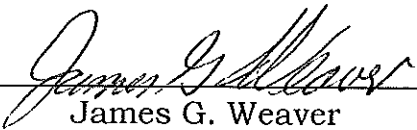
**BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FREMONT, STATE OF OHIO:**

**SECTION 1.** That the Mayor is hereby authorized to execute on behalf of the city a final and definitive settlement agreement between the city and Arcadis, US Inc., Trucco Construction Co., Inc., and H.M. Miller Construction Co., in a form approved by the Law Director, which final and definitive settlement agreement shall substantially conform to the principal terms and conditions set out in the "Deal in Principle" memorandum attached to this ordinance, and attached as Exhibit A, and that the Mayor and other city officials shall take such further action as is required to put into effect all the terms of said final and definitive settlement agreement, which shall finally resolve all outstanding disputes among the parties with respect to the Fremont Raw Water Reservoir-Phase I project.

**SECTION 2.** It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and any of its committees that resulted in such formal action were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Revised Code of Ohio.

**SECTION 3.** The immediate operation of the provisions of this ordinance is necessary for the immediate preservation of the public peace, health, safety and welfare of the citizens of the City of Fremont. Said emergency being the need to end litigation with the trial date shortly approaching.

This ordinance, provided it receives a two-thirds yeas or nays vote of all the members elected to the Fremont City Council, is hereby declared to be an emergency measure and this ordinance shall be in full force and effect from and after its passage by the Council of the City of Fremont, approval by the Mayor, and publication and posting as required by law.

  
James G. Weaver  
President of Council

PASSED: 1-17-13

Effective date: 1-17-13

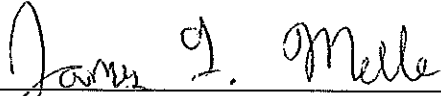
YEAS: 6 NAYS: 0

  
Elaine J. Huntley, City Council Clerk

  
James H. Ellis III, Mayor

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Approved as to form:

Handwritten signature of James F. Melle in cursive script.

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James F. Melle, Director of Law  
City of Fremont, Ohio

## DEAL IN PRINCIPLE

January 15, 2013 MEDIATION

BY AND BETWEEN CITY OF FREMONT, ARCADIS, U.S. INC., TRUCCO CONSTRUCTION CO., INC., AND H.M. MILLER CONSTRUCTION CO. (collectively "Parties")

This mediation, presided over by Mediators Ty D. Laurie and Don Gregory, in regards to disputes set forth in three pending actions regarding the design and construction of the City of Fremont Reservoir Project ("Project")(collectively "Disputes"). The pending actions are:

Trucco Construction Co., Inc. v. City of Fremont, Ohio, et al., Sandusky County Case No. 10-CV-1122  
 H.M. Miller Construction Co., Inc. v. City of Fremont, Ohio, Sandusky County Case No. 12-CV-758  
 City of Fremont, Ohio v. ARCADIS U.S., Inc., Sandusky County Case No. 12-CV-1292

(collectively "Actions") The parties voluntarily entering into a mediation of their Disputes, and the parties having come to a deal in principle in which they intend to be bound, agree as follows ("Agreement"):

1. City shall pay Trucco \$2.7 Million within one week of final execution of the definitive settlement agreement.
2. City shall pay Miller \$6.75 Million at time of financing in a manner similar to the financing under the MOU.
3. Arcadis shall contribute \$1.5 Million to the City for said settlements within 90 days of the definitive settlement agreement, waive its fee claim of approximately ~~\$522,000~~ <sup>550,000 QWR</sup> for all services unpaid but incurred to date (except current invoice of approximately \$6700 for basic services), and agree to provide the next \$10,000 of basic or additional services for the Project free of charge to the City.
4. All Three Actions to be dismissed with prejudice.
5. All Parties agree to release each other from any and all claims arising out of or relating to the Project, that each Party knows or reasonably should know at this time, final release language to be in final mutual release and settlement agreement, subject to Miller and City not releasing each other until financing is in place for the City, as set forth below.
6. Miller and City agree to execute a change order consistent with language agreed upon regarding no design liability and as-built survey, and City agrees to pay Miller for pay application 12 of approximately \$257,655 and final retainage of \$26,026.71, respectively, which shall be in addition to the payment in paragraph 2.
7. All Parties to agree to a reasonable non-disparagement and confidentiality clause to be inserted in the mutual release and settlement agreement.
8. This Agreement is in principle and shall be set forth in a mutual release and settlement agreement to be prepared by the parties and executed within 21 days, or such later time as mutually agreed to by the Parties. To the extent there is a dispute regarding language to be inserted into the mutual release and settlement agreement, Mediators Ty D. Laurie and/or Don Gregory are hereby appointed as the arbitrators of all such disputes, to be resolved by telephonic hearing. The Parties agree to be bound by Mr. Laurie's and/or Mr. Gregory's decisions regarding language that they rule shall be inserted into the mutual release and settlement agreement, which language Mr. Laurie and/or Mr. Gregory will determine is consistent with this Agreement and the Parties' intent.

9. This Agreement is conditioned upon and subject to the following:
- a. City of Fremont's City Council approval of this Agreement and ratification of the Trucco contract, which will be presented to Council on Thursday January 17, 2013, and if not approved at that meeting by Feb. 7, 2013.
  - b. As to the paragraph 2 payment to H.M. Miller, approval of financing for the City by State Agency within 90 days from the date of this Agreement.
10. The paragraph 2 payments to H.M. Miller shall be allocated by H.M. Miller and the City to the schedule of values line items as agreed to by H.M. Miller and the City to resolve all pending payment claims; including final quantity adjustments, provided, however, the total liability of the City to H.M. Miller shall not exceed the amounts set forth in this Agreement.

Allen / P.S. on behalf  
of ARCADIS U.S., Inc.

H.M. Miller Const. Co.

John [unclear] President

[Signature], Mayor City of Fremont

Jon [unclear], mediator

Peter P. [unclear] on behalf of  
Trucco Construction Co. Inc.

Ty Laurie BY DWG