

RESOLUTION 22-51 – AUTHORIZING THE EXECUTIVE DIRECTOR TO EXECUTE A SETTLEMENT AGREEMENT WITH RUMMEL, KLEPPER AND KAHL, LLP.

WHEREAS, The Delaware River and Bay Authority (the “Authority”) is a bi-state Authority of the State of Delaware and the State of New Jersey created by Compact that owns, operates and controls the Delaware Memorial Bridge; and

WHEREAS, The DRBA and Rummel, Klepper & Kahn (“RK&K”) are parties to a Consulting Services Agreement, Agreement No. CS-09-03, dated October 2010 (the “Agreement”) pursuant to which RK&K performed certain design and professional engineering services for the DRBA related to the I-295 Southbound Reconstruction project; and

WHEREAS, the parties have been engaged in a dispute over the satisfactory performance of those services; and

WHEREAS, on May 15, 2020, the DRBA sent RK&K a Notice of Intent to Arbitrate, notifying RK&K of the DRBA’s intent to arbitrate the Parties’ disputes under the terms of the Agreement (the “Arbitration”); and

WHEREAS, on June 11, 2020, RK&K filed suit in the Delaware Court of Chancery (the “Court”), captioned *Rummel, Klepper & Kahn, LLP v. Delaware River and Bay Authority*, C.A. No. 2020-458-PAF (the “Action”), seeking to enjoin the Arbitration; and

WHEREAS, The DRBA filed a motion to compel arbitration and to dismiss RK&K’s Action, which was granted by the Court in a Memorandum Opinion and Order dated January 3, 2022; and

WHEREAS, following receipt of the Memorandum Opinion and Order, on January 26, 2022, the DRBA sent a second Notice of Intent to Arbitrate to RK&K; and

WHEREAS, on February 2, 2022, RK&K filed an appeal of the Court’s January 3, 2022, Memorandum Opinion and Order with the Delaware Supreme Court; and

WHEREAS, following consultation with their counsel, the Parties agreed to mediate their dispute and attempt to reach a settlement during the pendency of the appeal; and

WHEREAS, following good faith negotiations and a mediation session on August 30, 2022, and in order to avoid the burden, expense, inconvenience, risk and distraction of litigation, the Parties agreed to resolve the Action on the terms and subject to the conditions set forth in a Settlement Agreement; and

WHEREAS, among other provisions, the Settlement Agreement provides for:

- 1) A payment of one million, one hundred twenty-five thousand dollars (\$1,125,000) by RK&K to the DRBA, within 20 days by after receipt by RK&K of notice of this resolution’s approval by the Authority’s Board of Commissioners,
- 2) Dismissal with prejudice by RK&K of the aforementioned litigation.

- 3) A mutual release of claims.
- 4) A confidentiality provision in accordance with Delaware law; and
- 5) A non-disparagement provision; and

WHEREAS, the Settlement Agreement has been reviewed and approved by the Authority's counsel.

NOW, THEREFORE, BE IT RESOLVED, that the Executive Director is hereby authorized to finalize and execute the Settlement Agreement between the Authority and RK&K, to be in final form acceptable to Authority counsel.

Resolution 20-51 - Executive Summary Sheet

Resolution: Authorizes the Executive Director to execute a Settlement Agreement with Rummel, Klepper & Kahl LLP (RK&K).

Committee: Projects Committee

**Committee/
Board Date:** September 20, 2022

Purpose of Resolution:
To authorize the Executive Director to execute a Settlement Agreement between the DRBA and RK&K.

Background for Resolution:
The DRBA and Rummel, Klepper & Kahn are parties to a Consulting Services Agreement, Agreement No. CS-09-03, dated October 2010, pursuant to which RK&K performed certain design and professional engineering services for the DRBA related to the I-295 Southbound Reconstruction project.

The parties have been engaged in a dispute over the satisfactory performance of those services.

On May 15, 2020, the DRBA sent RK&K a Notice of Intent to Arbitrate, notifying RK&K of the DRBA's intent to arbitrate the Parties' dispute under the terms of the Agreement.

On June 11, 2020, RK&K filed suit in the Delaware Court of Chancery, captioned *Rummel, Klepper & Kahn, LLP v. Delaware River and Bay Authority*, C.A. No. 2020-458-PAF, seeking to enjoin the Arbitration.

The DRBA filed a motion to compel arbitration and to dismiss RK&K's Action, which was granted by the Court in a Memorandum Opinion and Order dated January 3, 2022.

Following receipt of the Memorandum Opinion and Order, on January 26, 2022, the DRBA sent a second Notice of Intent to Arbitrate to RK&K.

On February 2, 2022, RK&K filed an appeal of the Court's January 3, 2022, Memorandum Opinion and Order with the Delaware Supreme Court.

Following consultation with their counsel, the Parties agreed to mediate in an attempt to reach settlement during the pendency of the appeal.

Following good faith negotiations and a mediation session on August 30, 2022, and in order to avoid the burden, expense, inconvenience, risk and distraction of litigation, the Parties agreed to resolve the Action on the terms and subject to the conditions set forth in a Settlement Agreement.

Among other provisions, the Settlement Agreement provides for:

- 1) A payment of one million, one hundred twenty-five thousand dollars (\$1,125,000) by RK&K to the DRBA, within 20 days by after receipt by RK&K of notice of this resolution's approval by the Authority's Board of Commissioners.
- 2) Dismissal with prejudice by RK&K of the aforementioned litigation.
- 3) A mutual release of claims.
- 4) A confidentiality provision in accordance with Delaware law; and
- 5) A non-disparagement provision; and

The Settlement Agreement has been reviewed and approved by the Authority's counsel