



City of Muscatine



AGENDA ITEM SUMMARY

DATE: 03/18/21

STAFF

Carol Webb, City Administrator
Nancy Lueck, Finance Director

SUBJECT

Resolution Approving a Release and Settlement Agreement with Hagerty Earthworks, LLC.

EXECUTIVE SUMMARY

The purpose of this item is to consider a resolution approving a release and settlement agreement with Hagerty Earthworks, LLC. The settlement agreement resolves certain disputes between the City and Hagerty Earthworks, LLC and requires certain actions by both parties.

STAFF RECOMMENDATION

Staff recommends approval of the Resolution.

BACKGROUND/DISCUSSION

On April 9, 2015, the City awarded the bid to Hagerty and on April 16, 2015 the City approved the contract and bond with Hagerty for the project referred to as "West Hill Area Sanitary and Storm Sewer Separation Phase 3" (the "Contract"). A dispute arose between the Parties with respect to their respective rights and obligations under the Contract.

Hagerty and the City have now tentatively agreed to resolve all disputes between them under the conditions outlined in the attached Settlement and Release Agreement.

CITY FINANCIAL IMPACT

Under the proposed agreement, the City will pay \$540,000.00 to Hagerty Earthworks LLC and Whitfield & Eddy PLC. \$214,691.81 was previously set aside in anticipation of a resolving the dispute. The additional \$325,308.19 will be funded from Local Option Sales Tax Revenue since it is related to the West Hill Area Sanitary and Stormwater Separation Project.

ATTACHMENTS

Release and Settlement Agreement
Resolution

RESOLUTION 2021-0107

A Resolution Approving a Settlement Agreement Between Hagerty Earthworks LLC And City Of Muscatine.

WHEREAS, on or about June 16, 2017, the City of Muscatine was served with a Petition by Hagerty Earthworks LLC alleging a breach of contract for non-payment of work performed on the West Hill Area Sanitary and Storm Sewer Separation, Phase 3 Project;

WHEREAS, the City filed an answer denying Hagerty's claims, and the trial is currently scheduled for April 2021;

WHEREAS, the parties have reached a tentative settlement agreement to resolve the outstanding issues and dismiss the trial;

WHEREAS, the settlement agreement requires, among other things, that Hagerty Earthworks dismiss all claims against the City with prejudice, the City pay \$540,000 for work performed and to avoid the costs, expenses and uncertainty of a trial;

WHEREAS, City staff recommends approval of the settlement agreement; and

NOW THEREFORE, BE IT RESOLVED, that the City Council hereby authorize approval of the settlement agreement with Hagerty Earthworks LLC.

PASSED, APPROVED, AND ADOPTED ON March 18, 2021.

(CITY SEAL)

Diana L. Broderson, Mayor

ATTEST:

Carol Webb, City Clerk

RELEASE AND SETTLEMENT AGREEMENT

This Release and Settlement Agreement (“Agreement”) is made as of March 16, 2021, by and between **Hagerty Earthworks, L.L.C.**, including all managers, members, owners, employees, contractors, and agents of Hagerty Earthworks, L.L.C. (collectively, “Hagerty”) and the **City of Muscatine, Iowa**, including all its councilmembers, employees, and agents (collectively, the “City”). Hagerty and the City are each referred to as a “Party,” or, together, the “Parties”.

1. BACKGROUND. On April 9, 2015, the City awarded the bid to Hagerty and on April 16, 2015 the City approved the contract and bond with Hagerty for the project referred to as “West Hill Area Sanitary and Storm Sewer Separation Phase 3” (the “Contract”). A dispute arose between the Parties with respect to their respective rights and obligations under the Contract. On April 27, 2017, Hagerty filed a Petition at Law and Jury Demand against the City in the Iowa District Court for Muscatine County, as Case No. LACV023958. On March 19, 2019 the City filed Defendant’s Third Amended & Substituted Answer, Affirmative Defenses, and Counterclaims and Jury Demand in Case No. LACV023958. Collectively, the filings and all allegations in Case No. LACV023958 are hereinafter referring to as “Case No. LACV023958”. Hagerty and the City have agreed to resolve all disputes between them.

2. SETTLEMENT AND RELEASE.

A. Hagerty’s Required Action Under Agreement.

i. Hagerty hereby releases, waives, acquits and forever discharges any and all known and unknown claims, counterclaims, defenses, debts, demands, amounts, liabilities, damages, obligations and actions, whether at law or in equity, based on contract, statute, common law, rule, or otherwise, which Hagerty has, or may have against the City, without limitation. This is intended to be a “global” release of all claims by Hagerty against the City. No reference herein to any specific claim, statute or obligation is intended to limit the scope of this release and, notwithstanding any such reference, this Agreement will be effective as a full and final bar to any and all claims Hagerty may have against the City as of the date of this Agreement. Hagerty does not release and specifically reserves any and all claims arising after the date of this Agreement.

ii. Within three (3) days of the receipt of funds to be paid pursuant to paragraph B(iv) below, Hagerty shall file a Dismissal With Prejudice in Case No. LACV023958, with each party to bear their own costs and attorneys’ fees.

B. The City’s Required Actions Under Agreement.

i. Subject to paragraph 2(B)(ii), below, City hereby releases, waives, acquits and forever discharges any and all known and unknown claims, counterclaims, defenses, debts, demands, amounts, liabilities, damages, obligations and actions, whether at law or in equity, based on contract, statute, common law, rule, or otherwise, which the City has, or may have against Hagerty, without limitation. Subject to paragraph 1(B)(ii), below, this is intended to be a “global” release of all claims by the City against the Hagerty.

ii. The City’s release shall not include, and shall not, in any way, be read to include a release of any unknown claims, demands, liens, actions, suits, causes of action, appeals, obligations, damages, judgments, orders, and liabilities of whatever kind or nature in law, equity, or otherwise that might otherwise arise under a warranty obligation imposed by the Contract.

iii. Within three (3) days of Hagerty's dismissal described in paragraph A(ii) above, the City shall file a Dismissal With Prejudice in Case No. LACV023958, with each party to bear their own costs and attorneys' fees.

iv. The City shall, within fifteen (15) days of full execution of this Agreement, pay to Hagerty the sum of five hundred and forty thousand dollars (\$540,000.00) by check made payable to Hagerty Earthworks LLC and Whitfield & Eddy PLC, and mailed to Whitfield & Eddy PLC, 669 Walnut, Ste. 2000, Des Moines, Iowa 50309.

v. The City shall not permit Bill Haag to inspect, administer, or in any way be involved with, work performed by Hagerty. This provision is part of a settlement of uncertain claims and is not an admission that Mr. Haag: (a) caused any work performance issues; (b) created any liability on behalf of the City; or (c) took any action that impugns his professional reputation.

vi. The City shall not automatically deem Hagerty to be a non-responsive bidder on future projects. The City shall not hold the dispute relating to the Contract against Hagerty for purposes of future projects. The intent of this provision is for the City and Hagerty to have a "clean slate" with respect to future projects, but shall not be construed as any guaranty of any future awards to Hagerty.

vii. To the extent the City provides notice to any contractors for potential City projects where the project falls below the competitive bid threshold under Iowa or City statute, ordinance, regulation, or policy, the City shall include Hagerty in such notification.

3. DUE AUTHORITY. Each Party respectively warrants and represents, which warranty and representation shall survive the date of this Agreement, that: (i) it has good right, title and authority to enter into this Agreement and perform its respective obligations hereunder; (ii) the execution and delivery hereof by the individuals set forth below, and the consummation of the transactions herein provided, have been duly authorized and approved by the governing body and/or individuals of each such Party and that no other authorization or approvals were or are required to bind each such Party; and (iii) this Agreement, upon execution and delivery by the individuals set forth below, will constitute a valid and binding obligation, enforceable against each such party in accordance with its terms.

4. GENERAL PROVISIONS.

A. Applicability. This Agreement applies to, and shall be binding upon, the Parties and all their successors in interest regardless of whether such interest is acquired through assignment, sale, subrogation, equity, and levy or through any other manner.

B. Severability. If any term of this Agreement is deemed unenforceable or invalid for any reason, that term shall be severed from this Agreement and the remaining terms of this Agreement shall be given effect to the greatest extent possible without the unenforceable or invalid provision.

C. Integration. This Agreement constitutes the entire understanding and intent of the Parties. It may not be modified unless the modification is done through a written document signed by all parties. This Agreement is made solely in reliance upon each of the Parties' own knowledge, belief, and judgment. No representations have been made on matters that include, without limitation, issues relating to the tax consequences of this Agreement.

D. No Admission. This Agreement is part of a settlement of uncertain claims and is not an admission of any liability or fact of any kind whatsoever. The Parties are executing this Agreement for the sole and exclusive purpose of avoiding costs of litigation.

E. Headings. The order and headings of the paragraphs and subparagraphs of this Agreement are for clarity and convenience only and should not, *per se*, be construed as a material expression of any term in this Agreement.

F. Counsel. All parties to this Agreement are represented by attorneys.

G. Applicable Law. This Agreement shall be construed pursuant to the laws of the State of Iowa. Any action brought to enforce this Agreement shall be brought in the 7th Judicial District Court, Muscatine County, Iowa.

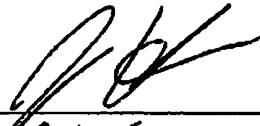
H. Additional documents. Both Parties agree to take any additional action, such as, but without limitation, executing supplemental, administrative, or other clerical documents that are necessary or appropriate to give full force and effect to the terms and intentions of this Agreement.

I. Costs and litigation fees. Each Party shall be responsible for paying its own costs and attorney fees related to this dispute. However, in the event any party shall fail to perform any of its obligations under this Agreement, the non-performing party hereby agrees to pay all reasonable expenses, including court costs and reasonable attorneys' fees, which may be incurred by the other party in enforcing this Agreement.

J. Signatures. This Agreement may be signed separately or in counterparts with the signature pages being combined for a single document. An electronic copy of a signature shall have the same effect as an original.

K. Taxes. Hagerty agrees that it is responsible for the payment of all federal, state and local taxes, of whatever type, due from Hagerty and resulting from the above payment, if any. Hagerty agrees to indemnify City for any monies paid by the City to the IRS or any state or local taxing authority as a result of the non-payment by Hagerty of any required taxes.

HAGERTY EARTHWORKS, L.L.C.

By: 
Its Owner
Dated: 3/16/21

CITY OF MUSCATINE, IOWA

By: _____
Its _____
Dated: _____