



LEGISLATIVE MEMORANDUM

TO: Honorable Mayor and Members of the City Council

FROM: Patricia Smith, City Attorney

THRU: Patricia D. Smith, City Attorney

DATE: June 25, 2024

RE: Consideration of a Release and Settlement Agreement with Community Asphalt Corp.

SUMMARY:

The City and Community Asphalt entered into a design-build contract to construct the St. Johns Heritage Parkway off the I-95 interchange. The contract was a Cost Plus a fee arrangement in which Community Asphalt was responsible for the design of the road and would receive a lump fee payment of \$752, 850. When the design services were complete, Community Asphalt would construct the roadway and would be compensated on a Cost Plus Fee, which was not to exceed their proposal amount for the construction services. There was a dispute between the City and Community Asphalt regarding whether some line-item costs were correct and Community Asphalt failed to achieve substantial completion by the contracted time. As a result, the City assessed liquidated damages.

There were three change orders changing the scope of work and providing time extensions for weather delays and other delays that Community Asphalt was not responsible for. Despite the City extending the substantial completion date to December 8, 2019, Community Asphalt failed to achieve substantial completion until January 16, 2020- 39 days late. The City assessed 39 calendar days of liquidated damages @ \$3,645.00 for a total of \$142,155.00. The City disputed \$331, 994.20 in credits that the City considered savings for underruns on certain line items. Initially the total disputed amount was \$474, 149.20. Community Asphalt made some concessions on the credits and alleged in their lawsuit they were owed \$412,576.60.

The City has approximately \$508, 766.01 remaining in funds set aside for Community Asphalt/SJHP Funding project:

\$176,771.81 – remaining project budget (unencumbered)

\$331,994.20 – remaining balance on existing PO 181056 to Community Asphalt

\$508,766.01 = give or take less than a dollar due to rounding.

Key provisions of the proposed settlement agreement:

The City pays Community Asphalt \$325,000.

Community Asphalt accepts the \$325,000 as the full settlement amount for any and all claims between Community Asphalt and the City related to any claims raised or that could have been raised in the lawsuit.

Community Asphalt dismisses the lawsuit with prejudice.

Each party bears their own attorney fees and costs.

REQUESTING DEPARTMENTS:

City Attorney's Office

City Manager's Office

FISCAL IMPACT:

Payment of \$325,000 from account

STAFF RECOMMENDATION:

Motion to approve settlement agreement and authorize the City Manager to execute the agreement.

ATTACHMENTS:

1. Release and Settlement Agreement