



PERSSON, COHEN & MOONEY, P.A.

ATTORNEYS AND COUNSELORS AT LAW

David P. Persson**

Andrew H. Cohen

Kelly M. Fernandez*

Maggie D. Mooney*

R. David Jackson*

Regina A. Kardash*

* Board Certified City, County and Local Government Law

** Of Counsel

Telephone (941) 306-4730

Facsimile (941) 306-4832

Email: kfernandez@swflgovlaw.com

Reply to: Venice

MEMORANDUM

DATE: January 6, 2020

TO: City Council

FROM: R. David Jackson, Assistant City Attorney

THROUGH: Kelly M. Fernandez, City Attorney

SUBJECT: Settlement Agreement with DeJonge Excavating Contractors, Inc.

Attached please find a proposed Settlement Agreement between the City and DeJonge Excavating Contractors, Inc. ("Contractor").

Factual Background

This dispute involves the City's Edmondson Road Multi-Use Trail Project (the "Project") and the contract with the Contractor for completion of the Project. Upon completion of the Project, the Contractor made a request to the City for final payment which included costs for five disputed items that exceeded the contracted quantities - maintenance of traffic, embankment, concrete sidewalks, sod, and superpave asphalt concrete. The total amount requested by the Contractor for these additional items was \$82,738.80. While the City did derive some benefit from at least some of these additional items, it is the City's position that the Contractor was not authorized to perform this additional work under the contract or a change order under the

Lakewood Ranch
6853 Energy Court
Lakewood Ranch, Florida 34240

Venice
236 Pedro Street
Venice, Florida 34285

contract. The Contractor believes language within the contract documents allowed the disputed work and sums.

Settlement Agreement

In order to finally resolve this dispute without litigation, a proposed Settlement Agreement was negotiated with the Contractor under which the City will pay an additional \$32,965.00 to the Contractor. In addition, the Settlement Agreement provides for both the City and the Contractor to mutually release each other with respect to any claims related to this dispute. Further, as set forth in Paragraph 13 of the Settlement Agreement, the Settlement Agreement and payment of the settlement amount by the City is conditioned upon the approval by City Council of a corresponding budget amendment prior to February 29, 2020. Counsel for the Contractor has approved the Settlement Agreement and it has been executed by the Contractor. Accordingly, the attached Settlement Agreement between the City and the Contractor is provided for approval by the City Council and execution by the Mayor.

Budget Amendment

The first reading for the budget amendment related to the Project and this Settlement Agreement is scheduled for the January 14, 2020, City Council meeting, subsequent to consideration of the proposed Settlement Agreement.