

2G. Consideration of approving agreement for final settlement of all outstanding claims related to the Fallon Avenue Bridge Project

Prepared by: City Attorney, City Administrator	Meeting Date: 9/12/2022	<input checked="" type="checkbox"/> Consent Agenda Item <input type="checkbox"/> Regular Agenda Item
Reviewed by: PW Director/City Engineer	Approved by: City Clerk	

ACTION REQUESTED

Motion to approve the final settlement agreement for outstanding claims related to the Fallon Avenue Bridge Project.

REFERENCE AND BACKGROUND

In 2018 the City of Monticello worked with the State of Minnesota to initiate construction of the Fallon Avenue Bridge project. This large-scale public improvement project involved building a new bridge over I-94 and improvements within the city, including new roundabouts, new paved trails and sidewalks, and reconstruction of Fallon Ave, East 7th St, Chelsea Rd, and Washington St. The improvements improved traffic flow and safety for the public.

To carry out construction of this project, the City utilized eminent domain to acquire land from four properties located at the four corners of the intersection of East 7th Street and Washington Street. This included three apartment buildings and a vacant lot marketed for future development. The City also levied special assessments against all four properties.

The owners of these properties challenged both the taking of their land to build the project and the special assessments of their properties. Both matters were in litigation for several years and delayed due to COVID. Following the special assessment trial, the assessments levied by the City were fully affirmed and upheld by the district court. The owner has appealed that matter to the Minnesota Court of Appeals. Trial on the eminent domain matter remains pending.

This proposal includes full and final settlement of all outstanding claims related to the Public Improvement Project, including the eminent domain matter scheduled for trial and the special assessment matter currently on appeal. Settlement of all matters allows the City to close out the project and avoid the expense and uncertainty of future litigation.

STAFF RECOMMENDED ACTION

City staff and the City Attorney recommend that the Council approve the proposed settlement.

SUPPORTING DATA

- Proposed Settlement Agreement

SETTLEMENT AGREEMENT

This Settlement Agreement (“Settlement Agreement”), dated as of August __, 2022, is entered into by and between the City of Monticello, Minnesota (“City”), and The Bluffs in Monticello LLC (“The Bluffs”) (collectively, the “Parties”).

RECITALS

WHEREAS, The Bluffs own real property located in Wright County, State of Minnesota.

WHEREAS, The City sought to acquire by eminent domain certain temporary and permanent easements upon The Bluffs Property (the “Easements”), which easements were necessary for extension of public right of way and the location and construction of a public roadway and related public improvements;

WHEREAS, on or about January 9, 2018, the City filed its Petition in Condemnation and notice of intent to seek transfer of title and possession under Minnesota Statute § 117.042 to obtain the Easements over and across property owned by The Bluffs in a legal action entitled City of Monticello v. The Bluffs in Monticello LLC et al., Civil Court File No. 86-CV-18-193 in Wright County District Court, State of Minnesota (the “Condemnation Action”) and The Bluffs parcels were identified as Parcels 1, 2, 3 and 4 in this Condemnation Action;

WHEREAS, Parcel 1 in the Condemnation Action is also identified as PID No. 155-015-042010; Parcel 2 in the Condemnation Action is also identified as PID No. 155-050-000020; Parcel 3 in the Condemnation Action is also identified as PID Nos. 155-050-001010, 155-050-001020, 155-050-001030, 155-050-001040, 155-050-001050; and Parcel 4 in the Condemnation Action is also identified as PID No. 155-050-002010;

WHEREAS, on or about February 28, 2018, the Wright County District Court granted the City’s Petition, ordering the City to pay to deposit with the District Court the amount of the City’s approved appraisals of value with respect to Parcels 1, 3, and 4 in the Action (the “Quick Take Payments”), and this court order further

transferred the Easements to the City, and appointed three condemnation commissioners to hear the matter pursuant to Minnesota law;

WHEREAS, on or about March 8, 2018, the City deposited the Quick-Take Payments with the District Court and regarding The Bluffs property those payments were \$5,500.00 with respect to Parcel 1 (PID No. 155-015-042010), \$95,200.00 with respect to Parcel 3 (PID Nos. 155-050-001010, 155-050-001020, 155-050-001030, 155-050-001040, 155-050-001050), and \$16,100.00 with respect to Parcel 4 (PID No. 155-050-002010) for a total deposit of One Hundred Sixteen Thousand Eight Hundred and No/100 Dollars (\$116,800.00) on The Bluffs property;

WHEREAS, on or about March 8, 2018, the City made a Quick-Take payment directly to The Bluffs and that payment was \$81,200.00 with respect to Parcel 2 (PID No. 155-050-000020);

WHEREAS, on or about October 22, 2018, the City adopted special assessments against The Bluffs Property, PID Nos. 155-050-001050, 155-050-001040, 155-050-001030, 155-050-001020, 155-050-001010, 155-050-000020, 155-015-042010, and 155-050-002010;

WHEREAS, on or about November 15, 2018, The Bluffs appealed the special assessments in a legal action entitled The Bluffs in Monticello, LLC v. City of Monticello Court, Civil Court File No. 86-CV-18-6393 in Wright County District Court, State of Minnesota (the “Special Assessment Appeal”);

WHEREAS, the Condemnation Action and Special Assessment Appeal are collectively referred to as the “Actions”;

WHEREAS, on or about March 12, 2022, the Wright County District Court entered judgment affirming the special assessments;

WHEREAS, on or about June 3, 2022, the District Court entered judgment awarding the City’s costs and disbursements in the amount of \$10,050.50;

WHEREAS, on or about June 23, 2022, The Bluffs appealed the District Court’s judgment.

WHEREAS, as a result of arms-length and good faith negotiations, the Parties have mutually reached a settlement of all outstanding differences and disputes between them as set forth below.

AGREEMENTS

NOW, THEREFORE, for and in consideration of the mutual promises, covenants, and agreements herein described, and for other good and valuable consideration, acknowledged by each of them to be satisfactory and adequate, and intending to be legally bound, the Parties do hereby mutually agree as follows:

1. COMPENSATION AND REQUIREMENTS.

1.1 **PAYMENT:** In addition to the Quick-Take Payment of One Hundred Sixteen Thousand Eight Hundred and No/100 Dollars (\$116,800.00) previously deposited into the District Court by the City on behalf of The Bluff in March of 2018, and the Quick-Take payment made directly to The Bluffs in the amount of \$81,200.00 with respect to Parcel 2, the City agrees to pay The Bluffs the additional sum of Two Hundred Fifty Two Thousand and No/100 Dollars (\$252,000.00) for a total settlement amount of Four Hundred Fifty Thousand and No/100 Dollars (\$450,000) (the “Settlement Amount”). The City shall make payment to The Bluffs upon receipt of consent from Bell Bank f/k/a Bell State Bank & Trust (“Bell Bank”) and at its first opportunity but not longer than thirty (30) days after final approval of this Settlement Agreement by the City Council for the City of Monticello. It is hereby expressly understood and agreed to by the Parties that payment of the Settlement Amount shall be a full and complete settlement of all monetary claims that The Bluffs have related to the Actions, including the condemnation award, interest, attorneys’ fees, expert fees and any other costs or claims related to the Actions. Also, the City will not oppose and will agree to release of the funds deposited with the District Court to The Bluffs, plus any accumulated interest.

2. CITY’S EASEMENTS.

2.1 **FINAL CERTIFICATE:** The City may file a Final Certificate

as required by Minnesota Statutes Chapter 117 with respect to the Parcels 1, 2, 3, and 4 after making payment of the Settlement Amount.

3. **RELEASES.** In consideration of the terms of this Settlement Agreement, the Parties agree as follows:

3.1 The Bluffs, on behalf of themselves and their heirs, assigns, representatives, relatives and anyone authorized to act on their behalf, do hereby fully and forever release and discharge the City and its employees, elected officials, agents, assigns, affiliates, representatives, and anyone authorized to act on the City's behalf, from any and all claims, causes of action, suits, proceedings, debts, judgments, damages, levies, executions and demands of any nature, in law or equity, whether accrued or not, whether already acquired or acquired in the future, whether known, unknown, suspected or unsuspected, liquidated or unliquidated, fixed, contingent, direct or indirect, as well as any claim or right obtained by assignment, brought by way of demand, complaint, cross-claim, counterclaim, third party claim or otherwise, arising out of or related to the Actions.

3.2 The Bluffs have carefully read the terms of this Settlement Agreement and all attachments and understand the terms and effects, including the fact that they have agreed to RELEASE, RELINQUISH AND FOREVER DISCHARGE, City from any legal action or other liability of any type related to the Actions.

3.3 Notwithstanding the foregoing, the provisions of Sections 3.1 through 3.2 above shall not release actions, claims, demands, suits or liabilities related to or arising out of the failure by any of the parties to fulfill an obligation under this Settlement Agreement, or any of the documents to be executed and delivered pursuant to this Settlement Agreement.

4. **ENTIRE AGREEMENT.** Except as otherwise expressly set forth herein, this Settlement Agreement embodies the complete agreement and understanding between the Parties with respect to the subject matter hereof and thereof and specifically supersedes any prior proposals, promises, understandings, agreements, or

representations by or between the Parties, written or oral, which may have been related to the subject matter hereof in any way.

5. **AUTHORITY TO EXECUTE AGREEMENT.** Each Party hereto represents, warrants, and agrees that the person who executed this Settlement Agreement on his, her, or its behalf has the full and complete right and authority to enter this Settlement Agreement on behalf of that Party and has the full right and authority to execute this Settlement Agreement and to fully bind that Party to the terms and obligations of this Settlement Agreement. Moreover, each Party represents, warrants, and agrees that neither the execution of this Settlement Agreement, nor the performance of this Settlement Agreement will result in any violation of any contract, agreement, loan agreement or understanding to which any party hereto is a party.

6. **OPPORTUNITY TO CONSULT WITH COUNSEL.** All of the parties to this Agreement hereby represent that they have carefully read and have been advised of the effect of this Settlement Agreement by their own attorneys, or that they have had the opportunity to consult with counsel of their choosing (whether or not they have used such opportunity), have investigated the facts and are not relying upon any representation or acknowledgement, whether oral or in writing, except as contained herein.

7. **ADEQUATE CONSIDERATION.** The Bluffs have signed this Settlement Agreement voluntarily and knowingly in exchange for the consideration described herein, which they acknowledge is adequate and satisfactory to them and which they acknowledge is in addition to any other benefits to which they are otherwise entitled.

8. **NEUTRAL INTERPRETATION.** The Parties have each participated in the negotiation and drafting of this Settlement Agreement, and therefore, the terms and conditions of this Settlement Agreement shall be construed as if drafted jointly by the Parties and shall not be interpreted or applied in favor or against any Party on the basis of who may have drafted this Settlement Agreement or any particular provisions.

9. **SEVERABILITY.** Whenever possible, each provision of this Settlement Agreement shall be interpreted in such a manner as to be effective and enforceable

under applicable law. Should it be determined by any court of competent jurisdiction, however, that any provision of this Settlement Agreement is invalid, illegal, or unenforceable in any respect under any applicable law, such invalidity, illegality, or unenforceability shall in no way affect the validity, legality, or enforceability of any other provision of this Settlement Agreement. Instead, this Settlement Agreement shall be reformed, construed, and enforced by such court of competent jurisdiction as if such invalid, illegal, or unenforceable provision had never been contained herein.

10. **FURTHER DOCUMENTS.** Each of the Parties hereto and their respective counsel shall promptly take such actions and execute, acknowledge, deliver and cause to be fully filed and recorded all such additional agreements, documents, conveyances, pleadings, instruments, and/or other papers as may be reasonably necessary or appropriate to consummate or implement the settlement contemplated by this Agreement.

11. **COVENANT PROHIBITING OTHER ACTIONS.** No Party to this Settlement Agreement shall institute, promote, participate in, assist with, submit, file or permit to be filed on its behalf any lawsuit, charge, claim, complaint, grievance (e.g. media, criminal, Better Business Bureau, licensing and certification authorities, commissions, etc.) or other proceeding whether judicial, administrative, arbitration or otherwise arising out of or relating to the Actions (collectively a “Complaint”). To the extent any party to this Settlement Agreement has already made, submitted, participated in or is aware of any Complaint, such party shall immediately withdraw and/or dismiss any such Complaint.

12. **WAIVER OF TRIAL BY JURY.** To the fullest extent permitted by law, each of the Parties hereto waives any right it may have to a trial by jury in relation to any litigation arising out of or in any way related to this Settlement Agreement.

13. **EXECUTION IN COUNTERPARTS.** This Settlement Agreement, and any amendments thereto and waivers of conditions, may be executed by exchange of faxed or electronic (PDF) executed signature pages, and any signature transmitted by facsimile or electronic means (PDF) for the purpose of executing this Settlement Agreement shall be deemed an original signature. This Settlement Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same instrument.

14. **AMENDMENT.** This Settlement Agreement may be modified or amended only by written agreement signed by the parties.

15. **WAIVER.** The provisions of this Settlement Agreement may be waived only by an instrument in writing executed by the waiving party. The waiver by any party of any breach of this Settlement Agreement shall not be deemed to be or construed as a waiver of any other breach, whether prior, subsequent, or contemporaneous, of this Settlement Agreement.

16. **CHOICE OF LAW.** This Settlement Agreement shall be governed by and interpreted in accordance with the laws of the State of Minnesota, without giving effect to the conflict of laws or choice of law provisions thereof, except to the extent that the law of the United States governs any matter set forth herein, in which case such federal law shall govern.

17. **JURISDICTION AND VENUE.** Any litigation arising under or pertaining to this Settlement Agreement shall be brought in state court sitting in Wright County, State of Minnesota. In the event of such litigation, the Parties hereby consent to the jurisdiction and venue of such court, and waive any objection to the jurisdiction or venue of such court including the objection that venue is inconvenient or otherwise improper.

18. **NON-ADMISSION OF LIABILITY.** The Parties agree that this Settlement Agreement compromises and settles a dispute, that each Party chose to enter into this Settlement Agreement instead of continuing to pursue their respective claims and defenses in the Actions, that neither Party admits the validity of positions taken by the other Party in the Actions, and that both Parties are bound by the terms of this Settlement Agreement.

19. **NOTICE.** Any notice required or permitted by this Settlement Agreement shall be sent by U.S. Mail to the following addresses:

If to The
Bluffs:

Jonathan Hofer
3339 Crystal Bay Rd
Wayzata, MN 55391

With a copy to: Rob A. Stefonowicz
Larkin Hoffman
8300 Norman Center Drive
Suite 1000
Minneapolis, MN 55437
Email: rstefonowicz@larkinhoffman.com

If to City: City of Monticello
City Hall
500 Walnut St Ste 1
Monticello, MN 55362
Attn: Rachel Leonard, City Administrator
Email: rachel.leonard@ci.monticello.mn.us

With a copy to: Campbell Knutson, PA
Grand Oak Office Center I
860 Blue Gentian Road
Suite 290
Eagan, MN 55121
Attn: David S. Kendall
Facsimile No.: 651-243-6237
Email: dkendall@ck-law.com

Such notice shall be effective upon receipt.

20. **BINDING EFFECT.** This Settlement Agreement binds and inures to the benefit of the parties hereto, their assigns, heirs, administrators, executors and successors.

IN WITNESS WHEREOF, the parties have executed this Settlement Agreement as of the date first set forth above.

[Signature page(s) to follow—the remainder of this page intentionally left blank]

Petitioner:

CITY OF MONTICELLO, A MUNICIPAL CORPORATION

By: _____

Lloyd Hilgart, Mayor

CITY OF MONTICELLO, A MUNICIPAL CORPORATION

By: _____

Jennifer Schreiber, City Clerk

STATE OF MINNESOTA)

)ss.

COUNTY OF WRIGHT)

The foregoing instrument was acknowledged before me this ____ day of _____, 2022 by Lloyd Hilgart and by Jennifer Schreiber, respectively the Mayor and City Clerk of the City of Monticello, a Minnesota municipal corporation, on behalf of the corporation and pursuant to the authority granted by its City Council.

Notary Public

Respondents:

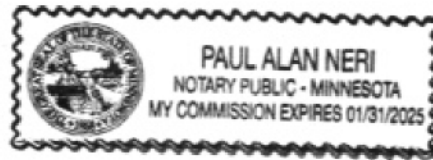
The Bluff in Monticello, LLC

By: *Jonathan Hofer*

Print Name: Jonathan Hofer

Print Title: president

Subscribed and sworn to before me
this 31st day of Auguste, 2022.



Paul Alan Neri
Notary Public

4896-0527-4416, v. 1