



\$9,000.00 to H&G Paving Contractors, Inc. Section 22.3 provides as follows:

The City may suspend payments of any sum due for Work done on this Contract until such claims and/or suits, actions or proceedings are final and liability has been determined. The amount of such damage or liability shall be deducted from sums due or to become due on this Contract. The City will retain the sums mentioned above until the Contractor furnishes evidence that satisfactory settlement has been made. Any action taken by the City shall not excuse the Contractor for failure to perform this Contract or bar the City from legal action to recover from the Contractor the amount of damages or liability suffered in excess of the amount retained.

On July 10, 2017, the City of Broken Arrow sent H&G Paving Contractors, Inc., a letter advising them that the City was retaining the \$9,000.00 in dispute between H&G Paving Contractors, Inc., and Ballard TP Constriction, LLC., until H&G Paving Contractors, Inc., furnished the City of Broken Arrow evidence that a satisfactory settlement had been made between the parties. The City did release payment to H&G Paving Contractors, Inc., in the amount of \$28,052.08 that represented the undisputed payment for the balance of the periodical estimate for partial payment date June 26, 2017.

On August 2, 2017, H&G Paving Contractors, Inc., filed a Petition for Declaratory Judgment against Ballard TP Construction, LLC., in the District Court in and for Wagoner County, State of Oklahoma, Case No. CS-2017-465. The City of Broken Arrow is not a party to this action. However, H&G Paving Contractors, Inc., is requesting the Wagoner County Court to Enter a Declaratory Judgment determining that H&G Paving Contractors, Inc., is entitled to disputed \$9,000.00 in funds. The City of Broken Arrow has no claim to the \$9,000.00 in funds and may deposit with the court the \$9,000.00 of funds that is disputed between H&G Paving Contractors, Inc., and Ballard TP Construction, LLC., once the City has deposited the disputed \$9,000.00 in funds with the Court Clerk the City will be discharged from this action and from any liability as the claims of the parties in this matter. To that end, the legal department recommends the City Council authorizes the City Attorney to file a Motion for Leave to Deposit the \$9,000.00 into the Court Clerk for subsequent adjudication by the Court.

**Cost:** \$9000.00  
**Prepared By:** Trevor A. Dennis, Deputy City Attorney  
**Reviewed By:** Engineering/Construction Department  
Finance Department  
**Approved By:** Michael L. Spurgeon, City Manager  
**Attachments:** Resolution No. 1049  
**Recommendation:** Approve Resolution No. 1049