



# City of Broken Arrow

## Request for Action

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**File #: 17-2559, Version: 1**

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**Broken Arrow City Council  
Meeting of: 08-15-2017**

**To: Mayor and Council Members  
From: Legal Department**

**Title: Consideration, discussion, and possible approval of Resolution No. 1049, a Resolution Authorizing the City Attorney to Deposit \$9,000.00 with the Wagoner County Court Clerk in the Matter of H&G Paving Contractors, Inc., vs Ballard TP Construction, LLC., in District Court in and for Wagoner County, State of Oklahoma Case No. CS-2017-465**

### **Background:**

On June 26, 2017, H & G Paving Contractors, Inc., submitted a periodical estimate for partial payment to the City of Broken Arrow requesting payment of \$37,052.08 for work done on the Leisure Park I Milling and Overlay Project, Contract Number ST1509A. On June 27, 2017, the City of Broken Arrow received notice from Ballard TP Construction, LLC., a sub-contractor of H & G Paving Contractors, Inc., for this project, Ballard TP Construction, LLC., advising the City of Broken Arrow that H&G Paving Contractors, Inc., had failed to pay Ballard TP Construction, LLC., \$9,000.00 for work Ballard TP Construction, LLC., provided on the Leisure Park I Milling and Overlay Project Contract Number ST1509A. Notably, Ballard TP Construction, LLC; claim of \$9,000.00 was part of the \$37,052.08 that H&G Paving Contractors, Inc., had submitted a partial payment request for on June 26, 2017. H & G Paving Contractors, Inc denies owing Ballard TP Construction, LLC., this \$9000.00.

In response to notice of dispute of the \$9,000.00 between H&G Paving Contractors, Inc., and H&G Paving Contractors, Inc., the City of Broken Arrow invoked the provisions of Section 22.3 of the Leisure Park I Milling and Overlay contract with H&G Paving Contractors Inc. and suspended payment in the amount of \$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 Construction, 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