

Mayor and Council Communication

DATE: 05/14/24

M&C FILE NUMBER: M&C 24-0373

LOG NAME: 12LEGENDS OF HANNA RANCH

SUBJECT

(ALL) Adopt Resolution Authorizing the City Attorney to Intervene in the Pending Litigation *Legends of Hanna Ranch, Ltd. v. Ark Contracting Services, LLC and Atlantic Specialty Insurance Company*, Cause Number 141-351277-24, 141st District Court, Tarrant County, Texas

RECOMMENDATION:

It is recommended that the City Council adopt the attached resolution authorizing the City Attorney to intervene in the pending litigation *Legends of Hanna Ranch, Ltd. v. Ark Contracting Services, LLC and Atlantic Specialty Insurance Company*, Cause Number 141-351277-24, 141st District Court, Tarrant County, Texas.

DISCUSSION:

On April 13, 2021 (Mayor & Council Communication 21-0286), the City Council authorized the execution of a Community Facilities Agreement (CFA) with Legends of Hanna Ranch, Ltd. (Legends), with City participation in an amount not to exceed \$7,574,786.00, for replacing public sanitary sewer mains M-295 and M-329, (City Project No.102152). On June 11, 2021, the CFA was executed between the City and Legends. Ark Contracting Services, LLC (Ark) was selected to construct the project pursuant to a public bid. On June 7, 2021, Ark entered into an agreement with Legends to construct the project. ARK obtained a performance bond in the name of Legends as Developer and the City as Owner from Atlantic Specialty Insurance Company (ASIC) in an amount equal to the contract price of \$7,599,999.00. In accordance with the terms of the performance bond, the obligations of ASIC would only be relieved upon Ark's successful completion of the project.

Ark began constructing the project on or about January 24, 2022. Ark has suspended all work on the project, has ignored multiple demands by Legends to complete the project, and has abandoned the project. Based upon Ark's refusal to complete the project, both Legends and the City made formal demands upon ASIC to honor the performance bond. ASIC has formally denied these demands. On March 21, 2024, Legends filed a lawsuit against Ark and ASIC for breach of contract and failure to perform pursuant to the performance bond. The City has a breach of contract claim against ASIC for its failure to perform pursuant to the performance bond. The City is a third-party beneficiary to the contract between Legends and Ark. The City must intervene in the lawsuit to protect its interests.

For any charges that will occur for the intervene, funding is budgeted in the General Operating & Maintenance Category within the Risk Financing Fund for the Human Resources Department.

A Form 1295 is not required because: This M&C does not request approval of a contract with a business entity.

FISCAL INFORMATION / CERTIFICATION:

The Director of Finance certifies that upon approval of the recommendation, funds are available in the current operating budget, as previously appropriated, in the Risk Financing Fund. Prior to an expenditure being incurred, the Human Resources Department has the responsibility to validate the availability of funds.

Submitted for City Manager's Office by: ALL ACMs 6122

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