

ORDINANCE 2023 -086

AN ORDINANCE AUTHORIZING THE SETTLEMENT BETWEEN THE CITY OF KENT AND ECLIPSE, AND DECLARING AN EMERGENCY.

WHEREAS, the City of Kent and Eclipse, have reached a Settlement mutually agreed upon by both parties in terms substantially comparable to the terms contained in the document attached as Exhibit "A".


NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Kent, Portage County, Ohio:

SECTION 1. Based upon the recommendation of City Council, the City of Kent and Eclipse have mutually agreed upon a Settlement in terms substantially comparable to the terms contained in the document as Exhibit "A", attached hereto and incorporated herein.

SECTION 2. That it is found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this Council and that all deliberations of this Council, and of any of its committees that resulted in such formal action, were in meetings open to the public in compliance with all legal requirements of Section 121.22 of the Ohio Revised Code.

SECTION 3. That this Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare of the residents of this City, for which reason and other reasons manifest to this Council this Ordinance is hereby declared to be an emergency measure and shall take effect and be in force immediately after passage.

PASSED: December 6, 2023
Date




Jack Amrhein
President Pro Tem

EFFECTIVE: December 6, 2023
Date

ATTEST: Amy Wilkens
Amy Wilkens, CMC
Clerk of Council

I, AMY WILKENS, CLERK OF COUNCIL FOR THE CITY OF KENT, COUNTY OF PORTAGE, AND STATE OF OHIO, AND IN WHOSE CUSTODY THE ORIGINAL FILES AND RECORDS OF SAID COUNCIL ARE REQUIRED TO BE KEPT BY THE LAWS OF THE STATE OF OHIO, HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND EXACT COPY OF ORDINANCE No. 2023-086 ADOPTED BY THE COUNCIL OF THE CITY OF KENT ON December 6, 2023.


(SEAL)




AMY WILKENS, CMC
CLERK OF COUNCIL

Settlement Term Sheet/City of Kent—Eclipse Dispute

1. City of Kent agrees to pay Eclipse as follows, and Eclipse agrees to accept, in exchange for mutual full releases between the parties, the following:
 - a. A lump sum of \$600,000.00, to be paid within 30 days of council approval; and
 - b. All outstanding retainage on the Project in the amount of \$129,771.77;
 - c. In accordance with Ohio law, the amount held in escrow related to the Sunshine Sand and Gravel claim; and
 - d. Amount due under Pay Application 17, totaling \$8,423.52;
2. The parties understand that the \$600,000.00 set forth in Section 1a above must be approved by City Council, to be presented at the meeting on Wednesday, December 6, 2023;
3. Brian Winchester will stay involved as mediator to facilitate final resolution, his costs to be equally shared by the parties;
4. Eclipse will provide requested Affidavits of Compliance for Prevailing Wages, for subcontractors subject to this requirement; and, Apprentice Certifications, where applicable. Unconditional waivers will be provided once payment is received.
5. For the purposes of releasing the outstanding retainage on the Project, the City acknowledges that Prevailing Wage Notifications to Employee requirements will be satisfied by submission of Affidavits of Compliance for Prevailing Wages;
6. The City acknowledges all testing is complete per the contract;
7. The City certifies as part of this settlement that it is not aware of any construction defects that have been discovered or would have been discovered upon a reasonable investigation;
8. The parties, for purposes of settlement, agree that the date of substantial completion is February 2, 2023;
9. The Maintenance Bond will remain in place through February 2, 2023;
10. This Agreement is subject to and will be formalized in a mutually-accepted Settlement Agreement;



Eclipse Co.
By: Thomas Agresta, President
Date: 11/30/2023



City of Kent
By: Melaine A. Barker, Service
Date: 11/30/2023 Director