



Project title: Settlement Agreement with U.S. Golden Eagle Farms LP and Golden Eagle Farms Ltd

City Council Agenda Item Cover Sheet

Council Bill # *interoffice use*

Consideration: Approve Settlement Agreement

Project: Settlement of Litigation

Other Parties : U.S. Golden Eagle Farms LP and Golden Eagle Farms Ltd

Location: Lowell Larimer Road

Preceding action: Authorization of Lawsuit

Fund: None

Agenda dates requested:

March 25, 2020

Briefing

Proposed action

Consent X

Action

Ordinance

Public hearing

Yes x No

Budget amendment:

Yes x No

PowerPoint presentation:

Yes x No

Attachments:

Settlement Agreement

Department(s) involved:

Public Works, Legal

Contact person:

Tim Benedict

Phone number:

425.257.8669

Email:

TBenedict@everettwa.gov

Initialed by:

Department head

Administration

Council President

Fiscal summary statement:

None

Project summary statement:

In 2017, the abutting owners excavated a new drainage ditch near Lowell-Larimer Road. Soon thereafter, a portion of the road collapsed partially. City Council authorized a lawsuit against the owners in late 2019. Under the proposed agreement, the owners and their insurer will pay about \$213,660.90 in exchange for the City releasing the road damage claim.

Recommendation (exact action requested of Council):

Authorize the Mayor to Sign Settlement Agreement with U.S. Golden Eagle Farms LP and Golden Eagle Farms Ltd

SETTLEMENT AGREEMENT

This Settlement Agreement is dated for reference purposes February __, 2020, by and among the CITY OF EVERETT (the “City” or “Plaintiff”); U.S. GOLDEN EAGLE FARMS LP and GOLDEN EAGLE FARMS LTD (collectively, “Golden Eagle” or “Defendants”).

RECITALS

A. In 2017, Golden Eagle excavated a drainage ditch on its property, which the City claims caused damage to Lowell-Larimer Road. Golden Eagle denies this.

B. On September 4, 2019, the City served a summons and complaint on Golden Eagle, regarding the alleged damage to Lowell-Larimer Road (the “Lawsuit”). The Lawsuit complaint is attached as Exhibit A. The City has not filed the Lawsuit.

C. The City and Golden Eagle wish to settle their disputes, in accordance with the terms and conditions of this Settlement Agreement.

AGREEMENT

For good and valuable consideration, the receipt and sufficiency of which is acknowledged, the City and Golden Eagle agree as follows:

SECTION 1: SETTLEMENT PAYMENT

No later than 10 business days after the date of full execution of this Agreement (including any City Council approvals needed), Golden Eagle, through its insurer, shall pay to the City an amount equal to \$213,660.90.

SECTION 2: RELEASE

Except for Golden Eagle’s obligations concerning payment under this Settlement Agreement, the City hereby effective upon delivery of the payment set forth in Section 1 releases and fully and forever discharges Golden Eagle, and any principals, agents, subsidiaries, directors, agents, and insurers, from any and all claims, demands, debts, guarantees, liabilities, obligations, liens, general, special or consequential damages, losses, or potential losses, through any and all actions or causes of action of any nature whatsoever, whether known or unknown, foreseen or unforeseen, at law or in equity or by statute, that the City now has or that may subsequently accrue to the City, that arise from damage to Lowell-Larimer Road caused by Golden Eagle’s 2017 excavation.

SECTION 3: LAWSUIT

The City will not file the Lawsuit. The parties agree that this Agreement has the same effect as a dismissal with prejudice of the Lawsuit.

SECTION 4: MISCELLANEOUS PROVISIONS

A. Governing Law. The laws of the State of Washington, without giving effect to

principles of conflict of laws, govern all matters arising out of or relating to this Settlement Agreement.

B. Venue. The parties shall bring any litigation arising out of or relating to this Settlement Agreement only before the Snohomish County Superior Court.

C. Complete Agreement. This Settlement Agreement constitutes the entire agreement of the parties relating to the subject matter of this Settlement Agreement. This Settlement Agreement supersedes and replaces all other written or oral agreements thereto.

D. Amendment. No amendment to this Settlement Agreement will be effective unless it is in writing and signed by the Mayor of the City and an authorized representative of Golden Eagle.

E. Waiver. No waiver of satisfaction of any condition or nonperformance of an obligation under this Settlement Agreement will be effective unless it is in writing and signed by the party granting the waiver, and no such waiver will constitute a waiver of satisfaction of any other condition or nonperformance of any other obligation.

F. Attorneys Fees and Costs. The prevailing party in any action brought to enforce any obligations under this Settlement Agreement shall be entitled to recover from the non-prevailing party or parties an amount equal to the reasonable attorneys fees and costs incurred by the prevailing party, including without limitation any costs incurred on appeal or in any bankruptcy proceeding.

G. Captions. The titles of sections are for convenience only and do not define or limit the contents.

H. Negotiated Agreement. The parties acknowledge that this is a negotiated Settlement Agreement, that they have had the opportunity to have this Settlement Agreement reviewed by their respective legal counsel, and that the Settlement Agreement is not to be construed against any party on the basis of which party drafted the Settlement Agreement.

I. No Admission. This Agreement is in compromise of a dispute, and it is not an admission of liability on the part of the City or Golden Eagle. The City and Golden Eagle specifically deny any liability. The purpose of this Agreement is solely to avoid the cost and undesirable effects of litigation.

IN WITNESS WHEREOF, the City and Golden Eagle have executed this Settlement Agreement as of the date first above written.

CITY:

CITY OF EVERETT
WASHINGTON

By: _____
Cassie Franklin, Mayor

Date

ATTEST:

Sharon Fuller, City Clerk
Date: _____

APPROVED AS TO FORM:

City Attorney
Date: _____

GOLDEN EAGLE:

U.S. GOLDEN EAGLE FARMS LP

By: _____ James Chu
Its: _____ Assistant General Manager

Feb 10, 2020
Date

GOLDEN EAGLE FARMS LTD

By: _____ James Chu
Its: _____ Assistant General Manager

Feb 10 2020
Date

