

CITY OF NOKOMIS, ILLINOIS

Resolution No. 2026-09

A RESOLUTION APPROVING A SETTLEMENT AGREEMENT

WHEREAS, the City of Nokomis, Illinois (the “City”) an Illinois non-home rule municipal corporation pursuant to Article VII, § 7 of the 1970 Illinois Constitution, organized and operating under the Illinois Municipal Code, 65 ILCS 5/1-1-1, *et seq.*; and

WHEREAS, there has been presented to and there is now before the meeting of the corporate authorities at which this Resolution is adopted a “Settlement, Compromise, and Contingent Refund Agreement” (the “Agreement”) with regard to the City’s wastewater treatment plant project; and

WHEREAS, the corporate authorities find that the Agreement should be approved.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF NOKOMIS, MONTGOMERY COUNTY, ILLINOIS, AS FOLLOWS:

SECTION 1: That the Agreement is hereby approved.

SECTION 2: That, for and on behalf of the City, the Mayor is hereby authorized to negotiate the final form of the Agreement and to accept the said Agreement, and the City Clerk is hereby authorized to attest to the same.

PASSED by the City Council of the City of Nokomis, Illinois, this 8th day of June, 2026, as follows:

Ayes: _____
Nays: _____
Present: _____
Abstain/Absent: _____

APPROVED by the Mayor of the City of Nokomis, Illinois this ____ day of June, 2026.

ATTEST:

MAYOR

CITY CLERK

SETTLEMENT, COMPROMISE, AND CONTINGENT REFUND AGREEMENT

This Settlement, Compromise, and Contingent Refund Agreement (“Agreement”) is entered into as of _____, 2026 (“Effective Date”), by and between the City of Nokomis, Illinois, an Illinois municipal corporation (“City”), and Kamadulski Excavating and Grading Company, Inc. (“Contractor”).

WHEREAS, the City and Contractor entered into that certain contract dated February 22, 2024 for the construction and related work associated with the City’s wastewater treatment plant project (“Construction Contract”);

WHEREAS, the Construction Contract required Contractor to achieve substantial completion and/or place the wastewater treatment plant into operation on or before August 25, 2025 (“Required Completion Date”);

WHEREAS, the Construction Contract contains certain provisions regarding liquidated damages in the event Contractor failed to timely complete the work;

WHEREAS, Contractor failed to achieve completion and/or operation of the wastewater treatment plant by the Required Completion Date;

WHEREAS, the City issued notice to Contractor invoking the liquidated damages provisions of the Construction Contract;

WHEREAS, the City is presently subject to a certain Consent Order with the Illinois Environmental Protection Agency (“IEPA”) relating to wastewater discharge issues;

WHEREAS, the parties dispute certain issues regarding responsibility, causation, damages, and the extent to which any continuing compliance issues are attributable to delays in Contractor’s performance;

WHEREAS, the parties desire to resolve the liquidated damages dispute to establish the circumstances under which a portion of the liquidated damages paid by Contractor may be refunded to Contractor by the City;

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

1. Settlement Payment

1.1 Contractor shall pay to the City the sum of \$ _____ (“Settlement Payment”) on or before _____, 2026.

1.2 The parties acknowledge and agree that the Settlement Payment represents a compromise and settlement of disputed claims relating to alleged delay damages and liquidated damages under the Construction Contract.

2. Contingent Refund

2.1 Subject to the conditions set forth in this paragraph, the City agrees to refund to Contractor the sum of \$ _____ (“Contingent Refund Amount”).

2.2 The City’s obligation to pay the Contingent Refund Amount shall arise if and only if each of the following conditions occur:

- (a) the IEPA Consent Order applicable to the City’s wastewater treatment plant is vacated, terminated, closed out, satisfied, or otherwise concluded by the IEPA; and
- (b) the City is not assessed, ordered to pay, or otherwise obligated to pay any fines, penalties, stipulated penalties, or similar monetary sanctions pursuant to the Consent Order arising out of discharge violations alleged to have occurred during the period associated with Contractor’s delay in achieving completion or operation of the wastewater treatment plant; and
- (c) Contractor is not otherwise in material default of any continuing obligations owed to the City under the Construction Contract or related project documents at the time the refund would otherwise become due.

2.3 If all conditions precedent set forth in Section 2.2 occur, the City shall remit the Contingent Refund Amount to Contractor within _____ days after receipt of final written confirmation from the IEPA that the Consent Order has been closed, satisfied, vacated, or otherwise terminated.

2.4 If any condition set forth in Section 2.2 does not occur, the Contractor shall have no right to the Contingent Refund Amount, and the City shall retain the Settlement Payment in full.

3. No Admission of Liability

This Agreement constitutes a compromise of disputed claims. Neither this Agreement nor any payment made pursuant to it shall be construed as an admission of liability, fault, or wrongdoing by either party.

4. Release

4.1 Upon Contractor's payment of the Settlement Payment, and except for obligations expressly preserved in this Agreement, the City releases Contractor from claims for additional liquidated damages arising from Contractor's delay in completion of the project through the Effective Date.

4.2 Upon satisfaction of all obligations under this Agreement, including any payment of the Contingent Refund Amount if applicable, Contractor releases the City from all claims relating to the liquidated damages dispute described herein.

4.3 This release does not apply to:

- latent defects;
- warranty obligations;
- indemnification obligations;
- claims arising from personal injury or property damage;
- claims arising from fraud or willful misconduct; or
- obligations expressly surviving under the Construction Contract.

5. Reservation of Rights Regarding IEPA Matters

Nothing in this Agreement shall:

- (a) bind or limit the IEPA;
- (b) constitute an admission regarding the cause of any discharge violation;
- (c) waive any defenses either party may possess in any regulatory proceeding or third-party claim; or
- (d) alter obligations imposed by the Consent Order or applicable law.

6. Authority

Each person signing this Agreement represents and warrants that he or she has the requisite legal capacity and all signatures of the parties are genuine.

7. Entire Agreement

This Agreement constitutes the entire agreement between the parties concerning the subject matter herein and supersedes all prior negotiations and understandings concerning such subject matter.

8. Amendment

This Agreement may be amended only by a written instrument signed by both parties.

9. Severability.

In the event any of the provisions of this Agreement are deemed to be invalid, illegal, or unenforceable, those provisions shall be severable from the remainder of this Agreement, which shall continue, in full force and effect.

10. Governing Law and Venue

This Agreement shall be governed by and construed under the laws of the State of Illinois. Venue for any action arising under this Agreement shall lie exclusively in the Circuit Court of Montgomery County, Illinois, unless otherwise required by law.

11. Counterparts

This Agreement may be executed in counterparts, each of which when so executed shall be an original, but all of said counterparts shall together constitute but one and the same instrument. Copies of executed counterparts transmitted by facsimile or email shall be considered original executed counterparts for purposes of this subsection. Electronic and PDF signatures shall be deemed effective as originals.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date and year first above written.

CITY OF NOKOMIS, ILLINOIS:

By: _____
Name: Dylan Goldsmith, Mayor

ATTEST: _____
Rachel Cassidy, City Clerk

KAMADULSKI EXCAVATING AND GRADING COMPANY, INC.:

By: _____
Name: _____
Title: _____