

COUNCIL COPY

PUBLIC WORKS AND UTILITIES COMMITTEE

13-0581R

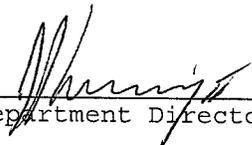
RESOLUTION APPROVING SETTLEMENT IN THE MATTER OF W.W.
GOETSCH ASSOCIATES, INC. V. CITY OF DULUTH IN THE AMOUNT
OF \$95,580.

CITY PROPOSAL:

RESOLVED, that the city council authorizes settlement in the matter of W.W. Goetsch, Inc. V. City of Duluth, filed in Minnesota district court, sixth judicial district, File No. 69DU-CV-13-1227, pursuant to the terms and conditions of the mediated settlement agreement, a copy of which is on file with the city clerk as Public Document Number _____. The settlement terms require payment by the city in the amount of \$95,580, payable to W.W. Goetsch Associates, Inc., from Fund No. 530-500-1945-5227 (Sanitary Sewer Fund 530), in exchange for delivery to the city of the forty control panels produced by plaintiff following the June, 2012 flood.

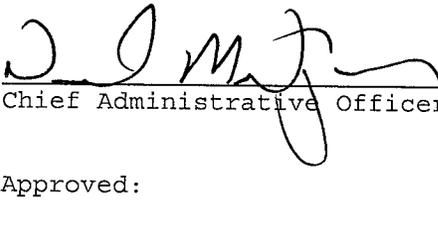
FURTHER RESOLVED, that proper city officials shall take all actions necessary to conclude this matter on a full, final and complete basis.

Approved:



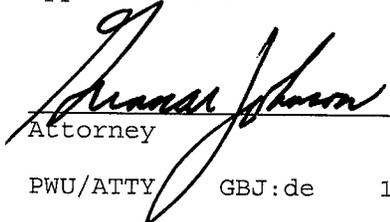
Department Director

Approved for presentation to council:



Chief Administrative Officer

Approved as to form:



Attorney

Approved:



Auditor

PWU/ATTY GBJ:de 11/19/2013

STATEMENT OF PURPOSE: This resolution authorizes a settlement in a civil suit commenced by W.W. Goetsch Associates, Inc. The suit arises out of a contract dispute regarding the production by plaintiff and purchase by the city of control panels to replace those damaged in the June, 2012 flood. The parties engaged in mediation and reached the terms of the settlement agreement. The city attorney recommends this settlement.

STATE OF MINNESOTA
COUNTY OF CARLTON

DISTRICT COURT
SIXTH JUDICIAL DISTRICT
Case Type : Contract

W.W. Goetsch Associates, Inc.

Plaintiff,

vs.

The City of Duluth, a Municipal Corporation,

Defendant.

Court File No. 69DU-CV-13-1227

MEDIATED SETTLEMENT AGREEMENT

We, the undersigned parties, having participated in the mediation session on Wednesday, November 13, 2013, have reached an agreement and wish to memorialize the terms of the resolution of our dispute and hereby agree to abide by and fulfill the following terms to the best of our ability and consistent with the agreements incorporated herein:

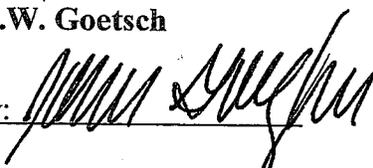
1. That in exchange for the dismissal of all claims advanced by W.W. Goetsch (hereinafter referred to as the Plaintiff) against the City of Duluth for all damages, attorneys fees and costs arising from the alleged order and manufacture of grinder station control panels requested by the City of Duluth (hereinafter referred to as the City) to repair equipment flooded in the Fond du Lac neighborhood of Duluth in the summer of 2012, the City agrees to purchase and pay to Plaintiff Ninety Five Thousand Dollars and no/100 (\$95,580) for the forty control panels produced by Plaintiff which comprises the cost of the panels to Plaintiff plus fourteen months interest at 4%.
2. In addition, upon payment to Plaintiff's Attorney's Trust Account, the Plaintiff agrees to deliver the forty control panels in good working order to the City of Duluth in Duluth Minnesota accompanied by a one year warranty on all components further representing that they will work for the purpose intended. Upon completion of delivery of the panels by the Plaintiff, Brian Rude will receive notification he can distribute the funds from his account. Notice will be provided by Attorney Gunnar Johnson promptly upon completion of delivery.
3. That it is understood by the parties that the terms and conditions of this mediation settlement are subject to the approval of the City Council of the City of Duluth and that specifically without the approval the mediated agreement is not legally enforceable.
4. That the parties, by and through their counsel, and upon approval of the Duluth City Council, agree the City will pay to Plaintiff \$95,580 which comprises the cost of the panels plus interest since the date of the lawsuit.

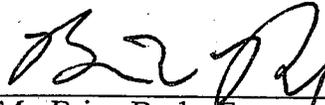
5. Upon receipt of payment the parties agree to sign and file with the Court a Stipulation of Dismissal With Prejudice as to all claims in this litigation. In addition, the Plaintiff and City agree to sign any and all additional releases necessary to memorialize this agreement and resolve this litigation and any warranty documents reasonably requested by the City regarding the panels which are the subject of the above-captioned litigation.
6. Each party agrees that it will be responsible for its own attorneys fees, costs of litigation and all expenses related to the litigation of this matter.
7. That participating in the mediation on behalf of the Plaintiff were John Galloway, V.P. & Steve Green of the W.W. Goetsch and their legal counsel, Mr. Brian Rude.
8. That appearing and participating on behalf of the City was James Banning, Public Works along with the City's legal counsel, Mr. Gunnar Johnson.

That all parties were properly advised that (a) the mediator has no duty to protect their interest or provide them with information about their legal rights and that they are to rely upon the advice of their respective legal counsel in that regard; (b) that signing a mediated settlement agreement may adversely affect their legal rights and that they should again consult with their attorney before signing the agreement; and (c) that the signing of a mediation settlement agreement is binding consistent with Minnesota Statute §572.35 subd. 1, of the Minnesota Civil Mediation Act.

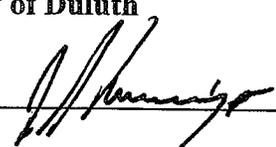
Dated this 13 day of Nov, 2013.

W.W. Goetsch

By: 


Mr. Brian Rude, Esq.
Brian Rude Law Office

City of Duluth

By: 


Mr. Gunnar Johnson, Esq.
Duluth City Attorney