

COMMITTEE OF THE WHOLE

09-0745R

RESOLUTION AUTHORIZING SETTLEMENT AGREEMENT IN THE DISPUTE BETWEEN THE CITY OF DULUTH AND MERRILL LYNCH PIERCE FENNER & SMITH, INC., IN THE AMOUNT OF \$1,975,583.

CITY PROPOSAL:

RESOLVED, that the proper city officials are hereby authorized to execute a settlement agreement, substantially in the form of that on file in the office of the city clerk as Public Document No. _____, for a total amount of \$1,975,583 in settlement of the dispute entitled *City of Duluth v. Merrill Lynch Pierce Fenner & Smith, Incorporated* asserted in arbitration before the Financial Industries Regulatory Authority (FINRA), FINRA Dispute Resolution No. 08-04814, funds to be deposited in Fund 110-120-1216-4601-02.

Approved for presentation to council:

Chief Administrative Officer

Approved as to form:

Approved:

Attorney

Auditor

ADM/ATTY GBJ:cjk 12/2/2009

STATEMENT OF PURPOSE: On July 20, 2007, the city of Duluth purchased \$3,000,000 par value of Mainsail II LLC asset-backed commercial paper through its broker, Merrill Lynch, with a maturity date of September 4, 2007. The paper was rated A1+ by Standard & Poor's Ratings Services and P1 by Moody's Investors Service, Inc. On August 23, 2007, the city of Duluth was informed of a wind down of the Mainsail program due to a net asset value breach. The program was placed in receivership and went through a restructuring process, and on October 2, 2008, the city received \$724,417.05 related to that process. Merrill Lynch has agreed to pay the city of Duluth \$1,975,583 for Duluth's right, title and interest in Mainsail II LLC in a settlement agreement related to the arbitration proceeding before the Financial Industries Regulatory Authority (FINRA) entitled *City of Duluth v. Merrill Lynch Pierce Fenner and Smith, Incorporated*, FINRA Dispute Resolution No. 08-04814. Any future payments in excess of \$1,975,583 will be divided equally between the city of Duluth and Merrill Lynch.