

PUBLIC WORKS AND UTILITIES COMMITTEE

11-0161R

RESOLUTION APPROVING SETTLEMENT OF CLAIM OF DOUGHERTY  
FUNERAL HOME IN THE AMOUNT OF \$15,891.92.

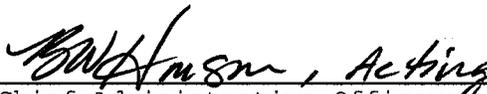
CITY PROPOSAL:

RESOLVED, that the proper city officials are authorized to pay to Dougherty Funeral Home the sum of \$15,891.92 in full and final settlement of the claim which arose as a result of a city employee capping the private sanitary sewer lateral in error during the 2<sup>nd</sup> Street renovation project which occurred near 600 East 2<sup>nd</sup> Street on December 6, 2010; payment to be made from Fund 610-036-1653-5841 (Self Insurance-Liabilities, Insurance Accounts, Insurance - Sewer).

Approved:

  
\_\_\_\_\_  
Department Director

Approved for presentation to council:

  
\_\_\_\_\_  
Chief Administrative Officer

Approved as to form:

  
\_\_\_\_\_  
Attorney

Approved:

  
\_\_\_\_\_  
Auditor

PW&U/ATTY MAL/DWD:dma 03/22/2011

STATEMENT OF PURPOSE: On December 6, 2010, during the 2<sup>nd</sup> Street renovation project, in error a city employee capped the private sanitary sewer lateral of property located at 600 East 2<sup>nd</sup> Street and owned by Dougherty Funeral Home. Dougherty Funeral Home paid to have the sewer lateral repaired as a result of the city capping the private line and made a claim to the city for its costs.

The city's liability is based upon the legal principle that it capped a private sanitary sewer lateral without proper verification that the private lateral was inactive. The city of Duluth has investigated this claim and verified the damages and expenses. The civil division of the city attorney's office analyzed the city's loss exposure. Settlement negotiations were conducted and an agreement has been reached in the amount of \$15,891.92. The city attorney's office recommends this settlement.

## RELEASE OF PROPERTY DAMAGE CLAIM

### PART A

For and in consideration of the payment to us of the sum of FIFTEEN THOUSAND EIGHT HUNDRED NINETY-ONE DOLLARS AND NINETY-TWO CENTS (\$15,891.92), the receipt of which is hereby acknowledged, we, being of lawful age do hereby release and discharge the CITY OF DULUTH, MINNESOTA, its agents, officers and employees, and their assigns and legal representatives, of and from any and all causes of action, claims, demands, damages, consequential damages, costs, loss of services, expenses, and compensation, including any claim presented as arising pursuant to Federal law, and including any insurance policy deductible or co-pay paid by claimants which is in any way related to any and all property damage resulting or to result from, or in any way arising out of, an accident or incident that occurred on or about the 2nd day of December, 2010, at or near 600 East 2nd Street for property damage due to sewer backup.

### PART B

It is further understood and agreed that this settlement is the compromise of a doubtful and disputed claim, and that the payment is not to be construed as an admission of liability on the part of the City of Duluth, its agents, employees, by whom liability is expressly denied.

### PART C

And in further consideration of said payment, we hereby subrogate, set over and assign to City of Duluth all our right, title, and interest in any and all claims for damages we may have against any persons or corporations that arise out of said incident or accident. We assign the City full right and authority to demand and receive from other parties any sums of money in settlement of said claims, in its own name or in our name, but without financial cost to us. We further agree to verify all proper pleadings, attend and testify at all hearings, aid said City of Duluth in securing evidence, and generally do all things necessary and proper as a party plaintiff.

### PART D

It is our intention that, except for payment to us provided for in this agreement, the City shall not be required to make any payment to any party as a result of the damages we sustained in the accident described in Part A. Should any party, other than the City, its agents or employees, that is concurrently or jointly liable to us, or is a subrogee of ours, for any damages arising out of the accident described in Part A become entitled, by way of judgment, arbitration award, settlement, or otherwise, to receive, on account of or directly resulting from said accident, any payment from the City of Duluth, its agents or employees, then I will indemnify the City, its agents, or employees for any such payment they may be required to make.

PART E

We agree that this settlement becomes binding upon the City of Duluth at the time this agreement is accepted and approved by the proper City officials, as required by law.

PART F

This release contains the entire agreement between the parties hereto, and the terms of this release are contractual and not a mere recital.

We hereby authorize and direct the proper City officers to draw an order payable to us from Self-Insurance Fund.

We further state that we have carefully read the foregoing release, and know the contents thereof, and we sign the same as our own free act.

WITNESS our hand this 17<sup>th</sup> day of March, 2011.

IN PRESENCE OF:

Sharon Jugasch  
Signature of Witness

808 3<sup>rd</sup> St  
PROCTOR MN 55810  
Address of Witness

✓ [Signature]  
Dougherty Funeral Home, Claimant

✓ Pies  
Title

APPROVAL BY CITY ATTORNEY'S OFFICE

Approved as to form and execution this  
21 day of March, 2011.

[Signature]  
City Attorney