

COMMITTEE OF THE WHOLE

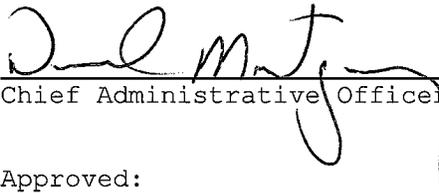
11-0365R

RESOLUTION APPROVING SETTLEMENT AGREEMENT BETWEEN THE CITY OF DULUTH, LAKE SUPERIOR ZOOLOGICAL SOCIETY AND BNSF RAILWAY COMPANY IN THE AMOUNT OF \$69,895.99.

CITY PROPOSAL:

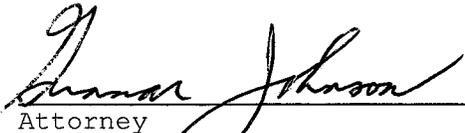
RESOLVED, that the city council hereby authorizes the proper city officials to execute a settlement agreement, substantially the same as that on file in the office of the city clerk as Public Document No. _____, between BNSF Railway Company, the city, and Lake Superior Zoological Society, for payment by BNSF in the amount of \$69,895.99, funds to be deposited in Fund 200-130-4654 (Zoo, Community Resources, Other Reimbursements.)

Approved for presentation to council:



Chief Administrative Officer

Approved as to form:



Attorney

Approved:



Auditor

ADM/ATTY DD:cjk 6/28/2011

STATEMENT OF PURPOSE: This resolution authorizes the proper city officials to execute a settlement agreement between BNSF Railway Company, the city, and Lake Superior Zoological Society, for payment by BNSF in the amount of \$69,895.99. This settlement arises out of a city claim related to flooding which occurred at the zoo on August 10, 2010.



BNSF RAILWAY COMPANY
RELEASE AND SETTLEMENT AGREEMENT

Property Damage Claim

FOR THE SOLE CONSIDERATION OF THE PAYMENT OF

---Fifty-Nine Thousand Fifty-Five and 60/100 ---, Dollars (\$ **59,055.60**), the receipt and sufficiency of which is hereby acknowledged, the **City of Duluth, Minnesota**, releases and forever discharges BNSF Railway Company (including its predecessor or successor companies, affiliated, related, subsidiary, and parent companies, specifically including any officers, directors, employees or agents of said companies and their attorneys) from all liability, actions, claims, and demands for loss or damage to property, if any, whether known or unknown to the City at the present time, arising out of an accident on or about **August 18, 2010** involving property at or near the Duluth Zoo damaged by flood water or otherwise.

It is expressly agreed and understood that this is a compromise settlement of a disputed claim and not an admission of liability by BNSF Railway Company, and/or any predecessor or successors companies, affiliated, related, subsidiary, and parent companies, and it is understood that said parties deny liability. The City understands that these representations were material to the payment of the consideration given, and material to all terms and conditions of this Agreement.

The City further acknowledges and agrees that in entering into this settlement, and agreeing to the terms and conditions contained in this document, the City has not relied upon any statement, representation, or claim made by any agent, employee or representative of BNSF Railway Company including the representative negotiating this settlement, other than payment of the consideration mentioned in this document.

Through the executed signature below, the undersigned representative of the City of Duluth affirms that he or she has the full capacity and authority to enter into this binding settlement agreement and release on behalf of the City of Duluth.

X

Signed at _____, this _____ Day of _____, 2011.

In the presence of:

Witness

Signature _____
Dave Montgomery, Chief Administrative
Officer for City of Duluth, MN.

Witness



BNSF RAILWAY COMPANY
RELEASE AND SETTLEMENT AGREEMENT

Property Damage Claim

FOR THE SOLE CONSIDERATION OF THE PAYMENT OF

---Ten Thousand Eight Hundred Forty and 39/100---, Dollars (\$ **10,840.39**), the receipt and sufficiency of which is hereby acknowledged, I, **Lake Superior Zoological Society**, release and forever discharge BNSF Railway Company and its predecessor or successor companies, affiliated, related, subsidiary, and parent companies, specifically including any officers, directors, employees or agents of said companies and their attorneys and from all claims for loss or damage to property, and loss of business revenue, if any, whether known or unknown to me at the present time, arising out of an accident on or about **August 18, 2010**, at or near **Duluth, MN**, while property at the Duluth Zoo was damaged as a result of flood water.

It is expressly agreed and understood that this is a compromise settlement of a disputed claim and not an admission of liability by BNSF Railway Company, and/or any predecessor or successors companies, affiliated, related, subsidiary, and parent companies, and it is understood that said parties deny liability. I understand that these representations were material to the payment of the consideration given, and material to all terms and conditions of this Agreement.

I further acknowledge and agree that in entering into this settlement, and agreeing to the terms and conditions contained in this document, I have not relied upon any statement, representation, or claim made by any agent, employee or representative of BNSF Railway Company including the representative negotiating this settlement, other than payment of the consideration mentioned in this document.

X _____

7210 Fremont St.
Signed at Duluth, mn, this 15th Day of June 2011.

In the presence of:

Ronald W. Gyles
Witness

Signature *Sam Maida*
Sam Maida – Chief Executive Officer, Lake Superior Zoological Society.

Witness

Paid by Draft No. **Draft Number**

Amt. Of Draft **\$Amount of Draft**