

COMMITTEE OF THE WHOLE

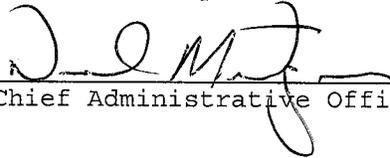
13-0460R

RESOLUTION APPROVING SETTLEMENT IN THE MATTER OF STEVE JANKOWSKI AND PETER SCOTT V. CITY OF DULUTH AND PAYMENT OF ATTORNEY FEES IN THE AMOUNT OF \$177,500.

CITY PROPOSAL:

RESOLVED, that the city council hereby authorizes settlement in the matter of Steve Jankowski and Peter Scott v. City of Duluth, filed in the United States District Court, District of Minnesota, File No.:11-3392, pursuant to the terms and conditions of the proposed consent decree and judgment, substantially the same as that on file in the office of the city clerk as Public Document No. \_\_\_\_\_, which includes payment of attorney fees in the amount of \$177,500, payable from Fund 610-036-1651-5841, and further authorizes the proper city officials to take all actions necessary to conclude this matter on a full, final and complete basis.

Approved for presentation to council:

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

Approved as to form:

  
\_\_\_\_\_  
Attorney

ATTY MAL:cjh 8/29/2013

Approved:

  
\_\_\_\_\_  
Auditor

STATEMENT OF PURPOSE: This resolution authorizes a settlement in a civil suit commenced by Steve Jankowski and Peter Scott. The suit arises out the plaintiffs' efforts to engage in various form of expressive activity during Bentleyville Tour of Lights presentations. Plaintiffs claim their activities are protected by the First Amendment to the Constitution of the United States. The claim against the city is pursued under 42 U.S.C. §1983. The claim for attorney fees arises under 42 U.S.C. §1988. The parties engaged in an extensive court mediated settlement process to reach the terms of settlement incorporated into the proposed consent decree and judgment. The city attorney recommends this settlement.

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

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STEVE JANKOWSKI and PETER  
SCOTT,

File No.: 11-3392 MJD/LIB

Plaintiffs,

vs.

**CONSENT DECREE  
AND JUDGMENT**

CITY OF DULUTH,

Defendant.

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WHEREAS, the parties now wish to settle all issues involved in the above-captioned matter in accordance with the terms of the Consent Decree set forth herein:

NOW THEREFORE, on the joint motion of Plaintiffs and Defendant, it is hereby ORDERED, ADJUDGED, and DECREED as follows:

1. During Bentleyville, Plaintiffs Jankowski and Scott will be allowed to engage in their desired First Amendment activity (via signs, literature and speech in compliance with all applicable state laws and city codes) in a portion of the Bentleyville event as agreed upon by the parties during their April 26, 2013 mediated settlement conference in the above-captioned matter, which is outlined on the map attached hereto and made a part hereof as **Exhibit A** in bold blue marker, and generally described as follows:

The sidewalks and public right-of-ways surrounding Bayfront Festival Park, and the walkways leading into Bayfront and up to, but not including, the steel structure (archway) and gate marking the entrance to "Area 1" indicated on Exhibit A.

referred to hereinafter as the “Free Speech Zone”;

2. While engaged in First Amendment activity in the area identified as “Area 2” on Exhibit A, Plaintiffs may not yell or shout and shall limit any oral/verbal communications to a conversational volume.

3. The “Free Speech Zone” does not extend into or inside Area 1, the steel structure and gate marking the entrance to Area 1, or any of the fences surrounding Area 1.

4. Plaintiffs Jankowski and Scott do not enjoy exclusive use of the Free Speech Zone;

5. While engaging in expressive activities within the Free Speech Zone, Plaintiffs Jankowski and Scott may not engage in conduct that violates other city ordinances or state laws;

6. While Plaintiffs’ First Amendment activities are confined to the Free Speech Zone, Plaintiffs are allowed to attend the Bentleyville event (assuming satisfaction of all event organizer requirements for admission) when they are not engaging in said activities;

7. The Free Speech Zone agreed to by the parties applies only to the Bentleyville event;

8. Plaintiffs are allowed to engage in First Amendment activities in the Free Speech Zone at the Bentleyville event regardless of whether Bentleyville subsequently becomes a ticketed event;

9. In full, final and complete satisfaction of any and all claim for attorneys' fees in the above-captioned matter now and in the future, the city agrees to a one-time payment in the amount of \$177,500. The city agrees to make best efforts to issue payment within 30 days after entry of this Decree and receipt from Plaintiffs' counsel of instructions for preparation of the payee section of the draft.

10. This Consent Decree and Judgment is a settlement and compromise between the parties and shall not be construed as an admission of liability on the part of the City of Duluth, its agents, officers, or employees, all of whom expressly deny liability.

11. This Consent Decree And Judgment, along with the attached exhibit, embodies the entire understanding of the parties and there are no further or other agreements, permits, or understandings, written or oral, in effect between the parties relating to the subject matter hereof.

NOW, THEREFORE, LET JUDGMENT BE ENTERED pursuant to all the terms and conditions above.

**SO ORDERED** this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

BY THE COURT:

\_\_\_\_\_  
Michael J. Davis  
Chief Judge  
United States District Court

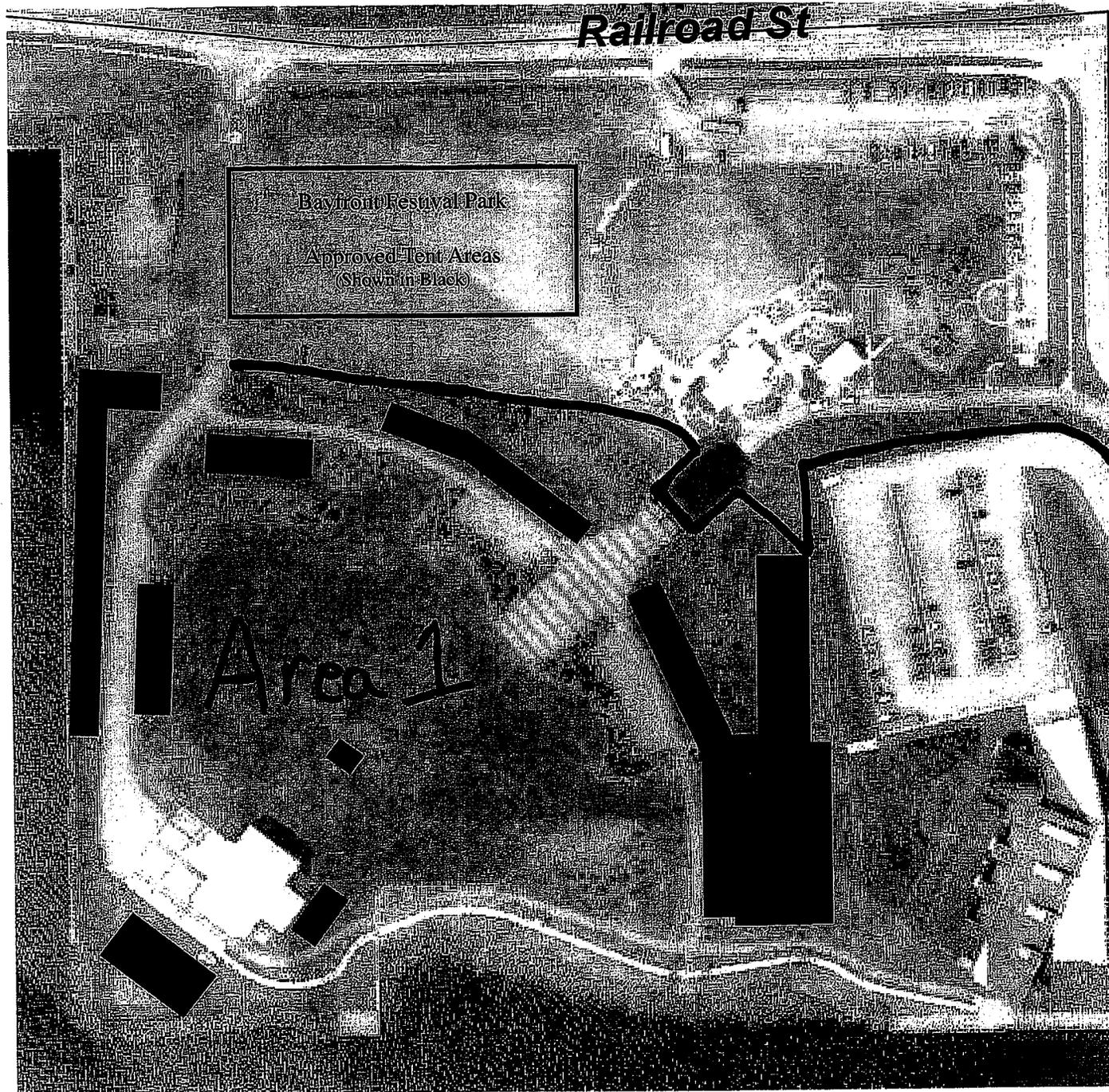


EXHIBIT A