



**Request for City Council Committee Action
From the City Attorney's Office**

Date: November 19, 2008
To: Ways & Means/Budget Committee
Referral to:

Subject: *DuAll Service Contractors, Inc., v. Michael G. Sweat et al v. City of Minneapolis*

Recommendation: The City Attorney's Office recommends that the City Council approve the settlement of this case by payment of \$23,144.53 to Michael Sweat, Yolanda Sweat, and their attorney Richard Eskola, from Fund/Org. 06900-1500100-145630 and authorize the City Attorney's Office to execute any documents necessary to effectuate settlement.

Previous Directives:

Prepared by: Sara J. Lathrop  Phone: (612) 673-2072

Approved by: _____
 Susan L. Segal
City Attorney

Presenter in Committee: Susan L. Segal, City Attorney

Financial Impact (Check those that apply)

- No financial impact (If checked, go directly to Background/Supporting Information).
 Action requires an appropriation increase to the _____ Capital Budget or _____ Operating Budget.
 Action provides increased revenue for appropriation increase.
 Action requires use of contingency or reserves.
 Business Plan: _____ Action is within the plan. _____ Action requires a change to plan.
 Other financial impact (Explain): Fund/Org. 06900-1500100-145630
 Request provided to department's finance contact when provided to the Committee Coordinator.

Community Impact

Neighborhood Notification

City Goal(s):

Build Community

Background/Supporting Information

MGS Professional Building Maintenance Services, Inc., owned by Michael and Yolanda Sweat, is a high-rise window cleaning company. MGS owns a building at 3620 Central Ave. in Minneapolis. On May 8, 2007, heavy rains washed into the sewer system. The system was not able to handle the extra volume of water, and it back flowed into several properties, including the MGS building. The raw sewage entered the property through toilets and sinks in the basement, resulting in standing sewage/water. Consequently, the basement of the property was severely damaged. Specifically, all of the walls, floor coverings, and custom sized and built cabinets were damaged to the point that none were salvageable. The City Council previously approved the settlement of the portion of the claim relating to the cost of hiring a contractor to repair of the building. That portion of the case was submitted first to limit the interest accruing on the contractor's lien.

In addition to the property damage, the building owners lost their business files, furniture, and other personal property. They also lost several months of rent from a tenant that had to vacate the building. Finally, they incurred substantial labor costs in dealing with the damage to their property and to their business operations.

Minnesota courts have consistently held cities liable for damages sustained by a claimant when the city's intentional or negligent actions divert the natural flow of water, causing damage to property which would not normally be in the water's path. In this case, the City was in the area of MGS's property relining sewer pipes, and City employees had taken out catch basins to facilitate this work. These actions caused additional water to flow into other systems in the area, thereby overloading those systems. The result was the backup that damaged the property. It appears that the City's work on the sewer system was a proximate cause of the damages the building owners have suffered.

The building owners claim damages of over \$41,000. At a mediation the parties were able to negotiate a proposed settlement of all remaining claims against the City for \$23,144.53. Robin Harris, Director of Administration-Public Works asked Lisa Cerney, Public Works- Surface Water and Sewers, to monitor this case. Ms. Cerney has approved this proposed settlement.

RECOMMENDATION

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