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

Date: January 22, 2004
To: Ways & Means/Budget Committee
Transportation & Public Works Committee

Subject: City of Minneapolis road restoration claims against Gabe's Construction Co., Inc.

Recommendation: That the City Council receive and file this report.

Previous Directives:

Prepared by: Peter W. Ginder, Acting Deputy City Attorney, Civil Phone: 673-2478

Approved by: _____
Jay M. Heffern
City Attorney

Presenter in Committee: Jay M. Heffern, City Attorney

Financial Impact (Check those that apply)
___ No financial impact - or - Action is within current department budget.
(If checked, go directly to Background/Supporting Information)
___ Action requires an appropriation increase to the Capital Budget
___ Action requires an appropriation increase to the Operating Budget
___ Action provides increased revenue for appropriation increase
___ Action requires use of contingency or reserves
X Other financial impact (Explain): Fund Org 6900 150 1500 6070
___ Request provided to the Budget Office when provided to the Committee Coordinator

Background/Supporting Information

In 2001 and 2002, Gabe's Construction Co., Inc. ("Gabe's") installed fiber optic and duct systems in the City's rights of way for the benefit of various telecommunications companies (the "Telecos"). Gabe's was neither the encroachment permit holder nor an applicant for any of the excavation permits for the work subsequently performed by the company. As a result of the work completed by Gabe's, the City invoiced Gabe's for various past restoration work and final mill and overlay work totaling at least $747,244.35. By ordinance, bonds were to be posted by the permitee Telecos prior to the permits being granted. However, the City apparently failed to require the posting of sufficient bonds prior to the permits being granted. This office, in conjunction with Public Works, commenced negotiations with Gabe's in 2002 to collect as much of the owed restoration costs as possible. Gabe's has worked with five of the Telecos to procure proportional payments against the balances owing on the amounts invoiced by the City for the various restoration and overlay work. Gabe's has collected and agreed to pay the sum of five hundred seventy-three thousand, seven hundred three and eleven one-hundredths dollars ($573,703.11) to the City in twelve equal payments beginning January, 2004. The amount represents the proportional share of the invoiced amounts for the paying Telecos. We have received the first payment of $47,808.59. In exchange, we have released the

paying Telecos and Gabe's from any other obligations on any of the balances owed on the subject invoices by the non-paying Telecos.

Three of the Telecos have not paid their proportionate share of the cost (Global Crossing American Networks, Inc., Metromedia Fiber Network Services, Inc., and 360 Degree Network (USA), Inc.). These companies have filed proceedings under Chapter 11 of the U.S. Bankruptcy code. The City Attorney's Office has filed appropriate claims in the United States Bankruptcy Court against the non-paying Telecos. Gabe's also agrees that in the event any amounts are collected by the City in the bankruptcy proceedings, Gabe's shall make no claims against such amount.

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