

..Number
130163

..Version
SUBSTITUTE TWO

..Reference

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..Title

Resolution to approve settlement of the City of Milwaukee's claims against J. P. Cullen & Sons, Inc. in the matter of *City of Milwaukee v. Simpson, Gumpertz & Heger, Inc., et al*, Milwaukee County Circuit Court Case No. 12 CV 004989.

..Analysis

This resolution approves a settlement of the City of Milwaukee's claims against J. P. Cullen & Sons, Inc., (JPC) one of several defendants in the matter of *City of Milwaukee v. Simpson, Gumpertz & Heger, Inc., et al*, Milwaukee County Circuit Court Case No. 12 CV 004989. This resolution authorizes the City Attorney to execute a Settlement Agreement and to execute other legal documents which may be necessary to effectuate the settlement called for herein; and this resolution further authorizes the Commissioner of Public Works to execute a contract for the terra cotta repair project between JPC and the City which will be part of the Settlement Agreement. The settlement provides that JPC will enter into the Contract for the Milwaukee City Hall Terra Cotta Repair Project, to repair and replace specified terra cotta on the Milwaukee City Hall façade, for a contract price of \$6,707,000 paid by the City of Milwaukee; that JPC will provide a three (3) year warranty on the replacement terra cotta; and, that upon approval of the settlement, the City will release JPC, its insurers, its subcontractors and its suppliers from all claims which have been or could be asserted against them in the lawsuit; that the City will dismiss JPC from the lawsuit although the lawsuit will continue with respect to remaining defendants; and, that the remaining defendants will be potentially liable only for that portion of the City damages that relates to said remaining defendants' legal responsibility.

..Body

Whereas, in regard to problems with the terra cotta restoration work which had been completed on the Milwaukee City Hall in 2008, the City filed suit on May 12, 2012 against Simpson, Gumpertz & Heger, Inc., Engberg Anderson, Inc., Bloom Companies, LLC and JPC, along with numerous insurance companies that had issued policies of insurance to said companies; and,

Whereas, the City has obtained an independent estimate for the cost of repairs necessary to terra cotta on the façade of Milwaukee City Hall in the amount of \$14,600,000; and,

Whereas, the damages the City seeks in the lawsuit include the cost of these repairs of approximately \$14,600,000 plus additional costs of approximately \$4,000,000 in other damages, past and future; and,

Whereas, JPC has offered to perform these needed repairs for a contract price of \$6,707,000, and to warranty the replacement terra cotta for three years, in exchange for a complete release of all liability asserted against JPC, its insurers, subcontractors and suppliers in the lawsuit, it is hereby RESOLVED, that the City Attorney is authorized to execute a Settlement Agreement and other documents, and to take such action as the City Attorney deems necessary to effectuate the settlement of claims called for herein, and it is further

RESOLVED, that the Commissioner of Public Works is authorized to enter into the Contract for the Milwaukee City Hall Terra cotta Repair Project as called for in the Settlement Agreement; and it is further

RESOLVED, That funding for this contract cost will come from contingent borrowing authority, which will be conferred by separate future resolution.

..Requestor

City Attorney

..Drafter

MRH:

July 1, 2013

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