



Legislation Details (With Text)

File #: 0759-2008 **Version:** 1

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File created: 4/25/2008 **In control:** Utilities Committee

On agenda: 5/12/2008 **Final action:** 5/15/2008

Title: To authorize the Director of Public Utilities to compromise and settle on behalf of the City of Columbus the litigation captioned Loveland Excavating of Columbus, Inc. v. City of Columbus, pending in the Franklin County Court of Common Pleas, in the total amount of \$35,000.00 (Thirty-Five Thousand Dollars and no cents); to execute any necessary documents associated with the settlement and final resolution of the litigation; to authorize the City Auditor to deposit the settlement funds as directed by the City Auditor, and to declare an emergency.

Sponsors:

Indexes:

Code sections:

Attachments:

Date	Ver.	Action By	Action	Result
5/15/2008	1	CITY CLERK	Attest	
5/14/2008	1	MAYOR	Signed	
5/12/2008	1	Columbus City Council	Approved	Pass
5/12/2008	1	COUNCIL PRESIDENT	Signed	
5/2/2008	1	Utilities Drafter	Sent to Clerk's Office for Council	
5/1/2008	1	City Clerk's Office	Sent back for Clarification/Correction	
4/30/2008	1	Utilities Drafter	Sent to Clerk's Office for Council	
4/29/2008	1	Utilities Drafter	Sent for Approval	
4/29/2008	1	CITY ATTORNEY	Reviewed and Approved	
4/28/2008	1	Utilities Reviewer	Sent for Approval	
4/28/2008	1	UTILITIES DIRECTOR	Reviewed and Approved	
4/28/2008	1	Utilities Drafter	Sent for Approval	
4/27/2008	1	Utilities Reviewer	Reviewed and Approved	
4/25/2008	1	Utilities Drafter	Sent for Approval	
4/25/2008	1	Utilities Reviewer	Reviewed and Approved	
4/25/2008	1	Utilities Drafter	Sent for Approval	

BACKGROUND: Loveland Excavating of Columbus, Inc. filed a lawsuit against the City to prevent the award of a contract to Loveland. Loveland had submitted a bid proposal to the Department of Public Utilities for the McDannald Estates Stormwater System Improvements Project No. CIP 610994 but sought to withdraw its bid after the bid opening on the grounds it had inadvertently omitted a substantial cost for some of the work. The Department and Loveland have determined that it is in the best interests of both parties to settle this lawsuit.

This ordinance authorizes the Director of Public Utilities to compromise and settle this lawsuit in the amount of \$35,000.00 and to execute any necessary documents to effectuate the settlement.

FISCAL IMPACT: The City will receive a settlement payment in the amount of \$35,000.00, and contractor will be debarred from bidding on city projects for a period of one year.

To authorize the Director of Public Utilities to compromise and settle on behalf of the City of Columbus the litigation captioned Loveland Excavating of Columbus, Inc. v. City of Columbus, pending in the Franklin County Court of Common Pleas, in the total amount of \$35,000.00 (Thirty-Five Thousand Dollars and no cents); to execute any necessary documents associated with the settlement and final resolution of the litigation; to authorize the City Auditor to deposit the settlement funds as directed by the City Auditor, and to declare an emergency.

WHEREAS, On February 20, 2008, Loveland submitted its bid proposal seeking to obtain a construction contract with the City on the McDannald Estates Stormwater System Improvements Project No. CIP 610994 (the "Project"); and

WHEREAS, On February 20, 2008, at the opening of bids, Loveland's bid of \$1,399,550.40 was the low numerical bid on the Project; and

WHEREAS, After the bid opening, Loveland discovered that it had made a substantial error in that it had not included in its bid an amount for the trucking and hauling portion of the work needed to perform the Project; and

WHEREAS, On the day after the bid opening, Loveland notified the City of its mistake and requested in writing that it be allowed to withdraw its bid and have its Proposal Bond returned; and

WHEREAS, The City refused this request because the City's bidding procedures do not allow for the withdrawal of bids after bid opening; and

WHEREAS, On March 12, 2008, Loveland filed a lawsuit in the Franklin County Court of Common Pleas, in which Loveland sought injunctive and other relief to allow it to withdraw its bid proposal and to prohibit the City from asserting a claim against the bond which it had submitted with its bid, which relief the City opposed; and

WHEREAS, Based on the totality of circumstances in this case and Loveland's sworn admission that its substantial mistake was caused solely by its own error and /or misjudgment while it was acting in good faith, and for the payment by Loveland of substantial consideration, the City has deemed it to be in the best interests of both parties to settle the lawsuit; and

WHEREAS, there is an emergency in the usual daily operations of the Department of Public Utilities in that it is immediately necessary for the preservation of the public peace, safety and welfare that this settlement be approved and such payment be made, and for the further reason that it is necessary to proceed forthwith with the construction of the named improvement, now therefore,

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF COLUMBUS:

SECTION 1. That the Director of Public Utilities is hereby authorized to compromise and settle all the claims in the case captioned Loveland Excavating of Columbus, Inc. v. City of Columbus, Case No. 08CVH-03-3733, pending in the Franklin County Court of Common Pleas, for the payment to the City in the total amount of \$35,000.00 (Thirty-Five Thousand Dollars and no cents).

SECTION 2. That the Director of Public Utilities is hereby authorized to execute any necessary agreements and court documents associated with the settlement and final resolution of the litigation on behalf of the City.

SECTION 3. That the City Auditor is hereby authorized to accept the settlement funds upon receipt, and to determine the appropriate fund into which they shall be deposited to the credit and benefit of the City.

SECTION 4. That for the reasons set forth in the preamble, which are incorporated by reference herein, this ordinance is hereby deemed to be an emergency measure necessary for the immediate preservation of the public peace, safety and welfare shall take effect and be in force from and immediately after its passage and signature by the Mayor, or within 10 days thereafter if the Mayor neither signs nor vetoes the same.

