

RESOLUTION NO. 39-2015

Authorizing the City Manager to Execute and Deliver a Settlement Agreement and Mutual Release in Connection with Franklin County Common Pleas Case No. 14-CV-010915 for the Community Center Roof Remediation.

WHEREAS, the City experienced problems with the roof on the Community Center that caused property damage; and,

WHEREAS, pursuant to Resolution No. 45-2014, the Director of Law was authorized and directed, on behalf of the City and by whatever means necessary and appropriate, to begin to pursue available legal remedies against parties involved with the construction of the Community Center roof who may have had some responsibility for the deficiencies discovered; and,

WHEREAS, on October 22, 2014, the City commenced an action against Moody-Nolan, Inc., Apex / M&P Construction, LLC and Travelers Casualty and Surety Company of America in the Franklin County Court of Common Pleas, Case No. 14-CV-010915 (the "Lawsuit"); and,

WHEREAS, the parties agreed to submit the action to mediation and, as a result, desire to resolve their disputes and the Lawsuit; and,

WHEREAS, a Memorandum of Settlement has been executed, which sets forth the primary terms of the discussions for settlement while the provisions of a Settlement Agreement and Mutual Release are being drafted; and,

WHEREAS, it is in the best interest of the City of Worthington to settle the Lawsuit on the terms contained within the Memorandum of Settlement.

NOW THEREFORE, BE IT RESOLVED, by the Council of the Municipality of Worthington, County of Franklin, State of Ohio:

SECTION 1. That the City Manager is hereby authorized and directed to execute and deliver a Settlement Agreement and Mutual Release consistent with the terms contained in the Memorandum of Settlement attached hereto as Exhibit "A", and upon such other terms not adverse to the City as are customarily contained in settlement agreements, as approved by the Director of Law.

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SECTION 2. That the Clerk be and hereby is instructed to record this Resolution in the appropriate record book.

Adopted August 3, 2015

/s/ Bonnie D. Michael
President of Council

Attest:

/s/ D. Kay Thress
Clerk of Council

MEMORANDUM OF SETTLEMENT

This Memorandum of Settlement is entered into this 22nd day of July, 2015 by and between The City of Worthington, Ohio (the "City"); Moody-Nolan, Inc. ("Moody-Nolan"); Apex/M&P Construction, LLC ("Apex"); and Travelers Casualty and Surety Company of America ("Travelers") (each a "Party" and collectively the "Parties").

The Parties hereby agree that the action captioned *City of Worthington, Ohio v. Moody-Nolan, Inc., et al.*, Case No. 14 CV 010915, Franklin County Court of Common Pleas (the "Lawsuit") has been settled on the following terms:

1. Moody-Nolan; CNA Commercial Insurance ("CNA"), on behalf of Apex; and Travelers shall collectively pay the City the sum of Three Hundred Seventy Five Thousand Dollars (\$375,000.00) (the "Settlement Amount"). It is understood and agreed to by the City that this settlement is a compromise of doubtful and disputed claims, and the payments are not to be construed as an admission of liability on the part of Moody-Nolan, CNA, Apex and/or Travelers, by whom liability is expressly denied, for the nature and extent of damages claimed by the City.
2. The Parties shall enter into a Settlement Agreement that contains mutual releases of claims relating to the Community Center Project and incorporates the terms of this Memorandum of Settlement (the "Settlement Agreement"). Moody-Nolan and the City will enter into a mutual project release. Execution of the Settlement Agreement by the City Manager is subject to authorization by the Worthington City Council, in accordance with the City's legislative process.
3. The Settlement Amount shall be paid by certified check or wire transfer within fourteen (14) days of the execution of the Settlement Agreement by all Parties.
4. The City shall dismiss the Lawsuit, with prejudice, within three (3) business days of receipt of the Settlement Amount, with each party to pay its own costs and attorneys' fees.
5. The laws of the State of Ohio shall govern the validity, performance and enforcement of the Settlement Agreement and the Memorandum of Settlement. The Court of Common Pleas of Franklin County, Ohio shall have exclusive jurisdiction to adjudicate disputes arising out of the Settlement Agreement and the Memorandum of Settlement.
6. Apex reserves the right to pursue its claims against Suburban Roofing and/or Kelly & Oliver Roofing. The City agrees to release any claims it has or may have against

Suburban Roofing and/or Kelly & Oliver Roofing. The City preserves its defenses against Suburban Roofing and/or Kelly & Oliver Roofing.

7. The City and Moody-Nolan have jointly drafted a letter to be attached as an exhibit to the Settlement Agreement which provides that the City and Moody-Nolan have resolved all matters relating to the Community Center roof to the satisfaction of both Parties.

8. The City, Moody-Nolan, Apex and Travelers agree that the Settlement Agreement will contain a mutual non-disparagement provision.

AGREED:

Sherri B. Lazear
Attorney for The City of Worthington, Ohio

David T. Patterson
Attorney for Moody-Nolan, Inc.

Thomas E. Dover
Attorney for Apex/M&P Construction, LLC

Ian H. Frank
Attorney for Travelers Casualty and
Surety Company of America