# CITY OF WEST DES MOINES
# CITY COUNCIL MEETING COMMUNICATION

**DATE:** **May 6, 2019**

**ITEM:** Motion - Approval of Settlement Agreement

**FINANCIAL IMPACT:** Settlement amount of $6,563.75 to City

**SYNOPSIS:** In 2015 the City contracted with ABC Electrical Services, LLC ("ABC") to obtain and install new MaxLite bulbs in the existing lighting fixtures in the West Des Moines City Hall and Library. Although the bulbs installed in City Hall have functioned properly, a significant number of bulbs installed in the Library have not. Subsequent to installation, ABC worked with the City to replace the MaxLite bulbs and address any existing problems.

ABC has negotiated a settlement with MaxLite for reimbursement of the defective bulbs, which includes reimbursement to the City of $6,563.75. The attached Settlement Agreement sets forth the terms and conditions of the reimbursement, including the release of the parties from any further claims.

**OUTSTANDING ISSUES** (if any): None.

**RECOMMENDATION:** Approve the Settlement Agreement between ABC Electrical Services, LLC and the City of West Des Moines

**Lead Staff Member:** **Richard J. Scieszinski, City Attorney** RJS

**STAFF REVIEWS**

| | |
|---|---|
| Department Director | Richard J. Scieszinski, City Attorney |
| Appropriations/Finance | ok for RJS |
| Legal | |
| Agenda Acceptance | |

**PUBLICATION(S)** (if applicable)

| | |
|---|---|
| Published In | |
| Dates(s) Published | |

**SUBCOMMITTEE REVIEW** (if applicable)

| | | | |
|---|---|---|---|
| Committee | None | | |
| Date Reviewed | | | |
| Recommendation | | | |

# SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is made and executed by and between ABC Electrical Services, LLC., a Iowa limited liability company maintaining a principal place of business at 5299 NE 15th Street, Des Moines, Iowa 50313 (hereinafter "ABC") and City of West Des Moines, Iowa, an Iowa Municipality with City Hall located at 4200 Mills Civic Parkway, West Des Moines, IA ("City of WDM") (ABC and City of WDM are collectively referred to as the "Parties").

WHEREAS, in or about 2015, City of WDM contracted with ABC to procure and install certain MaxLite Lamps, hereinafter referred to as the "Products;" and

WHEREAS, thereafter, following installation of the Products, City of WDM experienced malfunctions with many the Products in the Library facility; and

WHEREAS, ABC replaced the Products in the Library facility with fluorescent lamps, then at a later date, were replaced with LED lamps; and

WHEREAS, ABC and City of WDM have reached an agreement to fully resolve and settle the dispute related to the Products used in the City Hall and Library facilities, including the refund of an invoice billed by ABC and paid by City of WDM.

Now therefore, the Parties, incorporating the above background and intending to be legally bound and for good and valuable consideration, agree:

1. Settlement Terms.

1.1. In consideration for City of WDM's execution of this Agreement, ABC shall pay City of WDM, a one-time, lump sum Settlement Payment in the amount of $6,563.75. The Settlement Payment shall be made payable to the order of City of West Des Moines and shall be paid to the community within five (5) business days following the Effective Date of this Agreement.

1.2. Effective Date. The Effective Date of this agreement shall be the date on which ABC and City of WDM have each signed this Agreement, including by counterparts as authorized by Section 2.6 below.

1.3. Non-Disclosure and Non-Disparagement. The Parties agree that, as a material part of the consideration for this Agreement, the Parties will not disclose the existence of or terms of this Agreement, or the substance of any negotiations leading to same, to any person, entity, or institution, unless compelled to do so by law. Each party agrees not to make, or cause or otherwise encourage others to make, publish, or communicate any disparaging or derogatory comments, statements—whether written, oral, electronic, or otherwise—in any form, medium, or format with respect to the other party.

1.4 General Release and Covenant Not to Sue. In consideration for the payment set forth in Paragraph 1.1. of this Agreement, The Parties release and discharge each other and their parent, subsidiaries, successors, operating units, assigns, affiliates, related corporations and entities and all of their employees, supervisors, officers, directors, and agents, officials, insurers, attorneys, and any person or entity which can be held jointly and severally liable with any of them, from any and all past, present or future claims, liabilities, demands, causes of action, and personal injury/survival and/or wrongful death claims known or unknown, fixed or contingent, which either party may now have or which may hereafter accrue, including, without limitation, claims of the Parties and their customers, agents and representatives, arising out of or in any way connected to the sale, purchase, installation, operation and/or use of the Products and any subsequent warranty claims, including claims for equitable relief, compensatory, punitive, or other damages, expenses (including attorney's fees) and reimbursements or compensation of any kind.

1.5 No other parties. To the knowledge of City of WDM, there are no additional parties, other than City of WDM, that have claims against ABC or MaxLite arising out of or relating to the Products.

2. Miscellaneous.

2.1. Opportunity to Review. The Parties represent and warrant they have carefully read this Agreement, consulted with their respective attorneys, and understand and consent to be bound by the terms of this Agreement.

2.2. Entire Agreement. This Agreement constitutes the entire agreement among the Parties and supersedes any prior understandings and agreements between the Parties. This Agreement may not be modified, except by written consent of all Parties. This Agreement shall be binding and inure to the benefit of the Parties and their respective successors and assigns. No third party is intended to secure any rights or benefits under this Agreement, and it is not intended for the benefit of any third party.

2.3. Severability. A court's ruling rendering any provision of this Agreement is invalid or unenforceable shall not affect the validity of the remaining provisions of this Agreement.

2.4. No Interpretation Against Drafter. This Agreement has been negotiated and prepared by the Parties and their respective attorneys. If any of the Agreement's provisions require a court's interpretation, no ambiguity in this Agreement shall be construed against any party as the drafter.

2.5. Choice of Law; Enforcement. This Agreement shall be construed under the laws of the State of Iowa, without giving regard to its conflict of law rules. If a party is required to enforce the terms of this Settlement Agreement, venue shall be exclusively in a court of competent jurisdiction in and for Dallas County, Iowa. The prevailing party in any dispute to enforce this Agreement may recover that party's reasonable attorney's fees and costs in addition to all other damages recovered.

2.6. Counterparts. This Agreement may be executed in one or more counterparts, all of which shall be one and the same Settlement Agreement and shall become effective when one or more counterparts have been signed by each party and delivered (including delivery of executed signature pages electronically) to each party.

2.7. Authorization of Signatories. The undersigned are fully competent and authorized to execute this Agreement and have signed their names to this Agreement of their own free will.

IN WITNESS WHEREOF, the Parties set their hands effective as of the day and year set forth above.

ABC ELECTRICAL SERVICES LLC

Date: _____

_____

By: Leroy Clair

Title: President

CITY OF WEST DES MOINES, IOWA

Date: _____

_____

By: Richard Scieszinski

Title: City Attorney