CITY OF WEST DES MOINES
CITY COUNCIL MEETING COMMUNICATION

DATE: August 5, 2019

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

FINANCIAL IMPACT: $8,430.50 (positive)

SYNOPSIS: Tim Terrell & Company, Inc. d/b/a Trenchless Technology, damaged City fiber optic cable. The City paid Iowa Signal Inc. to repair the damage and filed a claim for the cost of repairs ($8,430.50) with Trenchless Technology's insurance company, Nationwide. Nationwide has agreed to pay the claim in exchange for the attached Release of All Claims.

Staff recommends the Council approve the settlement agreement for $8,430.50.

This item was distributed to the Public Services Subcommittee by e-mail only.

OUTSTANDING ISSUES (if any): None.

RECOMMENDATION: **Motion** - Approve the Settlement Agreement and authorize the Mayor to sign Release of All Claims.

Lead Staff Member: Jim Dickinson, Public Works

STAFF REVIEWS

Department Director	Bret Hodne
Appropriations/Finance	Tim Stiles, Finance Director
Legal	Richard J. Scieszinski, City Attorney
Agenda Acceptance	

PUBLICATION(S) (if applicable)

Published In	
Dates(s) Published	

SUBCOMMITTEE REVIEW (if applicable)

Committee	Public Services		
Date Reviewed	Email		
Recommendation	Yes	No	

RELEASE OF ALL CLAIMS

CLAIM NUMBER: 875453-GI

FOR AND IN CONSIDERATION OF the payment to City of West Des Moines the sum of EIGHT THOUSAND FOUR HUNDRED THIRTY DOLLARS AND 50 CENTS ($8,430.50) dollars and other good and valuable consideration, I, being of lawful age, have released and discharged, and by these presents do for myself, my heirs, executors, administrators and assigns do hereby release, acquit, agree to defend, indemnify, hold harmless and forever discharge AMCO Insurance Company, Tim Terrell and Company Inc., Tim Terrell, Trenchless Technology and any and all other persons, firms and corporations, whether herein named or referred to or not (collectively "the Released Party"), of and from any and all past, present and future actions, causes of action, claims, demands, damages, costs, loss of services, expenses, compensation, third party actions, suits at law or in equity, including claims or suits for contribution, indemnity, and/or subrogation of whatever nature, and all consequential damage on account of, or in any way growing out of any and all known and unknown personal injuries, death, and/or property damage resulting or to result from an accident that occurred on or about April 15, 2019 at or near 88th St. West Des Moines IA 50265.

I hereby declare and represent that the injuries sustained may be permanent and progressive and that recovery there from is uncertain and indefinite, and in making this release and agreement it is understood and agreed that I rely wholly upon my own judgment, belief and knowledge of the nature, extent and duration of said injuries, and that I have not been influenced to any extent whatever in making this release by any representations or statements regarding said injuries, or regarding any other matters, made by the persons, firms or corporations who are hereby released, or by any person or persons representing him or them, or by any physician or surgeon by him or them employed.

I understand that this settlement is the compromise of a doubtful and disputed claim, and that the payment is not to be construed as an admission of liability on the part of the persons, firms and corporations hereby released by whom liability is expressly denied.

~~I understand that this release expressly reserves all rights of the Released Party to pursue his remedies, if any, against me and/or those in privity or in any way connected with me.~~

~~I agree to be responsible for payment of any and all liens and claims for subrogation or reimbursement by any health care or similar provider including, but not limited to, those of any governmental agencies or programs that may have arisen as a result of the accident. I will defend, indemnify and hold harmless the Released Party and its insurance carrier, from any and all such liens or claims.~~

Initial(s): _____

Date: _____

RELEASE OF ALL CLAIMS

CLAIM NUMBER: 875453-GI

It is agreed that the terms contained in this Agreement will be read to apply equally in the singular as well as the plural and to refer to the feminine as well as the masculine.

This release contains the ENTIRE AGREEMENT between the parties hereto, and the terms of this release are contractual and not a mere recital.

I further state that I have carefully read the foregoing release and know the contents thereof, and I sign the same as my own free act.

WITNESS my hand(s) and seal this _____ day of _____, 20_____.

CAUTION! READ BEFORE SIGNING

In the presence of:

Your Signature: _____

Your Name (Please Print): _____

Your Signature: _____

Your Name (Please Print): _____

State of _____, County of _____.

On this _____ day of _____, 20_____, Before me personally appeared _____, to me known to be the person(s) described herein, and who executed the foregoing instrument and he/she acknowledged that he/she voluntarily executed the same.

Notary Public: _____

My term expires: _____, 20 _____