



Commission Memorandum

REPORT TO: Honorable Mayor and Commission Members

FROM: Anna Rosenberry, Finance Director
Greg Sullivan, City Attorney
Chris Kukulski, City Manager

SUBJECT: Settlement Agreement with NorthWestern Energy for March 5, 2009
Incident Related Costs

MEETING DATE: April 19, 2010

AGENDA ITEM TYPE: Consent

RECOMMENDATION: Authorize City Manager to Sign Settlement Agreement for
March 5, 2009 Incident Related Costs.

BACKGROUND: During the March 5, 2009 incident, the City tracked expenses related to our efforts to reduce the property damage and the public health and safety risks brought on by the explosion on Main Street.

Due to the unprecedented and substantial nature of the response that was required, in May 2009 we requested that NorthWestern Energy reimburse all of the staff time, equipment usage and supply purchases that the City incurred to handle the incident.

Requested Reimbursement for Incident Response	Quantity	Charge
Staff Hours - including regular hours and overtime efforts 221 Individuals with incident hours (65% of City Staff)	5,079 hours	\$209,577
Supply Costs 4.7 million gallons of water to suppress fire Materials for boarding windows Investigation expenses, etc.	various	26,853
Equipment Usage Over 200 pieces of equipment -Police cars, public works trucks, fire engines, generators, street sweepers, etc.	2,000+ hours	73,713
TOTAL Requested Reimbursement		\$310,143

Although they were used heavily during the incident, we did not request reimbursement for: Building Usage (City Hall, Old City Hall, Fire Station #1, City Shops, Library,) Technology System Usage (cable television system, website, phone, wireless, etc.)

We have been in discussions with NorthWestern Energy officials and their insurance representatives to resolve this issue. We have developed the attached settlement agreement, which Northwestern Energy is agreeable to. It reimburses the City a total of \$163,624 for incident related costs.

Settlement Agreement	Quantity	Amount
Staff Hours - no regular hours; only overtime to non-exempt employees, including direct benefit costs	1,834 hours	\$58,058
Supply Costs 4.7 million gallons of water to suppress fire Materials for boarding windows Investigation expenses, etc. Deductible for Property Damage	various	31,853
Equipment Usage Over 200 pieces of equipment -Police cars, public works trucks, fire engines, generators, street sweepers, etc.	2,000+ hours	73,713
TOTAL Settlement Agreement		\$163,624

The agreement also contains a number of clauses, including:

Section 2: The City forever releases NorthWestern Energy "from every claim, demand, liability, action and cause of action whatsoever, of every kind and nature, ...whether presently known or unknown,... arising out of or related to the March 5, 2009 explosion and fire that occurred in the 200 block of East Main Street in Bozeman, Montana"

Section 4: The agreement is no admission of liability by NorthWestern Energy.

UNRESOLVED ISSUES: None. NorthWestern Energy has agreed to sign the attached settlement.

FISCAL EFFECTS: When accounting for incident related costs, we accumulated paid overtime hours and supply costs out of a separate special revenue fund. Regular hours and equipment fuel were charged to FY09 department budgets. When we billed Northwestern Energy for these costs, a receivable was recorded in this fund.

The settlement amount will make this special revenue fund whole. It will also compensate a few funds for the utilization of their equipment and fuel (charged in FY09.) The following amounts will be returned to the fund and department that provided the equipment. We recommend adding these amounts to the reserve of each fund, to help support equipment replacement in the future.

DEPARTMENT EQUIPMENT	TOTAL AMOUNT	Budgeted Fund
PARKS	\$ 1,976.00	General Fund
POLICE	\$ 28,389.00	General Fund
FIRE	\$ 31,049.00	General Fund
STREETS	\$ 8,607.00	Street Maintenance Fund
WATER	\$ 3,122.00	Water Fund
	\$ 73,143.00	TOTAL

ALTERNATIVES: We could reject signing the Settlement Agreement; Our options would be to continue to pursue collection through the courts, or drop our request for reimbursement altogether.

Attachments: Settlement Agreement
Report compiled on: April 13, 2010

SETTLEMENT AGREEMENT AND RELEASE FROM LIABILITY

RELEASOR: City of Bozeman, Montana

RELEASEES: NorthWestern Corporation d/b/a NorthWestern Energy and its affiliated companies, successors, assigns, agents, partners, officers, directors, employees, insurers and attorneys

INCLUDING RELEASED INSURERS: Chartis (f/k/a AIG), Energy Insurance Mutual and ACE-Bermuda

DESCRIPTION OF INCIDENT: March 5, 2009 Explosion and Fire in 200 Block of East Main Street, Bozeman, Montana

SETTLEMENT AMOUNT: \$163,624

This Settlement Agreement and Release from Liability ("Agreement") is made and entered into by and between North Western Corporation d/b/a North Western Energy (NorthWestern) and the City of Bozeman, Montana ("City" or "Releasor") (together referred to as "Parties").

For good and valuable consideration mutually had and received, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Settlement Payment to the City of Bozeman

Within thirty (30) days after acceptance and execution of this Agreement by the City, NorthWestern or its insurers acting on its behalf shall pay the City the sum of One Hundred Sixty Three Thousand, Six Hundred Twenty Four and no/100ths Dollars (\$163,624).

2. Release of NorthWestern Corporation d/b/a NorthWestern Energy and its Insurers

In partial consideration of the payment referred to in Paragraph 1 hereof, the City agrees to settle with and fully and forever release and discharge NorthWestern Corporation d/b/a NorthWestern Energy, including its affiliated companies, successors, assigns, agents, partners, officers, directors, employees, attorneys, insurers and adjusters and their affiliated companies (including but not limited to Chartis insurance company [formerly known as AIG insurance company], Energy Insurance Mutual, ACE-Bermuda and GAB Robins NA Inc.) (hereinafter collectively referred to as the "Releasees") from every claim, demand, liability, action and cause of action whatsoever, of every kind and nature, whether arising out of contract, tort, statute, common law or otherwise, in law or in equity, including all claims for compensatory, special, liquidated and punitive damages, penalties, costs, expenses and attorneys' fees, and other types of loss or losses,

whether presently known or unknown, fixed or contingent, matured or unmatured, suspected or unsuspected, arising out of or related to the March 5, 2009 explosion and fire that occurred in the 200 block of East Main Street in Bozeman, Montana, including but not limited to all property damages, emergency response costs, personnel costs, equipment costs, and supply costs incurred by or on behalf of the City.

As additional consideration for the payment of the aforementioned sum, Releasor further agrees to release and discharge the insurance carriers and adjusters for NorthWestern Corporation and their affiliated companies (including but not limited to Chartis insurance company (formerly known as AIG insurance company), Energy Insurance Mutual, and ACE-Bermuda) and GAB Robins NA Inc. from all obligations related to Releasor's claims under any of NorthWestern Corporation's insurance policies and to release and discharge all of the Releasees from any and all claims Releasor might have against any of them arising out of their investigation, handling, adjusting, defense or settlement of any claims by Releasor arising out of or related to the March 5, 2009 explosion and fire that occurred in the 200 block of East Main Street in Bozeman, Montana including, without limitation, any common law claims and any claims under the Montana Unfair Trade Practices Act, § 33-18-242, MCA.

3. Release of Future Damages

Releasor acknowledges that its losses, damages and injuries resulting from the March 5, 2009 explosion and fire that occurred on Main Street in Bozeman, Montana may not currently be fully known and may be more extensive or more serious than it is now understood or expected and Releasor agrees, as a further consideration for the settlement paid hereunder, that this Release also applies to any and all future losses, damages and injuries resulting from the March 5, 2009 explosion and fire that occurred on Main Street in Bozeman, Montana, even if some of those losses, damages and injuries are now unanticipated, unexpected or unknown, as well as any and all other losses, damages and injuries that are currently known or anticipated.

4. No Admission of Liability

Releasor understands and acknowledges that the above-mentioned settlement sum is being paid as the sole consideration for a full satisfaction and accord to compromise a disputed claim, that the Releasees and their insurers deny that Releasees and/or their insurers are liable for any of the losses, damages or injuries arising from the March 5, 2009 explosion and fire on Main Street in Bozeman, Montana and that they have agreed to pay the consideration stated herein solely to avoid the costs and uncertainties of litigation. Neither payment of that sum by or on behalf of the Releasees nor the negotiations for settlement are an admission of liability by the Releasees or their insurers, which liability is expressly denied.

5. No Additional Claims

Releasor represents that Releasor does not contemplate pursuing any additional claims against any other party potentially liable for the losses, damages, and injuries for which this Release is given.

7. Binding Agreement

This Settlement Agreement and Release shall be binding upon and inure to the benefit of the successors and assigns of the parties.

8. Entire Agreement

This written Agreement contains the entire understanding between the Parties hereto in connection with the subject matter and it supersedes and replaces any and all prior negotiations, agreements and representations, whether oral or written. City acknowledges that neither the Releasees, nor any agent or attorney of any of the Releasees, has made any promises, representations or warranties whatsoever, express or implied, not contained herein, concerning the subject matter hereto, to induce City to execute this Agreement, and acknowledges that it has not executed this Agreement in reliance upon any promises, representations, or warranties not contained herein. City further acknowledges that it has had a full and complete opportunity to independently investigate all facts material hereto, and has done so.

9. Governing Law

The interpretation and enforcement of this Agreement shall be governed by the laws of the State of Montana.

10. Interpretation and Construction

This Agreement has been jointly drafted and/or reviewed by the Parties hereto following negotiations between them. It shall be construed according to the fair intent of the language as a whole, and not for or against either of the Parties.

11. Representations

The City represents that it is duly organized and has all requisite power and authority to execute and deliver this Settlement Agreement and Release From Liability and to perform its obligations thereunder; has taken all necessary action to authorize the execution and delivery of this Agreement and the performance of the obligations thereunder; the Agreement has been duly executed and delivered by the City; neither the execution nor the delivery of the Agreement nor the consummation of any of obligations contemplated, nor compliance with the terms and provisions thereof, will contravene the ordinances, rules and, regulations of the City or the laws of the State of Montana; and all consents, authorizations and orders required to be obtained, and all notices and filings required to be made, with any court, government authority, regulatory body or third party for the execution, delivery and performance by the City of the Agreement and the consummation of the obligations thereby, have been duly obtained or made.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the ____ day of _____, 2010.

NORTHWESTERN CORPORATION d/b/a
NORTHWESTERN ENERGY

By: _____
Robert C. Rowe
President and CEO

CITY OF BOZEMAN, MONTANA

By: _____
Chris Kukulski
City Manager

By: _____
Attorney for City of Bozeman
Approved as to form and content