

# RINKE NOONAN

T T O R N E Y S A T L A

SUITE 300, US BANK PLAZA, P. O. BOX 1497  
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ST. CLOUD, MINNESOTA 56302-1497  
TELEPHONE 320-251-6700, FAX 320-656-3500  
EMAIL: MAIL@RNOON.COM  
WWW.RNOON.COM

November 13, 2008

Rena Weber  
City Administrator/Clerk  
City of Rockville  
229 Broadway St. E.  
PO Box 93  
Rockville, MN 56369

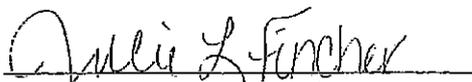
Re: **Grinder Pump Dispute**  
**Our File No. 16642.059**

Dear Rena:

Enclosed please find two original Settlement Agreement and Releases that have been signed by Crane Pumps and Systems, Inc. Both copies are the same, one copy will be for the City and the other will be for Crane Pumps and Systems, Inc. After the Council approves of this settlement, please sign both copies of the agreement along with Mayor Herberg in front of a Notary Public and return both originals to our office in the self-addressed, stamped envelope provided.

Do not hesitate to contact Jim Mogen if you have any questions.

Sincerely,

  
Julie L. Fincher, Paralegal  
JLF/jlf

Enclosures:

Two settlement agreements  
Self-addressed, stamped envelope

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F:\DATA\16642\059\LetterRena Weber (settlement agreement) 11 13 2008.wpd jlf

RINKE NOONAN SMOLEY DEFEA COLOMBO WANN JON KORFF & HOBBS LTD

D. Michael Noonan  
William A. Smoley<sup>1</sup>  
Kurt A. Deter<sup>2</sup>  
Gerrert L. Colombo

James I. Wifant  
Gerald W. von Karff  
Sharon G. Hobbs  
David J. Meyers<sup>3,4</sup>  
John J. Maters

Roger C. Justin<sup>5,6</sup>  
John J. Babcock  
Igor S. Lenzner<sup>7</sup>  
Gary R. Leistico<sup>8,9</sup>  
John C. Kolb

Scott G. Hamak  
Pamela A. Steckman<sup>1</sup>  
Stefania L. Brown  
Toriya T. Hinkemeyer  
Ryan J. Hatton<sup>4</sup>

Benjamin B. Bohnsack<sup>3</sup>  
Tim A. Sime<sup>7</sup>  
James A. Mogan<sup>3</sup>  
Nicholas R. Detanay<sup>7</sup>  
Chad D. Miller<sup>4</sup>

Adam A. Ripple  
Brodie L. Miller  
Andrew J. Steil<sup>1</sup>  
Kate R. Minnich

<sup>1</sup> Qualified to practice law under Rule 1.14. <sup>2</sup> Real Property Law Specialist certified by the Minnesota State Bar Association. <sup>3</sup> Admitted to practice law in Wisconsin. <sup>4</sup> Admitted to practice law in North Dakota. <sup>5</sup> Admitted to practice law in South Dakota. <sup>6</sup> Sherburne County Executive of Rules. <sup>7</sup> Admitted to practice law in Arizona. <sup>8</sup> Admitted to practice law in Iowa.

***SETTLEMENT AGREEMENT  
AND RELEASE***

This Settlement Agreement and Release (the "Settlement Agreement") is made and entered into by and between City of Rockville ("City"), P.O. Box 93, Rockville, MN 56369, and Crane Pumps and Systems, Inc. ("Crane Pumps"), 420 Third Street South, Piqua, Ohio 45356-0603 (collectively the "Parties").

***RECITALS***

A. City has asserted claims relating to operation, condition and suitability of grinder pump system units provided by Crane Pumps. Specifically, City claims that the units installed did not have the ability to process the waste for which they were purchased.

B. The Parties desire to enter into this Settlement Agreement in order to provide for certain payments and performance in settlement of claims as described in Recital A, above upon the terms and conditions set forth below.

***AGREEMENT***

**1. Release and Discharge**

In consideration of the payments set forth in Section 2, the performance set forth in Section 3, and the warranty set forth in Section 6, City hereby releases and forever discharges Crane Pumps from any and all past, present or future claims arising out of the incident described in Recital A above. Furthermore, the City agrees to waive late fees and finance charges for the past due charges identified in Section 2. Finally, the City agrees to provide serve as a positive reference upon completion of the performance element of this Agreement.

2. **Payments**

Crane Pumps agrees to pay all outstanding invoices, less late fees or finance charges, to the City in the amount of \$27,499.81. In addition, Crane Pumps agrees to pay all invoices from the City sent after December 22, 2008, for work performed by Ralph Walz in installing replacement units until it has retained a contractor pursuant to Section 4.

3. **Performance.**

Crane Pumps agrees to replace all originally installed units. Approximately 140 units have been replaced, and approximately 210 original units remain. Crane Pumps agrees to adjust this number to reflect the actual number of units remaining. All units will be replaced and installed by June 30, 2009. For every replacement unit not installed by this date, Crane Pumps agrees to pay liquidated damages in the amount of \$50.00 per unit, per day. A maximum limit of \$4,000.00 per unit will be recognized.

4. **Contractor.**

Crane Pumps will retain a contractor to install the replacement units. All contractors installing units must be pre-approved by the City. The City will not be responsible for compensating or supervising the contractor. Crane Pumps will be responsible for the actions of the contractor.

5. **Indemnity Clause.**

Crane Pumps will indemnify, hold harmless and defend the City against any and all liability, loss, costs including attorney's fees, damages, expenses, claims brought or actions filed against the City, its employees, or its agents for injury to, death of, or damage to the property of any third person or persons, arising out of or by reason of any act or omission of Crane Pumps or

its agent, the contractor, in the installation of the replacement units. Furthermore, Crane Pumps agrees to hold the City harmless for any damage done to City property in the installation of the replacement units.

6. Warranty.

Crane Pumps agrees to warranty all replacement units, both those installed prior to this agreement and those installed after this agreement, for a period expiring March 1, 2014.

7. Attorney's Fees

Each party shall bear all attorney's fees and costs arising from the actions of its own counsel in connection with this Settlement Agreement, the matters and documents referred to herein, and all related matters.

8. Representation of Comprehension of Document

In entering into this Settlement Agreement, the Parties represent that they have relied upon the advice of their attorneys, who are the attorneys of their own choice, concerning the legal and income tax consequences of this Settlement Agreement; that the terms of this Settlement Agreement have been completely read and explained to the Parties by their attorneys; and that the terms of this Settlement Agreement are fully understood and voluntarily accepted by Parties.

9. Governing Law

This Settlement Agreement shall be construed and interpreted in accordance with the laws of the State of Minnesota.

10. Entire Agreement and Successors in Interest

This Settlement Agreement contains the entire agreement between City and Crane Pumps with regard to the matters set forth in it and shall be binding upon and enure to the benefit of the

executors, administrators, personal representatives, heirs, successors and assigns of each. Any amendment to this Settlement Agreement must be in writing and acknowledged by both Parties.

11. Effectiveness

This Settlement Agreement shall become effective immediately following execution by each of the Parties.

12. Counterpart Copies

This Settlement Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall be deemed one and the same instrument. A counterpart of this agreement signed by a party shall be binding on that party the same as if signed by both Parties. A facsimile transmission or photocopy of a counterpart shall constitute a binding counterpart for purposes of this Settlement Agreement.

*Signature Pages to Follow*

Dated: \_\_\_\_\_, 2008

CITY OF ROCKVILLE, MINNESOTA

By \_\_\_\_\_  
Verena Weber  
Its City Administrator/Clerk

Subscribed and sworn to before me on  
this \_\_\_\_ day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
Notary Public

Dated: \_\_\_\_\_, 2008

CITY OF ROCKVILLE, MINNESOTA

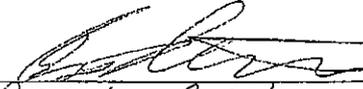
By \_\_\_\_\_  
Brian Herberg  
Its Mayor

Subscribed and sworn to before me on  
this \_\_\_\_ day of \_\_\_\_\_, 2008.

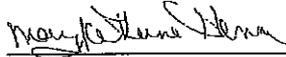
\_\_\_\_\_  
Notary Public

Dated: NOV. 10<sup>th</sup>, 2008

CRANE PUMPS AND SYSTEMS, INC.

By   
PATRICK RIENDUS  
Its VP SALES & MARKETING

Subscribed and sworn to before me on  
this 10<sup>th</sup> day of NOV, 2008.

  
Notary Public



MARY KATHERINE HENNE  
Notary Public, State of Ohio  
My Commission Expires July 27, 2012