

McCarthy Properties LLC

March 26, 2009

City of Rapid City
City Finance Office
300 Sixth Street
Rapid City SD 57701

Attn: Jim Preston
Re: Metz Building Sewage Backup Claim -- 601 12th Street

Dear Sirs:

Enclosed please find a check in the amount of \$18,887.98 to reimburse the City for the amount of money over and above our costs in taking care of the damages at the above referenced property. As you are well aware, we had a dispute with our contractor on the project (please see the enclosed correspondence) that we have been unable to resolve. We are tending the refund now because it has been over one year since we have had any contact with the vendor and feel the matter is closed.

Best regards,


Steve McCarthy

enclosures

r steu

JAMES W. OLSON
ROBERT M. NASH
ERIKA S. OLSON

WILSON, OLSON & NASH, P.C.
LAWYERS
CREEKSIDE PROFESSIONAL OFFICES
2640 JACKSON BOULEVARD, SUITE 1
P.O. BOX 1552
RAPID CITY, SOUTH DAKOTA 57709

ERNEST GUNDERSEN (1915-1972)
I.H. BOTTUM (1903-1984)
JAMES H. WILSON (1927-1989)

(605) 342-7090
FAX - (605) 342-9259

February 28, 2008

~~Bart Banks~~
~~Banks Johnson Law Firm~~
~~P.O. Box 9007~~
~~Rapid City, SD 57709-9007~~

Re: McCarthy Property/A-1 Steam Brothers

Dear Bart:

Thank you for your letter of February 15. As I indicated in my letter of February 12, I would hope again that this matter can be resolved. I wanted to clarify something in response to the second paragraph of your letter. My client did not use your client's billing in obtaining reimbursement from the City. The City reimbursed McCarthy Properties in the amount of \$20,466.00 based upon \$3.00 per square foot for 6,822 square feet, the actual square footage of the space. McCarthy Properties' position on this has always been that it is willing to pay your client a fair price for his work and that it will reimburse the City for the difference.

Your client's billing is disputed as being totally unreasonable for the reason detailed in my letter to you of February 12 advising you of the work done, the number of employees involved, the lack of difficulty and the short period of time required to complete the work. Further, there was never any agreement to complete this work at a per square foot basis.

Again, I would hope that we can come to a reasonable agreement for settlement of this matter and the offer made in my February 12 letter remains open.

Very truly yours,

WILSON, OLSON & NASH, P.C.


James W. Olson

JWO/lw

cc: Steve McCarthy

JAMES W. OLSON
ROBERT M. NASE
BRIKA S. OLSON

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L.H. BOTTUM (1909-1984)
JAMES H. WILSON (1927-1988)

(605) 342-7090
FAX - (605) 342-9259

February 12, 2008

Bart Banks
Banks Johnson Law Firm
P.O. Box 9007
Rapid City, SD 57709-9007

Re: McCarthy Property/A-1 Steam Brothers

Dear Bart:

Thank you for your letter of January 22. I have reviewed it and have discussed it to some extent with my client. I am frankly puzzled by your client's position in this matter. At no time did he advise that he was doing the work on a square foot basis nor did he request an agreement for the same prior to doing the work. When he finished the job, he billed a huge sum for a few hours work. According to the employee at Casto Travel who discovered the sewage backup, the area involved is the basement of the old Metz Bakery building. It's a concrete floor and basically is unimproved. When she discovered it and got authority to call A-1, A-1 came and most of the sewage had gone back down the sewer and so the project consisted of cleaning up sludge with some shovels by hand and washing down the floors and the drains. A-1 arrived around noon on the 7th of March. Two employees worked for approximately one hour and one stayed until 5:00. On the 8th, one man came and worked from 8:00 to 5:00, another person stopped in to check on the process. On the 9th, one employee was again there working from 8:00 to 5:00. It appears that there was approximately 20 hours for one man's labor and another coming in and out periodically. The boss was there maybe five hours of the total time. There was no advice of the charges prior to commencement of the work, as I stated. Some fans and dehumidifiers were apparently rented and placed on the premises. For this, your client is demanding now, \$25,000.00 plus interest.

On October 31, we made an offer to your client of \$12,000.00 for full settlement. His response was to sue in Small Claims Court, Casto Travel, Inc., for \$8,000.00. Now, after an answer is filed by Casto Travel, your client apparently has dismissed that action and retained you. I would hope that calmer heads will prevail and that we can settle this matter. I am authorized to re-offer the \$12,000.00 in full settlement. This can be paid immediately upon reaching agreement.

Bart Banks
February 12, 2008
Page Two

Please let me know. This offer is open until withdrawn

Very truly yours,

WILSON, OLSON & NASH, P.C.

James W. Olson

JWO/lw

cc: Steve McCarthy

mailed 8-30-07
 ✓ Mayo
 - City Council

McCarthy Properties LLC

August 28, 2007

A-1 Steam Brothers
 5019 Pierre Street
 Rapid City SD 57702

Attn: Duane Leier
 Re: 601 12th Street - Sewer Clean Up

We have repeatedly asked in writing (the latest request is attached) for an itemized breakdown of your billing including labor and material, in an effort to resolve this billing.

In lieu of that, you have presented us with a bill for \$3.00 a square foot. It is obvious to us that you are attempting to base your billing on the City's sewer back up resolution policy and not on your actual labor material, overhead and profit that we are willing to pay you. The City's policy is intended to pay the cost of the clean up, up to \$3.00 a square foot. You have failed to document your costs and we will not pay.

To resolve this issue I would propose the following settlement:

| | | |
|--------------------------------------|-------------|--------|
| City payment to McCarthy Properties: | \$20,466.00 | |
| Buck's Electric | 216.89 | - Paid |
| McCarthy Anderson | 142.50 | - Paid |
| MAC Construction | 121.63 | - Paid |
| Drain Masters | 74.20 | - Paid |
| Remaining Balance | \$19,910.78 | |
| A-1 Steam Brother | 10,000.00 | |
| Return to the City | \$ 9,910.78 | |

This proposal compensates you far in excess of any reasonable cost for the work accomplished and returns the remainder of the City payment to the City where it rightfully belongs.

Regards,

Steve McCarthy

mailed 8-30-07
✓ Mayo
- City Council

McCarthy Properties LLC

August 28, 2007

A-1 Steam Brothers
5019 Pierre Street
Rapid City SD 57702

Attn: Donnie Leier
Re: 601 12th Street - Sewer Clean Up

We have repeatedly asked in writing (the latest request is attached) for an itemized breakdown of your billing including labor and material, in an effort to resolve this billing.

In lieu of that, you have presented us with a bill for \$3.00 a square foot. It is obvious to us that you are attempting to base your billing on the City's sewer back up resolution policy and not on your actual labor material, overhead and profit that we are willing to pay you. The City's policy is intended to pay the cost of the clean up, up to \$3.00 a square foot. You have failed to document your costs and we will not pay.

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| Drain Masters | 74.20 | - Paid |
| Remaining Balance | \$19,910.78 | |
| A-1 Steam Brother | 10,000.00 | |
| Return to the City | \$ 9,910.78 | |
| Legal Fees | 1,022.40 | |

This proposal compensates you for in excess of any reasonable cost for the work accomplished and returns the remainder of the City payment to the City where it rightfully belongs.

Regards, Return to City 18,887.98

Steve McCarthy

McCarthy Properties LLC

2834 Jackson Boulevard, Ste. 202 • Rapid City, SD 57702 (605) 716-8365



Wells Fargo Bank South Dakota, N.A.
825 St. Joseph
Rapid City, SD 57701
www.wellsfargo.com

005842

78-4
914 BB

DATE 03/27/2009

PAY TO THE ORDER OF

City of Rapid City

AMOUNT *****\$18,887.98

EIGHTEEN THOUSAND EIGHT HUNDRED EIGHTY-SEVEN AND 98/100 DOLLARS

DOLLARS

City of Rapid City
300 6th Street
Rapid City SD 57701

AUTHORIZED SIGNATURE

⑈005842⑈ ⑆091400046⑆0841742547⑈

Check#: 5842

Date: 03/27/2009

Vendor#: 111 City of Rapid City

| Invoice# | Job/Description | Balance | Retain | Discount | This Check |
|----------|--------------------------|-----------|--------|----------|------------|
| 12/31/07 | Metz Bldg - Sewer | 20,466.00 | | | 20,466.00 |
| 3/26/09 | Deduct-Cost Sewer Damage | -1,578.02 | | | -1,578.02 |

McCarthy Properties, L.L.C.

005842

Check#: 5842

Date: 03/27/2009

Vendor#: 111 City of Rapid City

| Invoice# | Job/Description | Balance | Retain | Discount | This Check |
|----------|--------------------------|-----------|--------|----------|------------|
| 12/31/07 | Metz Bldg - Sewer | 20,466.00 | | | 20,466.00 |
| 3/26/09 | Deduct-Cost Sewer Damage | -1,578.02 | | | -1,578.02 |

Check Total 18,887.98

McCarthy Properties, L.L.C.

005842

McCarthy Properties, L.L.C.

June 28, 2007

A-1 Steam Brothers
5019 Pierre Street
Rapid City SD 57702

Attn: Duane Leier
Re: 601 12th Street - Sewer Clean Up

We have received a check in the amount of \$20,466 from the City of Rapid City, which is their payment of \$3.00 per square foot, per their policy of compensation to owners for damages caused by City sewage backup. We have paid all of the other vendors who submitted itemized bills for their charges for the work they accomplished to rectify the damages. We have repeatedly asked you to submit your itemized breakdown (time and material) that you expended. To date we have not received that billing. Please forward that to us so we can make payment.

Regards,

Steve McCarthy
Operating Manger

Cc: Greg Sperlich, DeMersseman, Jensen ✓