



**Request for City Council Committee Action  
From the City Attorney's Office**

Date: October 12, 2005  
To: Ways & Means/Budget Committee  
Referral to:

Subject: City of Minneapolis v. Knutson Construction Services and Architectural Alliance  
Hennepin County District Court File No. 04-002367

**Recommendation:** That the City Council approve partial settlement of the above litigation by accepting payment of \$30,000 by Knutson Construction Services ("Knutson") to the City as damages for alleged defective work by Knutson, the general contractor, at the Currie Maintenance Facility in the City and authorize the City Attorney's Office, by and through the law firm of Kennedy & Graven, to execute any documents necessary to effectuate the settlement.

**Previous Directives:** The City Council previously approved a partial settlement of this litigation primarily involving Cain Ouse, Inc., a consultant to AA, AA and Knutson, for \$40,100 relating to claims brought by the City for faulty HVAC design at the Currie Facility. The remaining issues in this litigation involved defective trench drain system and concrete floor in the service area of the Facility, as described below.

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Approved by: \_\_\_\_\_  
Jay M. Heffern  
City Attorney

Presenter in Committee: Jay M. Heffern, City Attorney

**Financial Impact** (Check those that apply)

- No financial impact - or - Action is within current department budget.  
(If checked, go directly to Background/Supporting Information)
- Action requires an appropriation increase to the Capital Budget
- Action requires an appropriation increase to the Operating Budget
- Action provides increased revenue for appropriation increase
- Action requires use of contingency or reserves
- Other financial impact (Explain): Fund/Org. 6200 1500 680 6822
- Request provided to the Budget Office when provided to the Committee Coordinator

**Background/Supporting Information**

On June 17, 2003, the City sued Knutson and AA for breach of contract and negligence for defects in the Currie Maintenance Facility, completed in stages during 1999 and 2000. The City is represented by the law firm of Kennedy and Graven in this lawsuit. The HVAC issue brought in this litigation was settled as noted above. The current allegations against Knutson and AA involve:

- 1) Defective design, supervision, and installation of the trench drain system that was installed throughout the maintenance area of the Facility; and
- 2) Defective design and installation of the concrete floor in the maintenance areas of the Facility.

Attempts were made early in the litigation to settle the matter through informal discussions and exchange of information and before filing the case with the Court. An issue that arose through the initial discovery and has been the focus of discovery into 2005 is the statute of limitations governing defective and unsafe conditions to improvements to realty such as this matter. The statute requires that claims brought against defendants such as architects and general contractors must be served within two years of discovery of injury "arising out of the defective and unsafe condition." Shortly after the Facility was substantially completed in early 2000, problems with the concrete floor and trench drain were noted in emails and discussed by City maintenance staff and supervisors. This identification of problems was, in our view and the view of our expert consultant, American Engineering Testing ("AET"), a different set of injuries from those alleged in the current litigation.

After extensive depositions of numerous City staff involved in the Facility construction and day-to-day use of the Facility and the extensive production and review of emails retrieved from City staff computers, defendants brought a motion for summary judgment that was heard on April 11, 2005. The Court granted, in part, the motions, finding that the City discovered the floor and trench drain injuries in 2000 as alleged and could not bring the claims more than two years after such discovery.

The City has appealed from the summary judgment to the Minnesota Court of Appeals. The primary basis of the appeal is to argue that there are fact issues in dispute as to whether the discoveries made in 2000 were of the injuries "arising out of the defective and unsafe condition" at issue in this litigation. For the City and project owners, this appeal raises an important issue as to the scope of the "discovery of the injury" requirement in the context of a newly-constructed building.

Based on an AET report of damages to the concrete floor and trench drain system, the City faces repair costs of approximately \$400,000 to \$500,000 for the concrete floor and up to \$125,000 for the trench drain system. These prospective repairs are based on those areas that have been found by AET to have insufficient concrete cover on the floor area and are vulnerable to rusting rebar that has already corroded to the point of visible concrete spalling. The trench drain system was improperly installed and may be inadequate to withstand the weight of vehicles known for use in the Currie Facility. It is apparent that the entire trench drain system will need to be replaced far sooner than its reasonable expected life.

#### **Reasons for Settlement Recommendation.**

Based on the evidence to this point, Knutson's ultimate damage exposure may not be significantly greater than the negotiated settlement amount of \$30,000 because its primary fault is in the trench drain installation. Settlement with Knutson and continuation of the lawsuit against AA will narrow and streamline the appeal without taking away from the City's most effective argument for reversal.

The settlement also eliminates the possibility of taxable costs up to \$40,000 assessed against it by Knutson as the prevailing party at this point. That issue is before the District Court at this time. The range in costs for which the City may be responsible if the appeal is affirmed ranges from as low as \$6,000 to as high as \$40,000 for Knutson. After the cost motion hearing before the Court, the greater

likelihood appears to be that the lower end of those costs would be taxed against the City. Nevertheless, the risk of a greater assessment of costs exists and all costs would be waived under this settlement.

We recommend approval of this settlement as favorable under the present circumstances. The City receives immediate payment of \$30,000 in cash. Costs are waived by Knutson. The release of Knutson includes the customary claims in the litigation and those claims that could have been brought against Knutson at this time. Any unknown, latent claim discovered after the settlement and before the statute of repose (year 2010) would remain viable against Knutson as the general contractor of the Currie Facility.