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

Date: June 15, 2004  
To: Ways & Means/Budget Committee  
Referral to:

**Subject:** City of Minneapolis v. Arkay Construction, Architectural Alliance and Ingram  
Excavating (Royalston Facility)  
Hennepin County District Court File No.: 04-5832

**Recommendation:** That the City Council approve partial settlement of the above matter by accepting the amount of \$17,500.00 from the sole remaining defendant, Architectural Alliance, and authorize the City Attorney's Office to execute any documents necessary to effectuate this settlement.

**Previous Directives:** On May 14, 2004, the City Council approved recommended settlements with the two other defendants to this lawsuit, Arkay Construction (for \$8,150) and Ingram Excavating (for \$2,500).

Prepared by: Peter W. Ginder, Acting Deputy City Attorney Phone: 673-2478

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

Presenter in Committee: Jay M. Heffern, City Attorney

<p><b>Financial Impact</b> (Check those that apply)</p> <p><input type="checkbox"/> No financial impact - or - Action is within current department budget. (If checked, go directly to Background/Supporting Information)</p> <p><input type="checkbox"/> Action requires an appropriation increase to the Capital Budget</p> <p><input type="checkbox"/> Action requires an appropriation increase to the Operating Budget</p> <p><input type="checkbox"/> Action provides increased revenue for appropriation increase</p> <p><input type="checkbox"/> Action requires use of contingency or reserves</p> <p><input checked="" type="checkbox"/> Other financial impact (Explain): Fund/Org. 6200 150 680 6822</p> <p><input type="checkbox"/> Request provided to the Budget Office when provided to the Committee Coordinator</p>
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**Background/Supporting Information**

This case is a companion to the *City of Minneapolis v. Knutson Construction Services and Architectural Alliance (Currie Facility)*, Court File No. 04-002367, filed in Hennepin County District Court. The City is represented by the law firm of Kennedy & Graven in both of these suits. In both cases, spalling of concrete has developed on the floors of these maintenance facilities. The Royalston Facility was completed in 1998 and provides maintenance for police and fire vehicles. The Currie Facility was completed in 1999-2000 and is used for maintenance and storage of heavy-duty city vehicles. The Royalston floor spalling is far less significant than that found in Currie. An estimated repair of the entire damaged area of the Royalston floor, with allowance for possible spalling expansion areas, is between \$27,000.00 and \$39,500.00.

The City commenced the Royalston case in June of 2003, and began an investigation by American Engineering Testing on the Royalston and Currie floors. To avoid litigation costs and facilitate early settlement the City did not file the Royalston case, but prepared and distributed its expert reports and gained consent from the parties to early mediation.

Mediation on Royalston was held on April 16, 2004. Steve Kotke, Director of Property Management Services was the City representative at the mediation. The City has settled with two of the three defendants in this case and filed the case with Hennepin County District Court. The proposed settlement is with the remaining defendant, Architectural Alliance (AA). AA is also the architect in the Currie Facility lawsuit, with repair estimates of \$500,000.00.

The proposed settlement of \$17,500.00 from AA would bring the total settlement amount in this case to \$28,150.00. This is within the range of cost repair estimates for substantial area repair and replacement of the spalled concrete. The scope and cost of necessary repair would be a disputed issue in this case.

Continued litigation of the case would be costly. Depositions were scheduled to begin on June 25, including technical discovery from expert witnesses in concrete and floor design, and regarding City maintenance procedures. This settlement completes a cumulative payment in the amount of significant repair estimates and precedes the heavy litigation costs this case would involve.

The City Attorney recommends that the offer of \$17,500.00 from AA be accepted, in full settlement of this case.