



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

Date: August 19, 2004
To: Ways & Means Budget Committee
Referral to:

Subject: City of Minneapolis v. Knutson Construction and Architectural Alliance (Currie Facility)
Hennepin county District Court File No.: 04-5832

Recommendation: That the City Council approve partial settlement in the above matter by accepting the amount of \$40,000 from Architectural Alliance and Cain Ouse, Inc., a mechanical contractor, and consultant to Architectural Alliance and authorizing the City attorney's Office to execute any documents necessary to effectuate this settlement.

Previous Directives:

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

Approved by: 
Jay M. Heffern
City Attorney

Presenter in Committee: Jay M. Heffern, City Attorney

<p>Financial Impact (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>

Background/Supporting Information

This case is a companion to the recently-settled *City of Minneapolis v. Arkay Construction, et al. and Architectural Alliance (Royalston Facility)*, filed in Hennepin County District Court. The City is represented by the law firm of Kennedy & Graven in both suits. In both cases, spalling of concrete has developed on the floors of these maintenance facilities. The Currie Facility was completed in 1999-2000 and is used for maintenance and storage of heavy-duty city vehicles. The issues in the Currie case involve not only defective trench drains and concrete floor in the service areas of the Facility, but also a problem with the heating ventilation and air conditioning system and equipment housed in a boiler room in an upper level of

the Facility ("Boiler Room"). This recommended settlement is for the Boiler Room dispute only and does not affect the trench drain/concrete floor aspects of the Currie case.

The City commenced the Currie case in June of 2003, and began an investigation by American Engineering Testing on the Currie floor. The Boiler Room issues were reviewed by the City staff as well as by Shane Albertson of Albertson Engineering. The trench/floor issues and Boiler Room issues at the Currie center are discreet. The trench drain/floor problems appear to require extensive repair and are the responsibility of either Knutson or Architectural Alliance, or both, in an allocation that is yet to be determined and is subject to vigorous dispute. Preliminary repair estimates are in the \$500,000 range. Such estimates will require more specific information from potential bidders and more information following another winter, after which the concrete spalling will probably become more widespread. The trench drain/floor issues are currently in the deposition discovery phase and will be the subject of motions to dismiss on statute of limitations grounds.

The subject of this settlement involves a series of problems with the air compressor, make-up air system, and heating water boilers. On a continuous basis since the Currie Facility was substantially completed, these Boiler Room facilities have functioned inconsistently and below capacity. Heating burners have experienced early deterioration and have been replaced. A number of remedies have been attempted, with little success. Shane Albertson, P.E., issued a report on the causes of the problems and a suggested remedy totaling approximately \$111,000 in non-betterment replacements. The remedies proposed by Mr. Albertson are in dispute with Architectural Alliance and its consultant responsible for the system, Cain Ouse.

Following internal discussions with City staff, based in risks attendant with the case, it was agreed that an attempt to settle the Boiler Room issues prior to costly depositions and motions would be appropriate. It was suggested to Architectural Alliance attorney's that the parties attempt a "pre-deposition" settlement. At that point, Architectural Alliance contacted Cain Ouse. The contribution amounts by the two parties reflect this agreement between Architectural Alliance and Cain Ouse. The \$40,000 settlement was negotiated over a three-week period.

The City Attorney strongly recommends that the offer of \$40,000 from Architectural Alliance (\$500) and Cain Ouse (\$39,500) be accepted, in full settlement of the Boiler Room dispute in the Currie case. The trench drain/floor dispute will continue and no settlement discussions are in the offing on that matter.