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

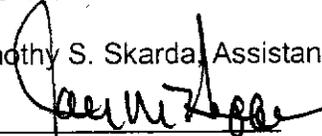
Date: April 12, 2004  
To: Ways & Means/Budget Committee  
Referral to: None

Subject: Brandon's 923, Inc. v. City of Minneapolis, Hennepin County District Court File PD 03-3685.

**Recommendation:** That the City Council approve settlement of all claims filed by Brandon's 923, Inc. for the seizure of property on December 13, 2001, in the amount of \$16,500.00, payable to Brandon's 923, Inc. and its attorney William L. Lucas and authorize the City Attorney to execute any documents necessary to effectuate the settlement and release of claims, payable from Fund/Org. 6900 150 1500 4000.

**Previous Directives:** None.

Prepared by: Timothy S. Skarda, Assistant City Attorney, 673-2553

Approved by:   
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): Payment from Fund/Org. 6900 150 1500 4000</p> <p><input type="checkbox"/> Request provided to the Budget Office when provided to the Committee Coordinator</p>
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<p><b>Community Impact:</b> Build Community</p>
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**Background/Supporting Information**

On December 12, 2001, Minneapolis police officers served a valid search warrant seeking narcotics and controlled substances at Brandon's 923 club located at 923 Washington Avenue North. The security system, including a commercial grade television, video cassette recorder and video multi-processor were also removed. The warrant allowed for the seizure of videotapes to review for evidence of drug related activity. The warrant did not specifically allow for removal of the video security system. The Plaintiff alleges that the security system was improperly removed and that video cameras were damaged when the system was removed. The Plaintiff replaced the security system approximately four days after the seizure when police

officers would not release the equipment. Previously, in response to a letter from the Hennepin County Attorney threatening to initiate a nuisance proceeding to close the business, the owners had agreed to, among other conditions, install the security system in question. During the course of the litigation the officer who made the seizure supplied explanations concerning the need for the removal of the security system, none of which appeared to provide exigent circumstances justifying confiscation of the electronics.

The Plaintiff is seeking the replacement cost of the system, as well as, related damages caused by the removal of the system and the search of the premises. The Plaintiff has not asserted any cause of action alleging illegal activity or constitutional violations on the part of the police officers involved in the search and seizure. The Plaintiff has supplied evidence indicating that the security system was replaced at a cost of \$17,455.50 and \$1,000.00 in repairs were done to the building. The old security system was eventually returned to the Plaintiff, several months after the installation of the new system. The Plaintiff alleged that because of damage to the system and advances in technology the old system had no salvage value.

On June 11, 2003, an arbitration hearing was held in Hennepin County District Court where the City and the Plaintiff submitted evidence. The arbitrator awarded \$18,455.00 in damages to the Plaintiff. The arbitration award also included costs and interest in addition to the award of \$18,455.50. The City appealed the decision. The case was scheduled for a trial block beginning May 10, 2004, before the Hon. LaJune Lange. On April 5, 2004, a settlement conference was held, attended by Council Member Barbara Johnson, Deputy Police Chief Lucy Gerold and Assistant City Attorney Timothy Skarda. The case had been previously reviewed by the City Attorney Litigation Committee. A tentative settlement was arrived at in the amount of \$16,500.00. It appears unlikely that the City would prevail at trial. The proposed settlement is discounted from the arbitration award and excludes any claims for interest or costs. The proposed settlement is recommended by the parties involved in the settlement conference. We believe that the proposed settlement is in the best interests of the City of Minneapolis and jointly recommend its approval.