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

Date: March 29, 2004
To: Ways & Means/Budget Committee
Referral to:

Subject: Dorothy Head v. City of Minneapolis
Hennepin County District Court File No.: PI 03-015759

Recommendation: That the City Council approve settlement of the above-referenced matter in the amount of \$35,000.00, payable to Dorothy Head from Fund/Org. 690 150 1500 6070 and further authorize the City Attorney's Office to execute all documents necessary to finalize the settlement.

Previous Directives:

Prepared by: Joel M. Fussy, Assistant City Attorney Phone: 673-2067

Approved by: Jay M. Heffern
JMB 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): \$35,000.00 payable from Fund/Org. 690 150 1500 6070</p> <p><input type="checkbox"/> Request provided to the Budget Office when provided to the Committee Coordinator</p>
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<p>Community Impact:</p>

Background/Supporting Information

The case arises as a result of injuries sustained by Mrs. Dorothy Head, a pedestrian, in a trip and fall she suffered on the afternoon of September 18, 2002 on an uneven and raised portion of the public sidewalk in front of 2700/2704 Drew Avenue South. Mrs. Head was 79 years of age, mobile, and in good health at the time of the incident. She was walking towards the Jones-Harrison nursing home to visit her husband, when a raised seam (approximately 2-3 inches) between two sidewalk panels caused her to trip and fall, severely fracturing her right hip. She was hospitalized for 6 days and underwent surgery to insert a plate and pins in

her hip. She walked with the aid of a walker and underwent physical therapy for approximately 6 months after the accident and eventually moved full-time from her home into an assisted-living facility. Some three months after the accident she underwent back surgery which her treating physician and surgeon attributed directly to her fall. She remains on pain medication and an exercise program today. Plaintiff was set to seek damages in the range of \$175,000 - \$250,000+ at trial in this matter, which was set for the last week of March.

The City's available defenses to this matter would center upon denying negligence based on a lack of constructive or actual notice of the defect as well as asserting immunity based on discretionary planning-level decisions leading to the implementation of the sidewalk inspection program. The City had not received any actual notice of sidewalk defects at the accident location, but had last inspected the area in 1996. A fact question would remain for the jury as to whether the City should have reasonably discovered the defect in the interim between the last inspection and the accident. Additionally, the court would have to decide whether discretionary immunity applied to shield the City from any negligence liability stemming from its sidewalk inspection program.

The City Attorney's Litigation Committee met and reviewed this case on March 11, 2004. Based on the extremely sympathetic nature of the Plaintiff and her significant injuries, the committee authorized settlement, realizing that although the City had the potential to prevail on immunity or lack of negligence, the risk of liability exposure on the case was conversely very high. Upon negotiating with Plaintiff's attorney, it was agreed that the case would be dismissed with prejudice in consideration of a \$35,000.00 settlement, thereby managing the City's potential liability exposure.

The City Attorney recommends that the finance officer be authorized to issue a settlement check to Dorothy Head in the amount of \$35,000.00 payable from Fund/Org. 690 150 1500 6070 and further recommends that the City Attorney's Office be authorized to execute any documents necessary to finalize the settlement.