



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

Date: January 14, 2008
To: Ways & Means/Budget Committee
Referral to: None

Subject: Minikahda Ministorage IV, LLLP v. Northstar Corridor Development Authority, City of Minneapolis, et al

Hennepin County District Court File No.: 27CV07-1565

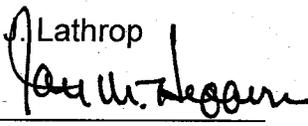
Recommendation: That the City Council approve settlement of this lawsuit by payment of \$3,000.00 payable to Minikahda Ministorage IV, LLLP, and its attorneys, Dunkley and Bennett P.A., from Fund/Org 6900 150 1500 6660 and authorize the City Attorney to execute any documents necessary to effectuate the settlement and release of this lawsuit.

Previous Directives: None

Prepared by: Sara J. Lathrop

Phone: 673-2072

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 6900 150 1500 6660
- Request provided to the Budget Office when provided to the Committee Coordinator

Community Impact: City Goals: Build Community

Background/Supporting Information

On September 16, 2006, an excavation crew from the City was digging at the intersection of 3rd Avenue North and 5th Street North (the "Site") in preparation for the Northstar Corridor transit line. The excavation team unintentionally hit an unmarked conduit that housed Minikahda's private line. The Minikahda building lost power for two days. As a result, the conduit, the line, and NSP's transformer needed to be replaced.

Before excavating, the City contacted NSP to have the site marked for locating and marking underground facilities at the site. NSP contracted with a company called SM&P to locate and mark all underground facilities. The SM&P employee who performed the "locate" used an NSP map to assist him with locating and marking underground facilities at the Site. The map showed there were two underground conduit and lines crossing underneath 3rd Ave. N. going from NSP's transformer toward the Minikahda building. The SM&P employee erroneously concluded that they were abandoned.

Despite SM & P's apparent negligence, there is exposure in this case for the City. The City was in possession of maps which showed the utility line that was struck, but our employees did not investigate further upon seeing that the utility was not marked on the street. Applicable statutes obligate excavators, such as the City, to investigate further, and even request a different locate of the dig site, if they believe that the locate is inaccurate or incomplete. Case law establishes that an excavator can be held liable even if a locate was requested and not completed by the locater.

Because the City may have liability for at least some of Minikahda damages and costs, the City Attorney's Office recommends settlement of this case. We have been able to negotiate a full and final settlement in the amount of \$3,000.00, which Minikahda has accepted contingent upon approval by the City Council, together with \$26,185.84 from SM&P and NSP.

RECOMMENDATION

The City Attorney's Office recommends settlement of the above-referenced case through payment of \$3,000 to Minikahda Ministorage IV, LLLP, and its attorneys, Dunkley and Bennett P.A., (payable from Fund/Org. 6900 150 1500 6660).