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This resolution authorizes the Department of Law to settle the lawsuit brought by Ada Thaxter against the Metropolitan Government for the amount of \$40,000 to be paid out of the judgments and losses fund. Ada Thaxter retired as a Metro police lieutenant in 2016. Lt. Thaxter filed suit against Metro shortly after retirement alleging a variety of employment claims, including sexual harassment/hostile work environment. Lt. Thaxter alleges that in 2015 she received late night phone calls and text messages of a sexual nature from former Midtown precinct Sergeant Howard, who worked another shift. Lt. Thaxter acknowledges that she did not report these communications, but rather tried to handle the matter herself. In July 2015, she was called to her commander's office to discuss her evaluation and work performance. During that meeting, she told her commander about a single late-night phone call from a sergeant that was sexual in nature, but that she had "taken care of it." The commander did not ask about the identity of the sergeant or follow up on the matter because Lt. Thaxter did not indicate she wanted to file a complaint.

In September 2015, Lt. Thaxter became the subject of an Office of Professional Accountability (OPA) investigation for allegedly making offensive comments during roll call. Lt. Thaxter then filed her own OPA complaint against the commander, including a complaint that the commander violated MNPD policy by not initiating a sexual harassment investigation in July 2015. The OPA found that the commander should have asked more questions about the identity of the sergeant and the circumstances surrounding the communication, which resulted in a four day suspension of the commander.

Later that month, Sergeant Howard sent another text message to Lt. Thaxter stating, "I don't like you ignoring me. We are still friends." Lt. Thaxter immediately reported this text message to her superiors, and it was handed it over to MNPD human resources, who notified Sergeant Howard that the message was unacceptable, that we would receive additional training, and that he was not to contact Lt. Thaxter again. Sergeant Howard subsequently harassed another MNPD employee and he was terminated.

Lt. Thaxter retired from MNPD in May 2016 while under investigation by OPA and while under a criminal investigation for forgery. The OPA investigation was closed and the criminal charges were dismissed. Lt. Thaxter filed her federal lawsuit in October 2016. Although she alleged a number of employment-related claims, the only claim to survive a summary judgment motion was the sexual harassment/hostile work environment claim.

Under federal law, employers can be liable for harassment in the workplace if the employer knew or should have known about the harassment and failed to take appropriate corrective action. Liability can attach to the employer when a supervisor's response is determined by a jury to be unreasonable. These decisions are fact dependent and juries have flexibility when determining whether an action was reasonable.

The Department of Law recommends settling Lt. Thaxter's lawsuit for \$40,000 given the facts in the case and the unpredictability of a jury. A jury could potentially find MNPD liable if it determined the commander's actions were unreasonable or if the jury equated a violation of policy with a violation of law. Further, if Sgt. Howard's

subsequent harassment of another employee was allowed into evidence, that could be used by a jury to find the commander didn't handle Lt. Thaxter's situation appropriately. The federal district court previously ruled in this case that damages would be limited to the emotional distress claims for the alleged harassment over an eight month period in 2015, which, according to the Department of Law's analysis, could still result in a possible verdict of \$50,000. Further, since this lawsuit concerns an alleged violation of federal law, the plaintiff can recover all of her attorney's fees even if the damage award is as little as one dollar. Attorney fees in this case would likely exceed \$100,000.

Fiscal Note: This \$40,000 settlement would be the 2nd payment from the Judgment and Losses Fund in FY21 for a cumulative total of \$225,000. The fund balance would be \$2,981,600 after this payment.