



City of Santa Rosa

Council Chamber
100 Santa Rosa Avenue

BOARD OF PUBLIC UTILITIES REGULAR MEETING AGENDA AND SUMMARY REPORT DECEMBER 17, 2020

DUE TO THE PROVISIONS OF THE GOVERNOR'S EXECUTIVE ORDERS N-25-20 AND N-29-20 WHICH SUSPEND CERTAIN REQUIREMENTS OF THE BROWN ACT, AND THE ORDER OF THE HEALTH OFFICER OF THE COUNTY OF SONOMA TO SHELTER IN PLACE TO MINIMIZE THE SPREAD OF COVID-19, THE BOARD MEMBERS WILL BE PARTICIPATING VIA ZOOM WEBINAR.

MEMBERS OF THE PUBLIC CAN PARTICIPATE IN THE MEETING BY VISITING [HTTPS://SRCITY-ORG.ZOOM.US/J/92984269685](https://srcity-org.zoom.us/j/92984269685) OR BY DIALING 1-877-853-5257, THEN ENTERING WEBINAR ID: 929 8426 9685

THE MEETING WILL ALSO BE LIVE STREAMED AT [HTTPS://SANTA-ROSA.LEGISTAR.COM/CALENDAR](https://santa-rosa.legistar.com/calendar). CLICK ON THE "IN PROGRESS" LINK TO VIEW. THE MEETING CAN ALSO BE VIEWED ON COMCAST CHANNEL 28 AND AT [HTTPS://WWW.YOUTUBE.COM/CITYOFSANTAROSA](https://www.youtube.com/cityofsantarosa)

The public accessing the meeting through the Zoom link will be able to provide public comment on agenda items at the time an Agenda Item is discussed during the Board of Public Utilities Meeting.

Public Comment may also be submitted via e-mail at bpu-comment@srcity.org or recorded voice message at 707-543-4224.

Deadlines and additional instruction for public comment are set forth below. The City of Santa Rosa has postponed many non-essential meetings until further notice. We appreciate your patience and willingness to protect the health and wellness of our community. If you have any questions regarding this meeting, please contact Roberta Atha at ratha@srcity.org.

1:30 PM (Virtual Meeting)

1. CALL TO ORDER AND ROLL CALL

2. STATEMENTS OF ABSTENTION BY BOARD MEMBERS

3. STUDY SESSION - NONE

4. MINUTES APPROVAL

4.1 December 3, 2020 - Regular Meeting Minutes

5. STAFF BRIEFINGS

5.1 WATER SUPPLY AND RECYCLED WATER SUPPLY UPDATE

Staff will update the Board on water and recycled water supply issues.
The Board may discuss this item and give direction to staff.

6. CONSENT ITEMS

6.1 MOTION - SETTLEMENT AGREEMENT-CONTRACT C02081 POST CT AND SIMPSON PL SEWER REPLACEMENTS

RECOMMENDATION: It is recommended by the City Council, the Water Department and Transportation and Public Works Department that the Board of Public Utilities, by motion, approve the settlement agreement with TerraCon Constructors, Inc., Healdsburg, California, to resolve a claim associated with Contract No. C02081, Post Ct and Simpson Pl Sewer Replacements, in a total amount not to exceed \$65,179.71 and authorize the Chair to sign the agreement.

Attachments: [Staff Report](#)
[Attachment 1 - Settlement Agreement](#)

7. REPORT ITEMS - NONE

8. PUBLIC COMMENTS ON NON-AGENDA MATTERS

Public Comment may be submitted via e-mail or recorded voice message.

Live Public Comment: The public accessing the meeting through the Zoom link or dial-in will be able to provide public comment on agenda items at the

Board of Public Utilities

DECEMBER 17, 2020

time an Agenda Item is discussed during the Board of Public Utilities Meeting. Go to <https://srcity.org/virtualparticipation> for more information.

E-mail Public Comment: To submit an e-mailed public comment to the Board of Public Utilities, please send to: bpu-comment@srcity.org by 5:00 p.m., Wednesday, December 16. Identify in the subject line of your e-mail the Agenda Item Number on which you wish to comment, provide your name in the body of the e-mail and your comment. These comments will be e-mailed to all Board Members, will be posted to the agenda documents on-line, and be made part of the archive packet.

Recorded Voice Message Public Comment: To submit a voice message public comment, please call 707-543-4224 by 5:00 p.m., Wednesday, December 16. State your name, the Agenda Item Number(s) on which you wish to comment, and your comment. Recordings will be limited to 3 minutes. Recorded comments may be played at the time that the Agenda Item is discussed during the Board Meeting.

Recorded public comments on public hearing items may be played at the time when the hearing is opened.

9. REFERRALS

10. WRITTEN COMMUNICATION (AND POSSIBLE BOARD DISCUSSION)

11. SUBCOMMITTEE REPORTS

12. BOARD MEMBER REPORTS

13. DIRECTORS REPORTS

14. ANNOUNCEMENT OF CLOSED SESSION ITEM(S) AND ADJOURNMENT TO CLOSED SESSION

14.1 CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION
(Paragraph (1) of subdivision (d) of Government Code Section 54956.9)

Name of Case: In the Matter of the City of Santa Rosa's Petition for Review of Action and Failure to Act by the California Regional Water Quality Control Board, North Coast Region, in Adopting Order No.

R1-2020-0012

California State Water Resources Control Board, Water Quality Petition
A-XXXX (not yet assigned, filed September 18, 2020.)

**15. ADJOURN TO OPEN SESSION AND ANNOUNCEMENT OF CLOSED SESSION
ACTION, IF ANY**

16. ADJOURNMENT OF MEETING

The Board of Public Utilities encourages public comments regarding the above items. If you are unable to attend this meeting, please feel free to call the Water Department at 543-4200 or forward written comments to the City of Santa Rosa, Water Department, 35 Stony Point Road, Santa Rosa, CA 95401. All comments will be forwarded to the Board at the meeting.

The City of Santa Rosa does not discriminate against individuals with disabilities in its employment, services, benefits, facilities, programs or activities. Requests for accommodations, auxiliary aids, or services necessary to participate in a City program, service, or activity, including printed information in alternate formats, are available by contacting the Secretary at (707) 543-4266 (TTY Relay at 711) or ratha@srcity.org. Requests should be submitted as far in advance as possible, but no later than two business days before the scheduled meeting. Meeting information can also be accessed via the internet at <http://srcity.org>.



City of Santa Rosa

Text File

File Number: 21-200BPU

Agenda Date: 12/17/2020

Version: 1

Status: Agenda Ready

In Control: Board of Public Utilities

File Type: BPU- Minutes

Agenda Number: 4.1



City of Santa Rosa

Text File

File Number: 21-500BPU

Agenda Date: 12/17/2020

Version: 1

Status: Agenda Ready

In Control: Board of Public Utilities

File Type: BPU-Agenda Item

Agenda Number: 5.1



City of Santa Rosa

Text File

File Number: 21-100BPU

Agenda Date: 12/17/2020

Version: 1

Status: Agenda Ready

In Control: Board of Public Utilities

File Type: BPU- Consent

Agenda Number: 6.1

CITY OF SANTA ROSA
BOARD OF PUBLIC UTILITIES

TO: BOARD OF PUBLIC UTILITIES
FROM: LORI URBANEK, DEPUTY DIRECTOR
ENGINEERING RESOURCES

SUBJECT: SETTLEMENT AGREEMENT–CONTRACT C02081 POST CT
AND SIMPSON PL SEWER REPLACEMENTS

AGENDA ACTION: MOTION

RECOMMENDATION

It is recommended by the City Council, the Water Department and Transportation and Public Works Department that the Board of Public Utilities, by motion, approve the settlement agreement with TerraCon Constructors, Inc., Healdsburg, California, to resolve a claim associated with Contract No. C02081, Post Ct and Simpson Pl Sewer Replacements, in a total amount not to exceed \$65,179.71 and authorize the Chair to sign the agreement.

EXECUTIVE SUMMARY

This motion will approve the settlement agreement and authorize payment to resolve the claim associated with a construction contract to replace sewer main and sewer laterals in Post Court and Simpson Place.

BACKGROUND

In 2017 the City contracted with TerraCon Constructors, Inc. (TerraCon) to replace sewer main and sewer laterals in Post Court and Simpson Place. The purpose of the project was to eliminate dips in the existing asbestos cement pipe and replace it with a larger diameter pipe in the same alignment. During the work, rock and pea gravel backfill were encountered and required additional work and material to widen the trench and break up and remove the gravel.

Construction began in October of 2017 and was completed in March of 2018. On June 19, 2018, City staff met with TerraCon representatives to resolve amounts owing under the contract on a punch list of change orders and extra work. An agreement was reached that the sum of \$65,179.71 remained owing on the contract. This agreement was conveyed again during mediation with TerraCon on June 2, 2020.

SETTLEMENT AGREEMENT– CONTRACT C02081 POST CT AND SIMPSON PL
SEWER REPLACEMENTS
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On June 18, 2020 Terracon filed a Claim with the City. Since a formal claim was filed, payment of the agreed upon amount required a structured settlement agreement and both a recommendation by the Board of Public Utilities and approval by the City Council.

PRIOR BOARD OF PUBLIC UTILITIES REVIEW

On August 17, 2017, the Board, by motion, approved the project and awarded Construction Contract No. C02081 in the amount of \$451,483.00 to the lowest responsive bidder, TerraCon Constructors, Inc., of Healdsburg, California, for Post Court and Simpson Place Sewer Replacements, and approved a 15% contingency, thus authorizing the total contract amount of \$519,205.45.

On December 1, 2020, the City Council, acting in closed session on an anticipated litigation matter, approved settlement of the claim, as recommended by the Board of Public Utilities, in the amount of \$65,179.71, and directed Counsel and staff to take the further steps necessary to implement the settlement.

ANALYSIS

Approval of this agreement will authorize payment to resolve all outstanding claims associated with Contract No. C02081 Post Ct and Simpson PI Sewer Replacements.

FISCAL IMPACT

Sufficient funds were appropriated in prior fiscal years and are available to resolve this claim in the Water Department's approved budget.

ENVIRONMENTAL IMPACT

This action is statutorily exempt from the California Environmental Quality Act (CEQA), pursuant to CEQA Guideline section 15282 for pipeline replacement, as well as being categorically exempt under CEQA Guideline section 15301, Existing Facilities.

BOARD/COMMISSION/COMMITTEE REVIEW AND RECOMMENDATIONS

Not applicable.

ATTACHMENTS

Attachment 1 – Settlement Agreement

SETTLEMENT AGREEMENT– CONTRACT C02081 POST CT AND SIMPSON PL
SEWER REPLACEMENTS
PAGE 3 OF 3

CONTACT

Lori Urbanek, lurbanek@srcity.org, (707) 543-3854

AGREEMENT

The parties to this Agreement (“Agreement”) are the City of Santa Rosa (the “City”) and TerraCon Constructors, Inc. (“TerraCon”), which are collectively referred to as the “Parties” and individually as a “Party.” This Agreement is entered into as of _____, 2020 (the “Effective Date”).

Recitals

A. The City and TerraCon entered into a written agreement (the “Contract”) for a work of public improvement known as Post Court and Simpson Place Sewer Replacement – Contract No. C02081 (the “Project”).

B. Disputes developed between the Parties regarding whether TerraCon was entitled to a change order for additional compensation.

C. The Contract and Public Contract Code Section 9204 required the Parties to submit claims or disputes to mediation. On June 2, 2020, the Parties participated in a mediation.

D. Having resolved their claims and disputes related to the Project, the Parties enter into this Agreement.

Terms of Agreement

NOW THEREFORE, for good and valuable consideration, the receipt of which is acknowledged, the Parties agree as follows:

1. ***Payment.*** No later than fourteen calendar days after execution of this Agreement, the City shall pay TerraCon the sum of Sixty-Five Thousand One Hundred and Seventy-Nine Dollars and seventy-one Cents (\$65,179.71) (hereinafter, the “Settlement Sum”). The Settlement Sum takes into account all credits, deductions, backcharges, set offs, offsets, retention, claims, and counter-claims, of any kind that may exist or could have existed, as to payments due to TerraCon by the City, claims by TerraCon against the City, claims by the City against TerraCon and encompasses any claims for actual, liquidated, or any other damages allegedly owed by either Party to the other Party. All such credits, deductions, backcharges, set offs, offsets, retention, claims, and counter-claims, of any kind, have been resolved by mutual agreement and negotiation in accordance with the provisions of the Contract.

2. ***Mutual Release.*** Subject to the exceptions set forth in Paragraph 3 below, each Party for itself and its respective directors, officers, employees, partners, affiliates, subsidiaries, parent entities, agents, attorneys, representatives, successors, and assigns hereby releases the other Party and its respective directors, officers, employees, partners, affiliates, subsidiaries, parent entities, agents, attorneys, sureties, representatives, successors, and assigns from any and all claims, liabilities, backcharges, demands, losses, expenses, causes of action, damages, interest, attorney’s fees, expert or other litigation expenses, costs, and/or penalties, whether known or unknown, actual or potential, existing or not yet existing, accrued or unaccrued, and whether legal or equitable and/or arising from negligence, breach of contract, or from violation of statutes, including Prompt Payment statutes, the Public Contract Code, the False Claims Act, or other laws or ordinances, and/or which are based any other legal theory or grounds (hereinafter referred to as “Claims”) that arise from or relate to the Contract and/or the Project.

3. ***Exceptions to Releases.*** Notwithstanding any provisions of this Agreement, including Paragraph 2, the following Claims, rights, defenses, and obligations are in no way released, waived, impaired, compromised or otherwise are affected by this Agreement:

- a. Claims, rights, defenses, and obligations under or in connection with this Agreement.
- b. Rights for indemnity or contribution, if any, in connection with Claims by third parties for:
 - i. Personal or bodily injuries arising from the Project; or
 - ii. Property damage, other than as to the Project itself, arising from the Project.
- c. Claims for latent deficiencies in TerraCon's work at the Project, not known or suspected to exist as of the Effective Date, and defenses to such claims. For purpose of this Agreement, the term latent deficiencies has the same meaning as in Section 337.15 of the Code of Civil Procedure.
3. Claims, rights, and obligations arising out of construction projects other than the Project.

4. ***Section 1542 Waiver.*** As to those matters that are expressly released herein, but subject to the exceptions in Paragraph 3, the Parties hereby waive all rights under California Civil Code Section 1542 and any similar right under any similar federal, state or local statute, rule or regulation. Section 1542 provides as follows:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

The Parties have been and are represented by legal counsel, and they understand and acknowledge the significance and consequence of this waiver of California Civil Code Section 1542.

5. ***No Admission of Liability.*** The Parties stipulate that this Agreement and settlement have been entered into in good faith, at arm's length, without collusion, and are the product of the negotiation. This Agreement involves the settlement and compromise of disputed claims and this Agreement and the consideration therefor does not constitute an admission of liability, fault, negligence, or breach of obligations by the Parties.

6. ***Fees and Costs.*** Each Party agrees to bear its own legal fees and costs with regard to the matters that are the subject of this Agreement.

7. ***Further Actions.*** Each Party to this Agreement shall execute all instruments and documents and take all actions as may be reasonably required to effectuate this Agreement.

8. ***Authority.*** Each Party warrants that it has authority to enter into this Agreement. Each person executing this Agreement on behalf of a Party represents and warrants that he or she has authority to do so.

9. ***Interpretation.*** The Parties hereby acknowledge that they have conducted an independent investigation of the facts concerning the Project, as well as any other matters relevant to this Agreement. Each Party to this Agreement and its legal counsel have had an opportunity to review and negotiate the terms of this Agreement. The rule of construction that any ambiguities

are to be resolved against the drafting Party shall not be employed in the interpretation of this Agreement.

10. **Applicable Law.** This Agreement is governed by the laws of the State of California, without regard to choice of law principles, statutes, or laws.

11. **Enforcement.** This Agreement is enforceable pursuant by any means available under applicable law, including without limitation, pursuant to the provisions of California Code of Civil Procedure Section 664.6, whether by motion or otherwise. The Parties agree that this Agreement is admissible and may be disclosed in connection with motions or applications to the Court pursuant to California Code of Civil Procedure Section 664.6 or any other proceeding to enforce the terms of this Agreement.

12. **Time is of the Essence.** Time is of the essence with respect to each provision of this Agreement.

13. **Modification.** This Agreement may be modified only by a contract in writing executed by the all Parties.

14. **Savings.** In the event that any portion of this Agreement shall be found void or voidable by a court of competent jurisdiction, such portion shall be stricken and the Agreement reformed to approximate, as closely as the law permits, the intent of the stricken portion or portions.

15. **Final Agreement.** This Agreement contains the entire agreement between the Parties with respect to the subject matter of this Agreement and is intended as a final expression of the Parties' agreement with respect to such matters.

16. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one document. A copy of the Agreement signed by a Party, and transmitted by facsimile, email, or other electronic means, shall be deemed enforceable as an original.

WHEREFORE the Parties enter into this Agreement as of the Effective Date.

Dated: _____, 2020

CITY OF SANTA ROSA

By _____
Chair, Board of Public Utilities

City Attorney

Attest:

Recording Secretary

Dated: _____, 2020

TERRACON CONSTRUCTORS, INC.

By _____
Its: _____



City of Santa Rosa

Text File

File Number: 21-501BPU

Agenda Date: 12/17/2020

Version: 1

Status: Agenda Ready

In Control: Board of Public Utilities

File Type: BPU-Agenda Item

Agenda Number: 14.1