

CITY OF SANTA ROSA
CITY COUNCIL

TO: MAYOR AND CITY COUNCIL
FROM: TERESA STRICKER, CITY ATTORNEY
CITY ATTORNEY'S OFFICE
ALAN ALTON, CHIEF FINANCIAL OFFICER
FINANCE DEPARTMENT
SUBJECT: AMENDMENT TO THE FISCAL YEAR 2023-24 ADOPTED
BUDGET AND APPROPRIATION OF \$1,850,000 FROM THE
GENERAL FUND RESERVES NECESSARY TO PAY THE CITY'S
PORTION OF THE SETTLEMENT IN *BAY CITIES PAVING &
GRADING, INC. V. CITY OF SANTA ROSA*, SONOMA COUNTY
SUPERIOR COURT CASE NO. SCV-265333

AGENDA ACTION: RESOLUTION

RECOMMENDATION

It is recommended by the City Attorney's Office and Finance Department that the Council, by resolution, amend the Fiscal Year 2023-24 adopted budget, increasing appropriations in the amount of \$1,850,000 from unassigned General Fund reserves to fund the City's \$2,750,000 portion of the settlement in the matter of *Bay Cities Paving & Grading, Inc. v. City of Santa Rosa*, Sonoma County Superior Court Case No. SCV-265333.

EXECUTIVE SUMMARY

Following mediation, a conditional global settlement was executed in the matter of *Bay Cities Paving & Grading, Inc. v. City of Santa Rosa*, Sonoma County Superior Court Case No. SCV-265333. An appropriation of funds in the amount of \$1,850,000 by the Council from the unassigned General Fund reserves is necessary to fund the City's \$2,750,000 portion of the settlement.

BACKGROUND

Bay Cities Paving & Grading, Inc. v. City of Santa Rosa, Sonoma County Superior Court Case No. SCV-265333, concerns a complex public works construction contract dispute arising out of Phase 2 of the Stony Point Road Widening Project. The City awarded the bid to Bay Cities Paving and Grading as low bidder in May of 2015, and work began in August 2015. The City retained Winzler & Kelly Consulting Engineers, Inc., the

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predecessor-in-interest to GHD, Inc. (“GHD”), to prepare the design for Phase 2. Disputes arose almost immediately over GHD’s design plans, which resulted in significant delays, and continued throughout the project. In October 2019, Bay Cities filed suit against the City alleging breach of contract and asserted approximately \$10.2 million in damages against the City.

Following a March 4, 2024 mediation among Bay Cities, GHD and the City, on March 26, 2024, the parties entered into the conditional settlement agreement attached as Attachment 1. Under the terms of the agreement, the City agreed to pay Bay Cities \$2.75 million and GHD agreed to pay Bay Cities \$3.75 million in exchange for Bay Cities’ dismissal of the pending lawsuit against the City with prejudice, and the City’s release of all claims against GHD. The settlement agreement is conditioned on the City Council appropriating funds necessary for the City to pay its \$2.75 million portion of the settlement. With a combined total of \$900,000 available in previously appropriated funds for this project and for the associated litigation costs and fees, an additional appropriation of \$1.85 million is needed to fully fund the City’s portion of the settlement.

PRIOR CITY COUNCIL REVIEW

On January 30, 2024, by Resolution RES-2024-016, Council approved a Professional Services Agreement with Burke, Williams & Sorensen, LLP for representation in the matter of *Bay Cities Paving & Grading, Inc. v. City of Santa Rosa* in an amount not to exceed \$725,000 and authorizing the Chief Financial Officer to amend the Fiscal Year 2023-24 General Fund Operating Budget from unassigned General Fund reserves.

ANALYSIS

Following the recent mediation, the parties entered into a settlement agreement that requires GHD to pay Bay Cities \$3.75 million and the City to Bay Cities \$2.75 million. The settlement is conditioned on the City Council appropriating sufficient funds to fully pay the City’s portion of the settlement. Should the City Council not appropriate sufficient funds for this purpose, the settlement will not become effective and the matter will be reset for trial.

On January 30, 2024, the Council authorized an appropriation of \$725,000 from the unassigned General Fund reserves to fund the litigation through trial. \$300,000 of those funds are available to use to help fund the settlement. Additionally, \$600,000 in contingency funds in Transportation and Public Work’s project file for this project are available to be used towards the settlement.

Accordingly, to fully fund the City’s \$2.75 million portion of the settlement, the City Attorney’s Office and Finance Department recommend that the City Council amend, by resolution, the Fiscal Year 2023-24 adopted budget, increasing appropriations in the amount of \$1.85 million from unassigned General Fund reserves.

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FISCAL IMPACT

Funding sufficient to pay the City's \$2.75 million portion of the settlement is not included in the fiscal year 2023-24 operating budget and requires an additional appropriation of \$1.85 million from General Fund unassigned reserves.

Funding for this settlement requires one-time funding, and as such does not present an ongoing cost to the General Fund. Approval of the resolution as requested will drop the unassigned General Fund reserves to approximately 27.6%, which is approximately \$20.3 million over the Council's 17% reserve requirement.

ENVIRONMENTAL IMPACT

This action is exempt from the provisions of the California Environmental Quality Act (CEQA) under CEQA Guidelines Section 15061(b)(3) and 15378 in that there is no possibility that the implementation of this action may have significant effects on the environment, and no environmental review is required.

BOARD/COMMISSION/COMMITTEE REVIEW AND RECOMMENDATIONS

Not applicable.

NOTIFICATION

Not applicable.

ATTACHMENTS

- Attachment 1 – Settlement Agreement
- Resolution

PRESENTERS

Teresa Stricker, City Attorney
Alan Alton, Chief Financial Officer