

REPORT

To the Honorable Mayor and City Council
From the City Manager

January 25, 2016

SUBJECT

Settlement Agreement by and Between the City of Redwood City and Citizens for the Public Trust and Ted. J. Hannig

RECOMMENDATION

1. By motion, approve the Settlement Agreement by and between the City of Redwood City and Citizens for the Public Trust and Ted J. Hannig.
2. Adopt a Resolution approving a budget amendment to (1) transfer \$1,500,000.00 from the general fund to the general liability self-insurance fund; and (2) transfer \$3,000,000.00 from the general fund to the Docktown Marina Fund.

BACKGROUND

On November 9, 2015, the Citizens for the Public Trust and Ted J. Hannig filed a Petition for Writ of Mandamus and Complaint for Declaratory and Injunctive Relief against the City in San Mateo Superior Court ("Petition"). The Petition alleges, among other things, violations of environmental law and the common law Public Trust Doctrine in connection with Docktown Marina ("Docktown"). In order to resolve any and all claims arising out of the Petition, the parties have negotiated a settlement which settles their disputes.

ANALYSIS

The terms of the settlement involve three major components. The first component is the creation of a Docktown Fund ("Fund"). The City has agreed to set aside three million dollars (\$3,000,000.00) in an earmarked fund to address environmental issues, including any potential water and soil contamination, and public trust issues, such as possible relocation assistance, associated with the public trust portion of Docktown. The Fund will be administered consistent with the objective of bringing the City's use of the public trust portion of Docktown, including residential use of Docktown, into compliance with the California State Lands Commission's ("Commission") public trust policies regarding Docktown under State law. A portion of the Fund may also be used to provide financial incentives for liveaboard residents in Docktown to relocate their houseboats elsewhere. The Fund shall exist until the City fully performs the terms of the Settlement Agreement, or December 31, 2020, whichever is earlier. If the entirety of the Fund is not used by the City, the monies deposited in the Fund shall remain the

property of the City and may be used thereafter for any purposes designated by the City free and clear of the Settlement Agreement.

The second component involves a payment to Citizens for the Public Trust and Ted J. Hannig in the amount of \$1,500,000.00 as reimbursement to them for all of their legal fees, costs, and damages arising from the Petition. In exchange, the Citizens for the Public Trust and Ted J. Hannig have provided the City with a complete release of all known and unknown claims related to the Petition. The Settlement Agreement also explicitly states that the City's payment is not intended, and shall not be construed, to be an acknowledgment, admission, concession, or stipulation of liability or wrongdoing by the City but, rather, constitutes a resolution and settlement of disputed issues without admission of any fault.

The third component of the Settlement Agreement involves an agreement by the City to undertake certain actions related to Docktown. By December 31, 2016, the City agrees to adopt a Docktown Plan which shall be in conformance with the Commission's policies concerning residential use of the public trust portion of Docktown and consistent with the recent letter issued by the Attorney General's office to the State Lands Commission. If, however, the Commission's policies change, a different legal opinion is received from the Attorney General's office, or there is action by the State Legislature to modify State law related to Docktown, the City's Plan would have to be in compliance with any new policies or law. The City further agrees to use its best efforts and action towards prompt implementation of the Plan by December 31, 2017. Finally, the City agrees that by December 31, 2016, it shall complete the environmental site assessment and sampling work and prepare a report regarding any findings. Once prepared, the City agrees to submit the report to relevant federal, state, and local agencies, and cooperatively work with those agencies to address any findings requiring action.

ALTERNATIVES

Do not approve the Settlement Agreement and direct the City Attorney's Office to continue with its defense of the City with regard to the Petition.

FISCAL IMPACT

\$3,000,000.00 will be transferred from the general fund to a Docktown Marina Fund and \$1,500,000.00 will be transferred from the General Fund to the General Liability Self-Insurance Fund for claim settlement.

ENVIRONMENTAL REVIEW

This activity is not a project under CEQA Guidelines 15378(b) (5) as it will not result in direct or indirect physical changes in the environment.



MICHELLE KENYON
ACTING CITY ATTORNEY

Melissa Stevenson Diaz

MELISSA STEVENSON DIAZ
CITY MANAGER

ATTACHMENTS

1. Settlement Agreement By and Between The City of Redwood City And Citizens For Public Trust, Ted Hannig.
2. Resolution Approving Budget Amendment.