



# Memorandum

**TO:** HONORABLE MAYOR AND CITY COUNCIL

**FROM:** RICHARD DOYLE  
JENNIFER A. MAGUIRE

**SUBJECT:** SEE BELOW

**DATE:** February 13, 2009

---

**SUBJECT: SETTLEMENT WITH WORLD OIL COMPANY RE: EMINENT DOMAIN AND ADOPTION OF APPROPRIATION ORDINANCE AMENDMENTS IN THE BUILDING AND STRUCTURE CONSTRUCTION TAX FUND**

## **RECOMMENDATION**

1. Approve a settlement and authorize City Attorney to negotiate and execute a Stipulated Judgment to settle an eminent domain matter with World Oil Company relating to real property located at 3148 Senter Road for the total amount of \$762,500, plus statutory interest and costs for the land value, plus \$9,375 for the loss of goodwill, as considered by the City Council during Closed Session on January 27, 2009.
2. Adopt the following Appropriation Ordinance amendments in the Building and Structure Construction Tax Fund:
  - a. Increase the appropriation to the Public Works Department for the Senter Road: Tully to Singleton project by \$150,000
  - b. Decrease the Ending Fund Balance by \$150,000

## **OUTCOME**

To settle an eminent domain lawsuit in which the City condemned 6,262 square feet of land with improvements from the World Oil Gas Station to complete the Senter Road Widening Project – Phase II.

## **BACKGROUND**

This is an eminent domain action initiated by the City to acquire a portion of Defendant World Oil's gas station property located at 3148 Senter Road for the purpose of widening Senter Road to six lanes between Tully Road and Singleton Road. This project, completed in May 2008, removed roadway "bottlenecks" and enhanced pedestrian, bicycle, and traffic circulation increasing the level of service to the South San José area. The project involved the construction of pavement, curb, gutter, sidewalk, driveway aprons, wheelchair ramps, streetlight upgrades, striping, signage, and traffic signal modification.

February 13, 2009

**Subject:** Settlement with World Oil Company Re: Eminent Domain and Adoption of Appropriation Ordinance Amendments in the Building and Structure Construction Tax Fund

Page 2

## **ANALYSIS**

In order to accommodate these roadway improvements, it was necessary to acquire the frontage property owned by World Oil. The parties had disputes regarding the two components to the value of the City's acquisition: value of the land acquired as well as loss of goodwill. After mediating the matter, the parties agreed to assign a fair market value to the land (with improvements) of \$762,500, plus statutory interest and costs. The parties further agreed to assign a value of \$9,375 to the loss of goodwill claim. Because the City had already made a court deposit of probable compensation of \$428,500, the total additional payment to be made by the City will be \$343,375, plus statutory interest and costs.

The settlement is reasonable in light of the inherent risks and costs of litigation as well as the range of results likely to result from a jury trial. This settlement is made as a compromise of a disputed claim, and by settling, the City is not admitting that it is legally liable for the amounts claimed.

## **PUBLIC OUTREACH/INTEREST**

This memorandum is posted on the City's website for the February 24, 2009 Council Agenda.

## **COORDINATION**

The settlement has been coordinated with the Department of Public Works and the Department of Transportation.

## **COST SUMMARY/IMPLICATIONS**

The total settlement for the fair market value to the land, agreed upon by both parties, is \$762,500 plus statutory interest and costs, and an additional payment of \$9,375 to settle the loss of goodwill claim. The City has already made a payment of \$428,500 towards the settlement for the fair market value for the land, which leaves an outstanding balance of \$334,000 plus statutory interest and costs (approximately \$78,000), and the payment of \$9,375 to settle the loss of goodwill claim. An existing budget of \$272,000 in the Building and Structure Construction Tax Fund and the recommended appropriation increase of \$150,000 will fully fund this settlement.

HONORABLE MAYOR AND CITY COUNCIL

February 13, 2009

**Subject:** Settlement with World Oil Company Re: Eminent Domain and Adoption of Appropriation Ordinance Amendments in the Building and Structure Construction Tax Fund

Page 3

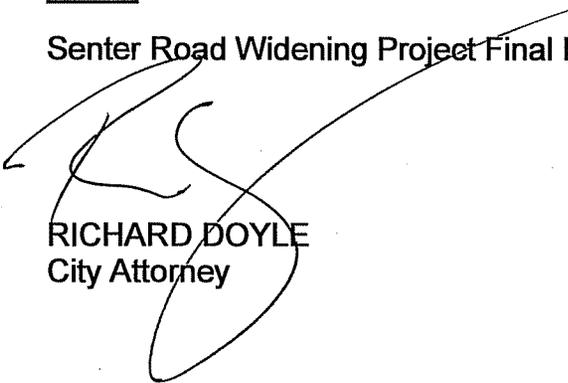
**BUDGET REFERENCE**

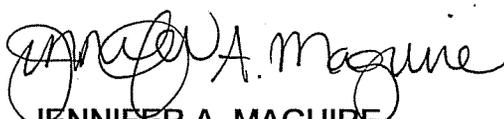
The table below identifies the fund and appropriation proposed to fund the settlement recommended as part of this memorandum.

Fund #	Appn #	Appn. Name	Total Appn.	2008-2009 Adopted Budget (Page)	Last Budget Action (Date, Ord. No.)
<b>Current Funding Available</b>					
429	6030	Senter Road: Tully to Singleton	\$272,000	N/A	10/21/08, Ord. No. 28422
<b>Total Current Funding Available</b>			<b>\$272,000</b>		
<b>Additional Funding Recommended</b>					
429	6030	Senter Road: Tully to Singleton	\$150,000	N/A	N/A
<b>Total Funding Available</b>			<b>\$422,000</b>		

**CEQA**

Senter Road Widening Project Final EIR, File No. PP04-295.

  
RICHARD DOYLE  
City Attorney

  
JENNIFER A. MAGUIRE  
Budget Director

For questions please contact Richard Doyle, City Attorney at (408) 535-1900.