

# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Nora Frimann  
City Attorney

Jennifer A. Maguire  
City Manager

**SUBJECT:** **Sainte Claire Historic  
Preservation Foundation v. City  
of San José et al. – Settlement  
of Costs and Attorney’s Fees**

**DATE:** August 15, 2024

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## RECOMMENDATION

- (a) Approve the settlement of trial costs and trial and appellate attorney’s fees in the case of *Sainte Claire Historic Preservation Foundation v. City of San José, City Council of the City of San José and City of San José Department of Parks, Recreation, and Neighborhood Services (Real Parties in Interest: Mortimer & Mimi Levitt Foundation, Levitt Pavilion San José)*, Superior Court of California, County of Santa Clara Case Number 20CV374459, and Sixth District Court of Appeals case number H050106, in the total amount of \$399,950.00, and authorize the City Attorney to execute a Settlement Agreement and Release.
- (b) Adopt the following 2024-2025 Appropriation Ordinance amendments in the Subdivision Park Trust Fund:
- (1) Increase the St. James Park Phase I Design appropriation to the Parks, Recreation and Neighborhood Services Department by \$399,950; and
  - (2) Decrease the St. James Park Phase I Reserve by \$399,950.

## SUMMARY AND OUTCOME

Approval of a Settlement Agreement and Release to resolve claims for trial costs and trial and appellate attorney’s fees by Sainte Claire Historic Preservation Foundation (“Foundation”) against the City of San José (“City”) arising out of the trial court and appellate matters, and approval of corresponding budget adjustments.

## **BACKGROUND**

Sainte Claire Historic Preservation Foundation, a California non-profit corporation ("Foundation"), sued the City challenging the City's approvals for the St. James Park Capital Vision and Performing Arts Pavilion project. The lawsuit alleged violations of the California Environmental Quality Act ("CEQA") and San José Municipal Code. The lawsuit claimed that the City's Environmental Impact Report did not comply with CEQA and that the City should not have granted a Historic Preservation permit for the project under the San José Municipal Code. The trial court resolved both the environmental and the historic preservation claims in favor of the City. The Foundation appealed. The Sixth District Court of Appeal affirmed the trial court's CEQA determination but reversed on the issue of the Historic Preservation permit.

On July 17, 2024, the trial court entered Judgment on Remand, granting the Foundation's writ petition as to the San José Municipal Code cause of action, ordering that a peremptory writ shall issue, and denying the Foundation's writ petition as to the CEQA cause of action. In the Judgment on Remand, the trial court reserved jurisdiction over the Foundation's claim for private attorney general fees under California Code of Civil Procedure section 1021.5 and over the Foundation's claim for trial costs.

As set forth in the Settlement Agreement and Release, the City and the Foundation undertake to settle the Foundation's claims for trial costs and trial and appellate attorney fees for the sum of \$399,950.00 (Three Hundred Ninety Nine Thousand and Nine Hundred Fifty dollars).

## **ANALYSIS**

This settlement is recommended to resolve the Foundation's claim for litigation costs, including attorney's fees, recoverable under the California Private Attorney General Act to eliminate the fiscal risk to the City attendant to litigating the Foundation's attorney's fee claim.

## **COST SUMMARY/IMPLICATIONS**

The settlement payment will be disbursed from the St. James Park Phase I Design project, which is budgeted within the Subdivision Park Trust Fund. To provide sufficient budget capacity for the payment, the actions recommended in this memorandum include the reallocation of \$399,950 from the St. James Park Phase I Reserve to the St. James Park Phase I Design project.

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### **BUDGET REFERENCE**

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

<b>Fund #</b>	<b>Appn #</b>	<b>Appn Name</b>	<b>Total Appn</b>	<b>Recommended Budget Action</b>	<b>2024-2025 Proposed Capital Budget Page*</b>	<b>Last Budget Action (Date, Ord. No.)</b>
375	404S	St. James Park Phase I Design	\$25,000	\$399,950	419	06/18/2024, 31102
375	8507	St. James Park Phase I Reserve	\$9,862,000	(\$399,950)	449	06/18/2024, 31102

\*The 2024-2025 Proposed Capital Budget was approved on June 11, 2024, and adopted on June 18, 2024, by the City Council.

### **PUBLIC OUTREACH**

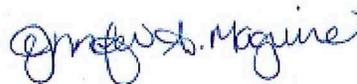
This memorandum and the settlement agreement have been posted on the City's website for the August 27, 2024 City Council agenda.

### **CEQA**

Not a Project, File No. PP17-003, Agreements/Contracts (New or Amended) resulting in no physical changes to the environment.



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For questions, please contact Nora Frimann, City Attorney, at (408) 535-1900.