



Agenda Report

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File #: 19-0243

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**AGENDA REPORT  
REQUEST FOR CITY COUNCIL ACTION**

DATE: 3/20/2019

TO: Honorable Mayor and City Council Members

FROM: Public Works Department

**SUBJECT:**

City Council consideration of a Property Damage Release for settlement of damages to the City fiber network on North Main Street - Kinsale Insurance Company.

**RECOMMENDED ACTION:**

That the City Council:

1. Approve and authorize the City Manager to execute a Property Damage Release for the settlement of damages to the City's fiber network on North Main Street (Kinsale Insurance Company).
2. Consider, accept and approve General Fund and Gas Tax revenue increases for insurance proceeds in the amount of \$3,165.48 and \$69,505.00 respectively, from Kinsale Insurance Company for reimbursement of damages caused to the City's fiber network on North Main Street.
3. Authorize an appropriation of \$69,505.00 for reimbursement to the Capital Improvement Project titled "Striping Rehabilitation" within the Gas Tax Fund (Fund 222).

**ANALYSIS:**

On December 1, 2017, a contractor working on the commercial redevelopment project at 705 North Main Street struck a City fiber conduit and severed multiple fiber optic cables used to connect traffic facilities throughout the City. Kinsale Insurance Company, who is representing the contractor, agreed to cover the damages but declined to hire a contractor to do the work, thereby electing to have the City hire and supervise its own contractor. The work has since been completed to City standards and specifications, and the total cost, which includes the contractor's costs, as well as City labor costs in overseeing the repairs, is \$72,670.48. Kinsale Insurance Company has agreed to pay this amount and provided the City with the attached Property Damage Release to complete the settlement.

Per City Municipal Code (CMC) section 2.04.060 (W), the City Manager is authorized to enter into an agreement for the receipt of money by the City in an amount up to \$25,000 in order to compromise or avoid the filing of a claim or lawsuit by the City against a third party. Since the amount to be paid to the City with this settlement is in excess of what is permitted under the CMC, the City Council would need to approve the receipt of this amount and the associated Property Damage Release in order to settle all claims against the contractor and Kinsale Insurance Company pertaining to the damage that occurred on December 1, 2017.

All work has been completed to restore the City's fiber network, which has been fully tested and deemed functional. Therefore, staff recommends that the City Council approve and authorize the City Manager to execute the Property Damage Release provided by Kinsale Insurance Company.

**COMMITTEE ACTION:**

Not applicable.

**STRATEGIC PLAN:**

Not applicable.

**FISCAL IMPACT:**

This action will reimburse the City \$72,670.48 for the repair of its damaged facilities at full cost including materials and labor. The funds will reimburse the General Fund (110) and the Gas Tax Fund (222) of the Capital Improvement Project (CIP) for the Striping Rehabilitation project (Project No. 72920), which provided the funds to pay the contractor to repair the fiber optic cables. This CIP was used as it funds roadway striping rehabilitation and maintenance of the traffic signal communication system infrastructure.

Fund	Description	Amount
Gas Tax (222)	Cost of contractor hired to effect repairs	\$69,505.00
General Fund (110)	Staff time to administer repair and process release	\$3,165.48
<b>Total Reimbursement Amount</b>		<b>\$72,670.48</b>

Fund	07/01/18 Est. Fund Balance	Budgeted Revenues/ Sources	Budgeted Expenditures/ Uses	Fund Balance Impacts	06/30/19 Est. Fund Balance
Gas Tax Fund 222	\$259,526	\$4,312,791	(\$4,330,032)	\$69,505 Revenue (\$69,505) Appropriation	\$242,285

GENERAL FUND	
Budget Workshop May 23, 2018 - Estimated Revenue Over Expenditures	\$6,626,911
Previously approved budget adjustments (net)* - Note 1	(5,999,820)
Current Estimated Revenue Over Expenditures	627,091
Damage Reimbursement - Kinsale Insurance Company	3,165
<b>Revised Estimated Revenue Over Expenditures - Note 1</b>	<b>\$630,256</b>

Budget Balancing Measures Reserve - Actual 6/30/18	\$25,182,735
Estimated FY 2018-19 Change in Budget Balancing Measures	<u>630,256</u>
<b>Budget Balancing Measures Reserve - Estimated Balance 06/30/19</b>	<b>\$25,812,991</b>

*\* Approved through Council Action or other operational process.*

Note 1: Includes additional General Fund items on the March 20, 2019 meeting.

**ENVIRONMENTAL ANALYSIS:**

This action approves a settlement that provides reimbursement to the City for completion of repair that is categorically exempt pursuant to Section 15301(b) of the California Environmental Quality Act (CEQA) Guidelines, which states that a project which consists of the repair of existing public or private structures, facilities, and mechanical equipment, involving negligible or no expansion of use beyond that, does not have a significant impact on the environment, and is therefore exempt from CEQA.

**PREPARED BY:** DENNIS RALLS, T.E., PUBLIC WORKS PROGRAM MANAGER

**REVIEWED BY:** TOM KOPER, P.E., ASSISTANT PUBLIC WORKS DIRECTOR

**REVIEWED BY:** NELSON D. NELSON, P.E., PUBLIC WORKS DIRECTOR

**REVIEWED BY:** KIM SITTON, FINANCE MANAGER

**REVIEWED BY:** KERRY D. EDEN, ASSISTANT CITY MANAGER/ADMINISTRATIVE SERVICES DIRECTOR

**SUBMITTED BY:** MICHELE NISSEN, ACTING CITY MANAGER

**Attachment:**

1. Property Damage Release

# PROPERTY DAMAGE RELEASE

## KNOW ALL MEN BY THESE PRESENTS:

That the Undersigned, being of lawful age, for sole consideration of **Seventy Two Thousand Six Hundred Seventy Dollars & 48/100 (\$72,670.48)** to be paid to the **City of Corona, CA** hereby releases, acquits and forever **4 West Pipeline Inc & Kinsale Insurance Company**, and their agents, servants, successors, heirs, executors, administrators and all other persons, firms, corporations, associations or partnerships of and from any and all claims, actions, causes of actions, demands, rights, damages, costs, loss of service, expenses and compensation whatsoever, which the undersigned now has or which may hereafter accrue on account of or in any way growing out of any and all known and unknown, foreseen and unforeseen property damage and the consequences thereof resulting or to result from the occurrence on or about the **1st day of December, 2017** at or near **the corner of Parkridge Ave & N. Main St, Corona, California**.

It is understood and agreed that this settlement is the compromise of a doubtful and disputed claim and that the payment made is not to be construed as an admission of liability on the part of the party or parties hereby released and that said releases deny liability therefore and intend merely to avoid litigation and buy their peace.

The undersigned further declares and represents that no promise, inducement or agreement not herein expressed has been made to the undersigned and that this Release contains the entire agreement between the parties hereto and that the terms of this Release are contractual and not a mere recital.

It is further understood and agreed that all rights under section 1542 of the Civil Code of California and any similar law of any state or territory of the United States are hereby expressly waived. Said section reads as follows:

*"1542. Certain claims not affected by general release. A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."*

FRAUD NOTICE—California warning: For your protection California law requires the following to appear on this form: Any person who knowingly presents a false or fraudulent claim for the payment of a loss is guilty of a crime and may be subject to fines and confinement in State Prison.

Undersigned hereby accepts the following drafts as final payment of the consideration set forth above:

**THE UNDERSIGNED HAS READ THE FOREGOING RELEASE AND FULLY UNDERSTANDS IT.**

Signed, sealed and delivered this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

**CAUTION: READ BEFORE SIGNING BELOW**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
City of Corona

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT**

*A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.*

State of California

County of \_\_\_\_\_ }

On \_\_\_\_\_, before me, \_\_\_\_\_, Notary Public,  
personally appeared \_\_\_\_\_

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

SIGNATURE \_\_\_\_\_

PLACE NOTARY SEAL ABOVE

SIGNATURE OF NOTARY PUBLIC

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

**Description of attached document**

Title or type of document: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

Signer(s) Other than Named Above: \_\_\_\_\_

