



Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: NORA FRIMANN,
City Attorney

SUBJECT: SAN JOSE MERCURY NEWS,
LLC V. CITY OF SAN JOSE

DATE: September 1, 2023

RECOMMENDATION

Approve payment of attorneys' fees and costs in the amount of \$78,225.40 in the *San Jose Mercury News, LLC v. City of San Jose* case, and authorize the City Attorney to execute a Settlement Agreement.

OUTCOME

The City will pay the sum of \$78,225.40 to settle the Mercury News's claim for attorneys' fees and litigation costs in the case of *San Jose Mercury News, LLC v. City of San Jose*, filed on May 4, 2023 in the Superior Court of California, County of Santa Clara, case number 23CV415609.

BACKGROUND

The San Jose Mercury News filed this lawsuit alleging the City violated the Public Records Act (PRA) by withholding employee discipline records arising from a October 5, 2022 incident involving Fire Engine 4. The Court issued an order on July 7, 2023 finding the PRA required the City to disclose the records and granted the Mercury News' petition for a writ of mandate.

ANALYSIS

The PRA allows the prevailing party to recover reasonable attorney's fees. (Gov. Code § 7923.115(a).) The City Attorney has negotiated an agreement with the Mercury News to pay \$78,225.40 in full satisfaction and settlement of the Mercury News's claim for attorneys' fees and costs. The proposed agreement will settle the Mercury News's claim for attorneys' fees and costs and will conclude the litigation without further cost, expense, or risk of loss to the City.

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CONFIDENTIAL—ATTORNEY/CLIENT

PUBLIC OUTREACH/INTEREST

This memorandum and the Settlement Agreement have been posted on the City's website for the September 12, 2023 agenda.

COST SUMMARY/IMPLICATIONS

The settlement will be paid from the City's claims reserve fund.

CEQA

Not applicable. Not a project; PP17-003, Agreements/Contracts (New or Amended) resulting in no physical changes to the environment.

By /s/ Nora Frimann
NORA FRIMANN
City Attorney

cc: Jennifer Maguire, City Manager

For questions, please contact NORA FRIMANN, City Attorney, at (408) 535-1900