

RESOLUTION 2019 - 076

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CALISTOGA,
COUNTY OF NAPA, STATE OF CALIFORNIA, APPROVING FILING AN
INTERPLEADER ACTION REGARDING \$244,112.89 IN DISPUTED SPRING
STREET UTILITY REPLACEMENT PROJECT CONTRACT FUNDS WITH
THE NAPA COUNTY SUPERIOR COURT AND DELIVERING THE FUNDS
TO THE CLERK OF THAT COURT, AND AUTHORIZING THE CITY
MANAGER TO TAKE ALL REQUIRED ACTIONS IN CONNECTION WITH
THE ACTION**

WHEREAS, following receipt of Stop Payment Notices from six purported Northern Pacific Corporation subcontractors, suppliers, consultants and workers on the City's Spring Street Utility Replacement and Paving Rehabilitation Project
- Cedar Street to End (**Project**), the City is withholding \$244,112.89 from the amounts otherwise payable to NPC; and

WHEREAS, the City has received conflicting demands for the withheld funds, including from the Project's payment bond surety, Fidelity and Deposit Company of Maryland, and NPC's lender, California Bank of Commerce; and

WHEREAS, while the City does not know which party(ies) ultimately is entitled to the withheld funds, the City knows the City is not entitled to the funds; and

WHEREAS, the most cost effective way to resolve the matter from the City's perspective is to file an action in interpleader with the Napa County Superior Court, deposit the funds, less the City's attorney's fees and any other amounts which may be deducted pursuant to applicable laws, with the Clerk of that Court, and seek a Court Order directing the proper disposition of the funds.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Calistoga hereby approves filing an interpleader action with the Napa County Superior Court regarding the \$244,112.89 in disputed funds held by the City under the City's Spring Street Utility Replacement and Paving Rehabilitation Project - Cedar Street to End.

BE IT FURTHER RESOLVED that the in connection with the interpleader action, the City shall deposit the disputed funds with the Clerk of the Napa County Superior Court.

BE IT FURTHER RESOLVED that the City Council hereby authorizes and directs the City Manager to take all actions and execute all documents as necessary or appropriate to carry out the intent of the foregoing resolution on behalf of the City.

PASSED, APPROVED, AND ADOPTED by the City Council of the City of Calistoga at a Meeting held this 20th day of August 2019, by the following vote:

AYES: Councilmembers Kraus, Lopez-Ortega, and Williams,
Vice Mayor Dunsford and Mayor Canning
NOES: None
ABSTAIN: None
ABSENT: None



CHRIS CANNING, Mayor

ATTEST:



IRENE CAMACHO-WERBY, City Clerk