STAFF REPORT

MEETING
DATE: March 22, 2005

TO: City Council

FROM: Jerry Novak, Principal Civil Engineer
Glenn Young, Interim Public Works Director

SUBJECT: SETTLEMENT PAYMENT - MEASURE “B” BOND PAVEMENT REHABILITATION PROGRAM GROUP 1

REQUEST

Consider authorizing final payment of $59,542.50 to Ghilotti Brothers, Inc. for claims associated with the Measure "B" Pavement Rehabilitation Program, Group 1 construction contract and adopting a resolution amending resolution 139-02 to increase the contract award amount to Ghilotti Brother Inc. by $59,542.50 and amending budget resolution 67-04 in the amount of $46,000 for Capital Improvement Program (CIP) Measure "B" Pavement Rehabilitation Program, Group 1 Project 01-002.

DISCUSSION

On September 10, 2002, the City Council awarded a construction contract to Ghilotti Brothers, Incorporated for the Measure "B" Bond Pavement Rehabilitation Program, Group 1 Pavement Project in the amount of $1,278,908.11 plus a ten percent contingency. Work under the contract included excavation, patch repairs, pavement grinding, asphalt paving installation, concrete removal, sidewalk replacement, driveway approach replacement and street marking.

During the project, several difficulties were encountered that negatively affected the prosecution of work and resulted in the project extending far beyond either the City's or the Contractor's scheduled plans. In addition, these same difficulties resulted in commensurate cost increases.

The primary problems resulted from abnormally soft asphalt material, saturated sub-base below existing pavement, and rolled curb-driveway conditions. The soft paving material resulted in numerous tests by the City and the materials vendor. The project was suspended twice in an effort to determine the cause of the extended softness. In the end, the City's consultant and the material vendor were unable to determine the cause, but the pavement eventually healed and firmed. The saturated sub-base on two streets were discovered after grinding and resulted in delays and additional cleanup while a solution was determined. Subsequently, additional work had to be done to correct the situation. Lastly, grades of existing driveways and the removal of
paving from rolled curbs resulted in dissatisfied residents on one street. This resulted in the Contractor having to re-mobilize several times in order to finish the work.

During the project, staff met with the Contractor many times in regard to the project problems and the costs involved. After completion of the work, staff approached the City Council with a request for an expenditure of $112,500 above the sum authorized in the original award, and Council approved the amendment by Resolution 137-03 on December 12, 2003.

Unfortunately, subsequent to that, the Contractor indicated that he disagreed with the amount that was due. Staff engaged in discussion, but both parties remained at a stalemate. Despite being unable to resolve the issue, staff recommended that a Notice of Completion be recorded for the project, since the actual work had been completed and on March 23, 2004, the Council approved the recording of the Notice.

After the Notice of Completion had been recorded and the time frame for filing of mechanic's liens had expired, staff again tried to come to resolution on the remaining issues with the contractor, but were unsuccessful. A proposed final estimate was prepared and it was discovered that the City owed the contractor $13,393.90 and, as a result, on September 28, 2004 the City Council adopted Resolution 95-04 increasing the construction contract to $1,532,662.82. The contractor was paid the final amount due and the retention was released.

Since that time, both parties have argued their respective points without resolution. However, since the statutory time for filing a claim was close to expiring, the Contractor notified the City of his intent to mediate or litigate. Staff met with the Contractor to settle the issue and both sides have reached agreement.

The Contractor's claim was for a total of $190,606 of which $92,409 were soft costs and $98,197 were hard costs. After negotiations, the settled amount totaled $59,542.50, which appeared reasonable in light of the degree of claim validity and the potential negative time and cost impact of mediation and/or litigation. In addition, construction management costs during the last six months totaled $6,586. As a result, staff is forwarding this item for the Council's consideration.

**FISCAL IMPACT**

Staff is proposing that this final payment be processed as a change order to the contract. According to City records, this project had remaining unspent Measure "B" funds totaling $349,107 which can be used for this purpose. As a result of the City receiving $20,129 of the property owner payments for new driveway approaches, only an additional $46,000 is needed to cover the added costs:
Claim Settlement $59,543
Construction Management + 6,586
Sub-Total 66,129
Property Owner Payment - 20,129
Total Needed $46,000

ALTERNATIVES

1. Approve the payment to Ghilotti Brothers to finalize the project and adopt resolution.
2. Do not approve the payment and provide staff with alternate direction.

RECOMMENDATION

Authorize final payment of $59,542.50 to Ghilotti Brothers, Incorporated and adopt resolution.

ATTACHMENTS

1. Resolution
2. Excerpt from CIP Budget for the Measure "B" Bond Pavement Rehabilitation Program.
CITY COUNCIL OF THE CITY OF NOVATO

RESOLUTION NO. ________

RESOLUTION TO AMEND RESOLUTION NO.139-02 TO INCREASE CONTRACT AMOUNT AND AMENDING BUDGET RESOLUTION 67-04 TO INCREASE BUDGET AMOUNT FOR CONSTRUCTION (430) BY $39,414 AND CONSTRUCTION MANAGEMENT (440) BY $6,586 FOR THE MEASURE B PAVEMENT REHABILITATION PROJECT - GROUP 1 CITYWIDE, PROJECT NUMBER 01-002, FOR CONSTRUCTION

WHEREAS, the City Council of the City of Novato has adopted a resolution awarding the contract for the Measure B Pavement Rehabilitation Project - Group 1 Citywide, Project No. 01-002 in the amount of $1,278,908.11 plus 10% contingency to Ghilotti Brothers, Inc; and

WHEREAS, the City Council of the City of Novato has adopted two resolutions amending the awarded contract for the Measure B Pavement Rehabilitation Project - Group 1 Citywide, Project No. 01-002 in the amount of $112,500 and $13,363.90 to Ghilotti Brothers, Inc; and

WHEREAS, it is necessary to increase the construction contract amount by $59,542.50 to cover additional construction costs and finalize the project; and

WHEREAS, it is necessary to increase the budget for the project by $46,000 to cover the additional construction costs and construction management costs in finalizing the project; and

WHEREAS, the City Council of the City of Novato has adopted a final Capital Improvement Program (CIP) Budget for Fiscal Year 2004/2005; and

WHEREAS, funds are available through an allocation of Utility Reimbursement of $31,257 and of Street and Storm Drain Measure B Fund 307 of $14,743 to accommodate this increase.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Novato hereby approves the amendment to Resolution No.139-02 increasing the appropriation amount by an additional $59,542.50 to Agreement #3635 and that the City Council of the City of Novato hereby approves this budget amendment providing the revised appropriations as follows:

Allocate Utility Reimbursement of $2,718 to Project Development (410)
Remove Street and Storm Drain Measure B Fund 307 of $2,718 from Project Development (410)
Allocate Utility Reimbursement of $27,180 to Construction (430)
Allocate Street and Storm Drain Measure B Fund 307 of $12,144 to Construction (430)
Allocate Utility Reimbursement of $1,359 to Construction Management (440)
Allocate Street and Storm Drain Measure B Fund 307 of $5,227 to Construction Management (440)

I HEREBY CERTIFY that the foregoing resolution was duly and regularly adopted by the City Council of the City of Novato, Marin County, California, at a meeting hereof, held on the ____ day of ___________________, by the following vote, to wit:

AYES:      Councilmembers
NOES:      Councilmembers
ABSTAIN:   Councilmembers
ABSENT:    Councilmembers

__________________________
City Clerk of the City of Novato

Approved as to form:

__________________________
City Attorney of the City of Novato