

VERSION 1

..Fiscal Note

This resolution authorizes the City, pursuant to the recent judgment (for years 2002-2004 & 2006) and settlement (for years 2007-2010) in *Adams Outdoor Advertising v. City of Madison*, to make a total payment of \$1,079,092 to Adams as full refund of tax overpayments originally made to all taxing jurisdictions for several Adams billboard properties. Of that amount, \$710,321.53 represents the tax overpayment as determined by the court, and \$368,770.47 represents related interest and court charges. The City's share of the tax overpayments, estimated to be \$254,823.28, will result in reduced 2011 General Fund revenues. The remaining \$455,498.25 of tax overpayments will be recognized as a receivable from the other taxing jurisdictions and is expected to be repaid to the City during 2012, in accordance with Wisconsin Department of Revenue procedures governing such property tax adjustments. By state statute, all of the interest associated with such property tax adjustments is the responsibility of the municipality which assesses the property. Therefore, the full \$368,770.47 of interest and court expense associated with this tax adjustment must be paid by the City, resulting in increased General Fund expenses. The total fiscal impact on the City associated with the Adams judgment and settlement is \$623,593.75, comprised of \$254,823.28 in tax overpayments and \$368,770.47 in interest and court costs.

Sufficient funds are available in the Contingent Reserve to pay the \$368,770.47 of interest expense. (Following approval of this Resolution, the Contingent Reserve balance is anticipated to be \$167,910, assuming other pending commitments are approved.)

..Title

Authorizing the payment of a judgment in *Adams Outdoor Advertising v. City of Madison* 329 Wis. 2d 270, (Wis. App. 2010) *Unpublished*, and a settlement with Adams Outdoor Advertising: (1) payment of a judgment relating to a refund of property taxes for tax years 2002-2004 and 2006 which provides for a refund of taxes, interest and costs in the amount of \$710,467.00 from City resources and amending the 2011 operating budget to reduce estimated General Fund revenues by \$119,415.69 to recognize the City's share of the tax refund and appropriating \$368,770.47 from the Contingent Reserve to fund related interest and court costs; and (2) authorizing the payment of a settlement in *Adams Outdoor Advertising v. City of Madison* in tax years 2007-2010 for an additional refund of \$368,625.00 without interest and costs. The City's 2011 operating budget is amended to reduce the general fund revenues by \$135,407.59 to recognize the City's share of the settlement costs.

..Body

Background

The City of Madison and Adams Outdoor Advertising have been engaged in litigation for a number of years over the assessment of a number of billboards located in the City. The original litigation involved tax years 2002 through 2004 and 2006, which went up to the Wisconsin Supreme Court, (*Adams I*) *Adams Outdoor Advertising, Ltd. v. City of Madison*, 294 Wis.2d 441, 717 N.W. 2d 803 (2006). The Supreme Court rejected the City's methodology of assessing the billboards in relying solely on income approach and including the value of the billboard permits. The Supreme Court in their ruling stated that the permit is an interest in real property, however that does not mean that the entire tax burden of the permit is transferred to the landowner where the billboard is located. Therefore some portion of the tax burden remains with Adams. The case was then remanded back to the Circuit Court for reassessment to be consistent with the Supreme Court's decision.

The City Assessor reassessed the billboards in a manner in which we interpreted as consistent with the Supreme Court's decision in which they included the value of the permit in the assessment to Adams, because the Supreme Court stated that the entire tax burden of the permit should not be placed upon the property owner. This approach was subsequently

rejected by the Dane County Circuit Court and was appealed by the City to the Wisconsin Court of Appeals. *Adams Outdoor Advertising, Ltd. v. City of Madison*, 329 Wis.2d 270, (Wis. App. 2010), *Unpublished*. In an unpublished decision, the Court of Appeals rejected the City's reassessment because it continued to include the value of the billboard permits and adopted the Adams' assessments, however they did acknowledge that the Supreme Court's holding suggests that some portion of the tax burden of the permit remains with Adams and they method by which the City could tax Adams on the value of the permit is vague. Ultimately the Court of Appeals reasoned that the City's reassessment was not consistent with the Supreme Court's decision in Adams I. The City filed a Petition for Review of the Court of Appeals decision with the Wisconsin Supreme Court, which was subsequently denied. The City does not have any further legal remedies available to challenge these assessments. As a result, a judgment was entered against the City for tax years 2002-2004 and 2006, which must be paid. Adams has also sued the city for tax years 2005 and 2007-2010, those cases have been stayed pending the outcome of the 2002 through 2004, 2006 tax years. In light of the Adams II decision, the City and Adams have reached a tentative settlement for tax years 2007 through 2010. The 2005 tax year will continue to be litigated on a procedural issue and will not be part of this settlement agreement. This resolution seeks approval of the judgment, settlement and all other approvals necessary approvals necessary to carry it out, including adjusting the City's revenues.

The Judgment and Proposed Settlement

Under the judgment and proposed settlement Adams would be paid a total of \$1, 079,092.00 for all respective years for full satisfaction of the judgment for tax years 2002-2004, 2006 and settlement for tax years 2007-2010, with a dismissal of the case for these years. The 2005 tax year will continue to be litigated. The City is required by the Court to pay the judgment plus interest and costs for 2002-2004, 2006, but Adams has agreed to waive interest and costs for the 2007-2010 years. This resolution authorizes the City Attorney to sign the Settlement Agreement on behalf of the City.

The total amount \$1,079,092.00, is broken out into the judgment amount of \$710,467.00, for years 2002-2004, 2006 which includes interest and costs. The settlement amount for years 2007-2010 is \$368,625.00. The settlement figure represents a negotiated sum and does not identify an assessed valuation upon which the settlement is based, nor does it designate which years the total sum is allocated. The settlement figure is the total amount due; there is no interest. The City's share of the judgment is \$488,186.16 and the settlement is \$135,407.59. The City Attorney, the City Assessor, the City Finance Director and the City Treasurer all recommend approval of the proposed judgment and settlement.

Necessary Authorizations

This resolution:

1. Approves the settlement as outlined above.
2. Authorizes the City Attorney to sign the Settlement Agreement on behalf of the City.
3. Approves the payment of a total of \$1,079,092.00 for all respective years for full satisfaction of the judgment for tax years 2002-2004, 2006 and settlement for tax years 2007-2010.
4. Amends the 2011 Operating Budget to reduce estimated general fund revenues by \$254,823.28 to recognize the City's tax share of the judgment and settlement costs.
5. Amends the 2011 City Operating Budget to appropriate \$368,770.47 from the Contingent Reserve for interest and court costs as part of the judgment.
6. Authorizes the City Assessor and other City staff to pursue the tax adjustments from other taxing jurisdictions pursuant to State law and Department of Revenue procedures.

Resolution

WHEREAS, the City of Madison and Adams Outdoor Advertising have been involved in tax disputes and litigation for a number of years; and

WHEREAS, there is a judgment against the City by Adams for tax years 2002-2004 and 2006 and the City has no further legal remedies to pursue; and
WHEREAS, the City Attorney and Counsel for Adams have reached a proposed settlement of the dispute for tax years 2007-2010, which settlement the Common Council finds is in the best interests of the City; and
WHEREAS, the City Attorney, City Assessor, City Finance Director and City Treasurer all recommend approval of the settlement as described in this resolution.
NOW, THEREFORE, BE IT RESOLVED, that the City of Madison approves the payment of the judgment to Adams Outdoor Advertising for tax years 2002-2004 and 2006 as described above in this resolution; and
BE IT FURTHER RESOLVED, that the City of Madison approves the settlement with Adams Outdoor Advertising for tax years 2007-2010 as described above in this resolution; and
BE IT FURTHER RESOLVED, that the City Attorney is authorized to enter into the Settlement Agreement on behalf of the City with Adams as described above in this resolution; and
BE IT FURTHER RESOLVED, that the Common Council authorizes the payment of \$1,079,092.00 from City resources to be paid to Adams Outdoor Advertising in full satisfaction of the judgment for tax years 2002-2004 and 2005 and in settlement for tax years 2007-2010; and
BE IT FURTHER RESOLVED, that the Assessor and other City staff are authorized to file for reimbursement from other taxing jurisdictions pursuant to Wisconsin Department of Revenue procedures; and
BE IT FINALLY RESOLVED, that the City's Operating Budget for 2011 is amended to reflect reduced revenues of \$254,823.28 to reflect the City's tax share of the judgment and settlement costs and to appropriate \$368,770.47 from the Contingent Reserve for the City's interest and court expenses associated with the judgment.