KRH
4/17/14
Item No. 31

AN ORDINANCE 2014-04-17-0269

AUTHORIZING EXECUTION OF AN AGREEMENT WITH YANTIS COMPANY IN THE AMOUNT OF $197,000.00 FOR RESOLUTION OF A DELAY CLAIM IN CONNECTION WITH THE RUNWAY 4/22 EXTENSION – PHASE III PROJECT AT SAN ANTONIO INTERNATIONAL AIRPORT.

* * * * * *

WHEREAS, in October 2011, the City authorized a construction contract with Yantis Company (Yantis) for Phase III of the Runway 4/22 (formerly Runway 3/21) Extension Project at San Antonio International Airport; and

WHEREAS, upon completion of the work, Yantis submitted a delay claim in the amount of $670,024.00 in January 2014; and

WHEREAS, the parties have negotiated an Agreement to resolve the delay claim for an amount of $197,000.00 plus the release of retainage in the amount of $313,386.76; **NOW THEREFORE,**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. The City Manager or her designee is authorized to execute a Settlement Agreement and Release with Yantis Company in the amount of $197,000.00, a copy of which is set out in **Exhibit 1**.

SECTION 2. The budget in SAP Fund 51099000, Airport Capital Projects, Airport Capital Projects, SAP Project Definition 33-00215, Runway 21 Extension - Phase IV, shall be revised by decreasing the SAP WBS Elements as follows:

WBS NO.			WBS NAME	G/L	G/L NAME	PLAN VERSION 0
33	00215	01-02	AECOM Aviation	5201170	Engineering Fees	$ (2,732.17)
33	00215	05-04-07	Construction - Phase IV J3	5201140	Construction	(508,773.83)
33	00215	05-07	Unallocated Appropriations	5406530	Indirect Costs	(10,000.50)
					TOTALS	**$ (521,506.50)**

SECTION 3. The budget in SAP Fund 51099000, Airport Capital Projects, SAP Project 33-00215, Runway 21 Extension - Phase IV, shall be revised by decreasing the SAP WBS Elements as follows:

FUND NO. OR	FUND NAME OR INTERNAL	G/L	G/L NAME	PLAN VERSION 0
1330000000092	Runway 3-21 Extension 2010	6102100	Interfund Transfers Out	$ (221,506.00)
1330000000094	Runway 3-21 Extension 2011	6102100	Interfund Transfers Out	(300,000.50)
			TOTALS	**$ (521,506.50)**

SECTION 4. The amount of $221,506.00 is reverted in SAP Fund 2605833040, Runway 3/21 Extension, SAP Internal Order #133000000092, SAP GL account 6102100 - Interfund Transfer

out entitled Extend Runway 3/21 paving 66-2. The amount of $221,506.00 is authorized to be transferred from SAP Fund 51099000

SECTION 5. The amount of $300,000.50 is reverted in SAP Fund 2605833044, Runway 3/21 Extension, SAP Internal Order #133000000094, SAP GL account 6102100 - Interfund Transfer out entitled Extend Runway 3/21 paving 69. The amount of $300,000.50 is authorized to be transferred from SAP Fund 51099000.

SECTION 6. The amount of $221,506.00 is appropriated in SAP Fund 2605833040, Runway 3/21 Extension, SAP Internal Order #133000000092, SAP GL account 6102100 - Interfund Transfer out entitled Extend Runway 3/21 paving 66-2. The amount of $221,506.00 is authorized to be transferred to SAP Fund 51099000.

SECTION 7. The budget in SAP Fund 51099000, Airport Capital Projects, SAP Project Definition 33-00160, Extend Runway 21 & Taxiway N, shall be revised by increasing SAP WBS Element 33-00160-90-08 entitled Transfer from IO #133000000092, SAP GL Account 6101100 - Interfund Transfer In, by the amount $221,506.00.

SECTION 8. The amount of $300,000.50 is appropriated in SAP Fund 2605833044, Runway 3/21 Extension, SAP Internal Order #133000000094, SAP GL account 6102100 - Interfund Transfer out entitled Extend Runway 3/21 paving 69. The amount of $300,000.50 is authorized to be transferred to SAP Fund 51099000

SECTION 9. The budget in SAP Fund 51099000, Airport Capital Projects, SAP Project Definition 33-00160, Extend Runway 21 & Taxiway N, shall be revised by increasing SAP WBS Element 33-00160-90-10 entitled Transfer from IO #133000000094, SAP GL Account 6101100 - Interfund Transfer In, by the amount $300,000.50.

SECTION 10. The amount up to $521,506.50 is appropriated in SAP Fund 51099000, Airport Capital Projects, SAP Project Definition 33-00160, Extend Runway 21 & Taxiway N, shall be revised by increasing/decreasing the SAP WBS Elements as follows:

WBS NO.			WBS NAME	G/L	PLAN VERSION 0
33	00160	01-02	DMJM Aviation	5201170	$ (24,993.91)
33	00160	05-01	Administration	5201150	(1,647.68)
33	00160	05-01	Administration	5402030	(389.28)
33	00160	05-01	Administration	5402050	(2,373.51)
33	00160	05-04-04	Contingency	5406530	677,453.67
33	00160	05-04-05	CPS Energy	5201140	(2,447.66)
33	00160	05-04-06	Construction - Phase III	5201140	(124,095.13)
					$ 521,506.50

SECTION 11. Payment in the amount of $197,000.00 in SAP Fund 51099000, Airport Capital Projects, SAP Project Definition 33-00160, Extend Runway 21 & Taxiway N, is authorized to be encumbered with a purchase order and made payable to Yantis Company.

SECTION 12. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance, may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund

Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

SECTION 13. This Ordinance shall be effective immediately upon the receipt of eight affirmative votes; otherwise, it is effective ten days after passage.

PASSED and APPROVED this 17th day of April, 2014.

M A Y O R
Julián Castro

ATTEST:

Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:

Robert F. Greenblum, City Attorney

Agenda Item:	**31 (in consent vote: 4, 5, 6, 7, 8, 9, 11, 13, 14, 15, 16, 17, 17A, 17B, 18, 18A, 18B, 19, 21, 23, 24, 26, 27, 28, 29, 30, 30A, 30B, 31)**
Date:	04/17/2014
Time:	09:47:00 AM
Vote Type:	Motion to Approve
Description:	An Ordinance authorizing an agreement with Yantis Company in an amount up to $197,000.00 for resolution of delay claims associated with the 4/22 Runway Extension -- Phase III project at San Antonio International Airport. [Ed Belmares, Assistant City Manager; Frank Miller, Director, Aviation]
Result:	Passed

Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Julián Castro	Mayor		x				
Diego Bernal	District 1		x				
Ivy R. Taylor	District 2		x				x
Rebecca Viagran	District 3		x				
Rey Saldaña	District 4		x				
Shirley Gonzales	District 5		x				
Ray Lopez	District 6		x				
Cris Medina	District 7	x					
Ron Nirenberg	District 8		x				
Joe Krier	District 9		x			x	
Michael Gallagher	District 10		x				

Exhibit 1

SETTLEMENT AGREEMENT AND RELEASE

THIS SETTLEMENT AGREEMENT (hereafter referred to as the "Agreement") is entered into this _____ day of February, 2014, by and between the City of San Antonio, Texas, a Texas Municipal Corporation (hereafter referred to as "City") and YC Partners, Ltd. d/b/a Yantis Company, a Texas Limited Liability Company (hereafter referred to as "Claimant") with its offices located at 3611 Paesanos Parkway, San Antonio, TX 78231 (City and Claimant collectively referred to as "the Parties").

WHEREAS, the Parties entered into a construction contract, as authorized by the San Antonio City Council pursuant to Ordinance No. 2011-10-20-0852 on October 20,2011 (hereafter referred to as the "Contract") to perform certain construction for the Runway 3/21 Extension-Paving and Electrical for Runway 21 and Taxiway N at San Antonio International Airport in San Antonio, Texas, Project No. 33-00160, (hereafter referred to as the "Project"); capitalized terms not otherwise defined herein shall have the meanings set forth in the Contract; and

WHEREAS, the Parties have asserted certain claims against one another growing out of the Project, which claims collectively are referred to herein as the "Project Claims"; and

WHEREAS, bona fide disputes and controversies exist between the Parties, with respect to the Project Claims, but the Parties wish and agree to settle the Project Claims and any and all other matters relating to the Project;

NOW THEREFORE, in consideration of the mutual covenants, promises, representations, conditions warranties and agreements set forth herein, and other good and valuable consideration, receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Contingent upon approval of this Agreement by the City of San Antonio, Texas City Council ("City Council"), City does hereby agree to payment of the total amount of retainage and ONE HUNDRED NINETY-SEVEN THOUSAND and 00/100 Dollars ($197,000.00), as full and final settlement of any and all claims, liabilities, damages, obligation and/or duties, known and unknown, asserted or unasserted, past present and future owed by City to Claimant in any way related to or arising out of the Project Claim or out of the Project as whole, perceived or actual, that Claimant may have incurred. City will pay Claimant $316,386.76 in Contract retainage, currently being held by the City, within thirty days of receiving a good and accurate final invoice and all supporting documentation required per the Contract. The remaining $197,000.00 will be paid in full within thirty (30) calendar days of approval of this Agreement by City Council.

2. Claimant, its respective officers, directors, members, employees, agents, representatives and their respective successors, heirs and assigns, does hereby

release, acquit and forever discharge City and its respective officers, directors, members, employees, agents, representatives and their respective sureties, successors, heirs and assigns from any and all actions, suits, debts, demands, accounts, claims, reckonings, bonds, bills, liabilities, controversies, damages, judgments, and causes of action, whether known or unknown, actual or potential, whether based on law or in equity, in tort, contract, by statute or in law, which either now has or ever has had by reason of any matter, cause or thing, which in any way relate directly or indirectly to the Project. It is the express intent of the Parties that this Agreement operate as a bar to any subsequent proceedings initiated by or on behalf of Claimant with respect to any claims, causes of action, lawsuits, debts, demands, accounts, claims, reckonings, bonds, bills, liabilities, controversies, damages, and judgments, perceived or actual, that Claimant may have incurred or accrued, arising from or related to the Contract or Project.

3. City, its respective officers, directors, members, employees, agents, subcontractors, representatives and their respective successors, heirs and assigns, does hereby release, acquit and forever discharge Claimant and its respective officers, directors, members, employees, agents, representatives and their respective sureties, successors, heirs and assigns from those actions, suits, debts, demands, accounts, claims, reckonings, bonds, bills, liabilities, controversies, damages, judgments, and causes of action, whether based on law or in equity, in tort, contract, by statute or in law, with the exception of such warranty and indemnity provisions of the Contract as survive completion of the work thereunder and any implied warranties applicable by operation of law. It is the express intent of the Parties that this Agreement operate as a bar to any subsequent proceedings initiated by or on behalf of City with respect to any claims, causes of action or lawsuits, debts, demands, accounts, claims, reckonings, bonds, bills, liabilities, controversies, damages, and judgments, perceived or actual that City may have incurred or accrued arising from or related to the Contract or Project, with the exception of warranty and indemnity provisions of the Contract as survive completion of the work thereunder and any implied warranties applicable by operation of law. The Parties expressly agree that Claimant's warranty obligations, both express and implied, under the Contract shall remain in full force and effect in accordance with the terms thereof. The Parties agree that the one year express warranty in the Contract has expired. The Parties also agree that there are no known facts or circumstances indicating that any warranty or indemnity claim(s), issue(s) or problem(s) exist as of the date of the execution of this Agreement.

4. This Agreement is a negotiated Lump Sum settlement between the Parties. Any action(s) taken pursuant to the Agreement does not constitute and shall not be construed as an admission of liability on the part of either Party.

5. The Parties warrant and represent that they have read this Agreement, that they understand this Agreement and that they freely and voluntarily entered into this Agreement.

6. Claimant represents and warrants that it is the sole and lawful owner of all right, title and interest in and to every claim and other matter that Claimant is purporting to release or settle by this Agreement and that Claimant previously has not assigned or transferred, either by act or operation of law, to any party or entity, any claim or other matters release by this Agreement. It further is understand and specifically agreed, in the event that City is subject to further claims, whether in law or in equity, by any Subcontractor, Sub-Consultant, supplier, person, firm, corporation or other entity, acting under any actual or purported right of subrogation or assignment, Claimant shall indemnify, hold harmless and defend City from any such claim or demand.

7. Each of the Parties warrants, represents, and agrees that no promise, agreement, representation or statement not explicitly and expressly contained in the Agreement has been made or relied upon in entering the Agreement. This Agreement is a complete integration and represents the entire agreement among and between the Parties relating to the subject matter hereof. This Agreement supersedes and replaces any and all previous understandings or agreements, whether oral or written.

8. Each signatory warrant and represent that: (i) it legally is competent and has the power to execute this Agreement on behalf of the party for whom it purports to execute this Agreement; and (ii) it has entered the Agreement with full and complete knowledge of its contents and the effects thereof, solely motivated by its own free will and accord.

9. The Parties warrant and represent that they will cooperate fully in executing, preparing and filing any and all documents that may be necessary or appropriate to give full force and effect to the Agreement.

10. This Agreement shall inure to the benefit of and be binding upon the respective successors, heirs and assigns of the Parties hereto.

11. This Agreement may not orally be modified, amended, waived or terminated. No modification, amendment, termination or claimed waiver of any of the Agreement's provisions shall be binding unless made in writing and signed by the Parties hereto.

12. This Agreement may be executed in counterpart by each signatory and when each party has done so, such will have the same force and legal effect as if each had signed the same document.

13. If any portion of this Agreement is held to be invalid or restricted for any reason, the remainder of this Agreement shall continue in full force and effect.

14. This Agreement is made and performable in Texas, and shall be construed in accordance with the substantive law of the State of Texas, without giving effect to Texas's conflict of law provisions, and all obligation hereunder are to be performed in San Antonio, Bexar County, Texas. Any actions arising out of this

Agreement shall be brought in the State District Court of San Antonio, Bexar County, Texas.

15. If any action in law or in equity, to include any action for declaratory relief, is brought to enforce or interpret the provisions of this Agreement, the substantially prevailing party shall be entitled to recover reasonable attorney's fees from the other Party, which fees may be set by the Court in the trial of such action or may be enforced in a separate action brought for that purpose and which fees shall be in addition to any other relief which may be awarded.

IN WITNESS WHEREOF, the Parties each have duly executed this Settlement Agreement on the dates represented below.

City of San Antonio, Texas

By: _____
Sheryl Sculley
City Manager

Execution Date: _____

YC Partners Ltd. d/b/a Yantis Company

By: _____
Signature
ARNOLD BURROS
Printed Name
EXECUTIVE VICE PRESIDENT
Title

Execution Date: 2/24/14

APPROVED AS TO FORM:

_____
City Attorney

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