

AN ORDINANCE 2007-01-04-0015

AUTHORIZING THE SETTLEMENT OF A LAWSUIT STYLED *CITY OF SAN ANTONIO V. MARTIN MARIETTA MATERIALS SOUTHWEST, LTD.*, 04-06-00515-CV, COURT OF APPEALS, FOURTH COURT OF APPEALS DISTRICT, SAN ANTONIO, TEXAS, BEXAR COUNTY, AND AUTHORIZING PAYMENT IN THE AMOUNT OF \$115,000.00

* * * * *

WHEREAS, MARTIN MARIETTA MATERIALS SOUTHWEST, LTD filed suit against the City of San Antonio alleging failure to properly procure a payment bond on a construction project; and

WHEREAS, the City vigorously defended said suit; however, judgment was entered against the City in the in the amount of \$125,500.37 plus interest; and

WHEREAS, while the matter was on appeal, the parties reached a proposed settlement of this dispute in the amount of \$115,000.00; and

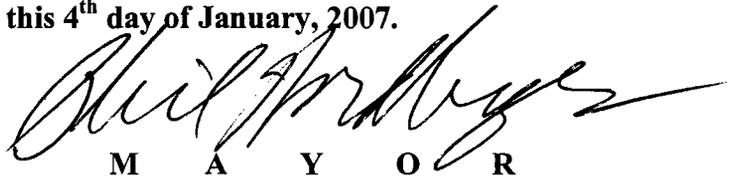
WHEREAS, because of the ongoing costs of appeal and the uncertainty of further litigation, settlement of the judgment is in the best interest of the City: **NOW THEREFORE:**

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

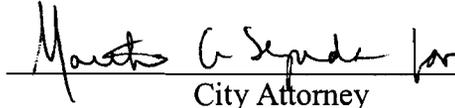
SECTION 1. The amount of \$115,000.00 is hereby to be paid in final settlement of the case, styled *CITY OF SAN ANTONIO V. MARTIN MARIETTA MATERIALS SOUTHWEST, LTD.*, 04-06-00515-CV, COURT OF APPEALS, FOURTH COURT OF APPEALS DISTRICT, SAN ANTONIO, TEXAS, BEXAR COUNTY. Payment to be paid from Fund 75-00100 Insurance Reserve, from GL 5402530, entitled General Liability Claims, in Cost Center 1009020001, and made payable to *MARTIN MARIETTA MATERIALS SOUTHWEST, LTD.*

SECTION 2. This ordinance shall be effective on the tenth (10th) day after passage hereof.

PASSED and APPROVED this 4th day of January, 2007.


M A Y O R

ATTEST: 
City Clerk

APPROVED AS TO FORM: 
City Attorney



CITY OF SAN ANTONIO
Request for Council Action

Agenda Item # 19
Council Meeting Date: 1/4/2007
RFCA Tracking No: R-885

DEPARTMENT: City Attorney's Office

DEPARTMENT HEAD: Michael Bernard

COUNCIL DISTRICT(S) IMPACTED:
City Wide

SUBJECT:
Settlement in Marietta Materials v. COSA

SUMMARY:

This Ordinance authorizes a settlement related to the lawsuit styled *City of San Antonio v. Martin Marietta Materials, Southwest, Lmt.*, Cause No. 2005-CI-01166, 225th Judicial District Court, Bexar County, Texas and *City of San Antonio v. Martin Marietta Materials Southwest, Lmt.*, Cause No. 04-06-00515-CV, currently pending in the Fourth Court of Appeals, for the amount of \$115,000.00.

BACKGROUND INFORMATION:

Martin Marietta Materials Southwest, Lmt. ("Martin Marietta") filed suit against the City on January 25, 2005 for the recovery of the cost of construction materials they provided to a City public improvement construction project ("Project"). The contractor on the Project declared bankruptcy and the performance surety took over. The performance surety was subsequently put into receivership by the State before satisfying all debts owed to subcontractors. Martin Marietta is one of those subcontractors. On April 24, 2006, the district court granted summary judgment to Martin Marietta and ordered the City pay \$141,482.59 plus post judgment interest at a rate of 7.5 % to Martin Marietta. The City Attorney's Office appealed the order. Martin Marietta has offered to settle the claim for \$115,000.00.

ISSUE:

Pursuant to Texas Government Code section 2253, a governmental entity that fails to obtain from a contractor a payment bond is subject to the same liability that a surety would have if the surety had issued a payment bond. The district court accepted Martin Marietta's argument that the City failed to procure a payment bond as required by statute.

ALTERNATIVES:

If the settlement agreement is not approved, the case will proceed before the Court of Appeals. If the Court of Appeals upholds the decision of the district court, Martin Marietta would recover from the City \$141,482.59 plus post judgment interest at a rate of 7.5%. It is in the best interest of the City to settle this matter to avoid the uncertainty and risks of the appeal.

FISCAL IMPACT:

If approved, \$115,000.00 will be paid to Martin Marietta and their attorneys from the Self Insurance Fund.

RECOMMENDATION:

Staff recommends approval of this Ordinance.

ATTACHMENT(S):

File Description	File Name
Ordinance/Supplemental Documents	200701040015.pdf

DEPARTMENT HEAD AUTHORIZATIONS:

Martha Sepeda First Assistant City Attorney City Attorney's Office

APPROVED FOR COUNCIL CONSIDERATION:

Sheryl Sculley City Manager

MEETING OF THE CITY COUNCIL

lack ordinance

ALAMODOME
ARTS & CULTURAL AFFAIRS
ASSET MANAGEMENT
AVIATION
BUDGET & PERFORMANCE ASSESSMENT
BUILDING INSPECTIONS
HOUSE NUMBERING
CITY ATTORNEY
MUNICIPAL COURT
REAL ESTATE (FASSNIDGE)
REAL ESTATE (WOOD)
RISK MANAGEMENT
CITY MANAGER
SPECIAL PROJECTS
CITY PUBLIC SERVICE - GENERAL MANAGER
CITY PUBLIC SERVICE - MAPS AND RECORDS
CODE COMPLIANCE
COMMERCIAL RECORDER
COMMUNITY INITIATIVES
COMMUNITY RELATIONS
PUBLIC INFORMATION
CONVENTION AND VISITORS BUREAU
CONVENTION CENTER EXPANSION OFFICE
CONVENTION FACILITIES
ECONOMIC DEVELOPMENT
FINANCE - DIRECTOR
FINANCE - ASSESSOR
FINANCE - CONTROLLER
FINANCE - GRANTS
FINANCE - TREASURY
FIRE DEPARTMENT
HOUSING AND COMMUNITY DEVELOPMENT
HUMAN RESOURCES (PERSONNEL)
INFORMATION SERVICES
INTERGOVERNMENTAL RELATIONS
INTERNAL REVIEW
INTERNATIONAL AFFAIRS
LIBRARY
METROPOLITAN HEALTH DISTRICT
MUNICIPAL CODE CORPORATION
MUNICIPAL COURT
PARKS AND RECREATION
MARKET SQUARE
YOUTH INITIATIVES
PLANNING DEPARTMENT
DISABILITY ACCESS OFFICE
LAND DEVELOPMENT SERVICES
POLICE DEPARTMENT
GROUND TRANSPORTATION
PUBLIC WORKS DIRECTOR
CAPITAL PROJECTS
CENTRAL MAPPING
ENGINEERING
ENVIRONMENTAL SERVICES
PARKING DIVISION
REAL ESTATE DIVISION
SOLID WASTE
TRAFFIC ENGINEERING
PURCHASING AND GENERAL SERVICES
SAN ANTONIO WATER SYSTEMS (SAWS)
VIA

AGENDA ITEM NUMBER: 19
 DATE: JAN 04 2007
 MOTION: _____
 ORDINANCE NUMBER: 2007-01-04-0015
 RESOLUTION NUMBER: _____
 ZONING CASE NUMBER: _____
 TRAVEL AUTHORIZATION: _____

ROBERT J. ...			
SHERRY ...			
ROBERT ...			
RICHARD ...			
PATT ...			
DELICIA ...			
ELINA ...			
JOE ...			
KEVIN ...			
CHRIS ...			
HAAS ...			
PHIL ...			

CONSENT AGENDA