



# City of San Antonio

## Legislation Details (With Text)

**File #:** 14-342

**Type:** Procedural

**In control:** City Council A Session

**On agenda:** 4/17/2014

**Title:** Consideration of the following items relating to delay claims associated with certain construction projects throughout the City: [Peter Zanoni, Deputy City Manager; Mike Frisbie, Director, Transportation and Capital Improvements]

**Sponsors:**

**Indexes:**

**Code sections:**

**Attachments:** 1. Settlement signed by E-Z Bel 3-19-14, 2. Yantis Settlement Agreement

Date	Ver.	Action By	Action	Result
4/17/2014	1	City Council A Session	approved	Pass

**DEPARTMENT:** Transportation and Capital Improvements

**DEPARTMENT HEAD:** Mike Frisbie (TCI)

**COUNCIL DISTRICTS IMPACTED:** 2, 4 and 10

**SUBJECT:**

Settlement of Claims by City

**SUMMARY:**

Consideration of the following items related to settlement of claims:

- A) An ordinance authorizing a negotiated agreement with Yantis Company, for a \$514,357.04 payment to Yantis Company, to settle issues associated with the construction of 36<sup>th</sup> Street (US 90 to Growden), Walters Street, Jones Maltsberger (Redland Road to Thousand Oaks) and Indian Creek Channel Improvements Projects.
- B) An ordinance authorizing a negotiated agreement with E-Z Bel Construction, LLC, for a \$284,709.34 payment to E-Z Bel Construction, LLC, to settle an issue associated with the construction of Fort Sam Houston Transportation Project.

**BACKGROUND INFORMATION:**

These ordinances regarding Settlement of Claims by the City authorizes approval of negotiated agreements with EZ Bel Construction and Yantis to settle issues associated with projects listed below. Upon completion of these Projects, these contractors filed certain claims for additional incurred costs for extended contract days. The City and Contractor reviewed time delays and additional costs incurred and agreed to settle these matters as a total lump sum agreement.

The lump sum agreement settlement amount compensates the contractor for overhead costs incurred for the extended contract days. Overhead costs include costs for non-hourly, project-specific, employees, equipment, jobsite facilities and services at a project site that are incurred by a contractor, regardless of the quantity of work accomplished.

- A) City contracted with Yantis Company to perform construction of four 2007 - 2012 Bond Projects, which included: 36<sup>th</sup> Street (US 90 to Growden), Walters Street, Jones Maltsberger (Redland Road to Thousand Oaks) and Indian Creek Channel Improvements. Upon completion of the work, certain claims remained unresolved regarding monies due and owed for work performed under these contracts. Yantis Company and City have agreed to resolve those issues related to these contracts for a settlement amount of \$514,357.04.

36<sup>th</sup> St. - US 90 to Growden

Council District: 4

Project Background: This Project provided for a four-lane street with a median, curbs and sidewalks, as well as drainage improvements. A previously-executed contract with Yantis Company for the construction of the 36<sup>th</sup> St. - US 90 to Growden Project was approved by City Council on January 21, 2010, through Ordinance 2010-01-21-0039. Project construction began in July 2010 and was substantially completed in October 2013, with a final contract value of \$3,844,745.

Claim: Material cost escalation and additional overhead costs, due to Project delays caused by utility conflicts, and additional incurred costs for paving and excavation that were outside the original Project scope. This settlement amount compensates Contractor for incurred costs beyond the original Project contract costs and covers overhead costs incurred for the extended contract days.

Walters Street - IH35 to Fort Sam Main Gate

Council District: 2

Project Background: This Project provided for constructing a six-lane street with a median, curbs, sidewalks, driveway approaches, bike lanes, turn lanes and drainage improvements. A previously-executed contract with Yantis Company for the construction of the Walters Street Project was approved by City Council on August 5, 2010, through Ordinance 2010-08-05-0656. Project construction began in October 2010 and was substantially completed in October 2013, with a final contract value of \$4,162,527.

Claim: City-requested changes throughout the life of the Project, totaling around \$292,000, increased the overall contract time. This settlement amount compensates Contractor for overhead costs incurred for the extended contract days.

Jones Maltsberger - Redland Road to Thousand Oaks

Council District: 10

Project Background: This Project provided for the reconstructing and widening of Jones Maltsberger, from Redland to Thousand Oaks from two lanes to five lanes, including necessary drainage facilities. A previously-executed contract with Yantis Company for the construction of the Jones Maltsberger Project was approved by City Council on December 16, 2010, through Ordinance 2010-12-16-1071. Project construction began in January 2011 and was substantially completed in December 2012, with a final contract value of \$7,172,657.

Claim: Utility conflicts caused delays to the Project schedule. This settlement amount compensates Contractor for overhead costs incurred for the extended contract days.

Indian Creek Channel Improvements

Council District: 4

Project Background: This Project provided for widening the existing channel on Indian Creek, from Five Palms to Godek, tying into War Cloud and widening the drainage easement behind Kim Valley. A previously-executed contract with Yantis Company for the construction of the Indian Creek Project was approved by City Council on March 18, 2010, through Ordinance 2010-03-18-0207. Project construction began in July 2010 and was substantially completed in February 2013, with a final contract value of \$2,985,830.

Claim: An off-site water main break caused excessive water in the Project area, delaying Contractor's efforts; further, unexpected additional hauling requirements on the Project precipitated an extension of the original contract days. This settlement amount compensates Contractor for incurred overhead costs for the Project's extended contract days.

- B) City contracted with E-Z Bel Construction, LLC, to perform construction of Fort Sam Houston Transportation Project, a 2007 - 2012 General Obligation Bond funded Project. Upon completion of the work, a claim remained unresolved regarding monies due and owed for work performed under this contract. E-Z Bel Construction and City have agreed to resolve this issue related to this contract for a settlement amount of \$284,709.34.

Fort Sam Houston Transportation

Council Districts: 2 & 9

Project Background: This Project provided for intersection improvements on Harry Wurzbach at Burr, Winans and Rittman Roads. A previously-executed contract with EZ Bel Construction, LLC for the construction of the Fort Sam Houston Transportation Project was approved by City Council on September 29, 2011, through Ordinance 2011-09-29-0783. Project construction began in November 2011 and was substantially completed in May 2013, with a final contract value of \$9,024,992.

Claim: Utility conflicts and additional environmental mitigation extended the contract days required for the Project. This settlement amount compensates the Contractor for overhead costs incurred for the extended contract days.

**ISSUE:**

Under the Texas Local Government Code, a municipality may be held liable for monies for work performed pursuant to a contract for the provision of goods and services.

- A) This ordinance authorizes a negotiated settlement with Yantis Company to resolve delay claims and out-of-scope work on four City construction projects -- 36<sup>th</sup> Street (US 90 to Growden), Walters Street, Jones Maltsberger (Redland Road to Thousand Oaks) and Indian Creek Channel Improvements -- in the total amount of \$514,357.04, made payable to Yantis from existing project budgets.

This amount represents the final amount due either party under the construction Contract.

- B) This ordinance authorizes a negotiated settlement with E-Z Bel Construction, LLC to resolve a delay claim on Fort Sam Houston Transportation Project in an amount of \$284,709.34, made payable to E-Z Bel Construction from the existing Project budget.

This amount represents the final amount due either party under the construction Contract.

**ALTERNATIVES:**

If these settlement agreements are not approved by City Council, the parties may escalate the disputes into litigation. It is in the best interest of the City to settle these matters to avoid the uncertainty and risks associated with litigation.

**FISCAL IMPACT:**

- A) If City Council approves the settlement, City will pay Yantis Company a total of \$514,357.04 from the existing project budgets.
- B) If City Council approves the settlement, City will pay E-Z Bel Construction, LLC a total of \$284,709.34 from the existing Fort Sam Houston Transportation project budget.

Funding has been identified in the specified projects within the FY 2014 to FY 2019 Capital Improvement Program Spending Plan.

**RECOMMENDATION:**

Staff recommends approval of these two settlements.