

CONSENT AGENDA
ITEM 1A 65

**CITY OF SAN ANTONIO
CITY ATTORNEY'S OFFICE
CITY COUNCIL AGENDA MEMORANDUM**

TO: Mayor and City Council

FROM: Michael D. Bernard, City Attorney

SUBJECT: Payment of Contractor Funds to Surety

DATE: December 15, 2005

SUMMARY AND RECOMMENDATIONS

This ordinance approves the payment of \$51,071.08 from appropriated contract funds for the renovation of the Mexican Cultural Institute (the "Project"), as part of the last expansion of the Henry B. Gonzalez Convention Center Expansion Project, to Mountbatten Surety Company, Inc., as surety for Sandoval Construction Company.

Staff recommends approval of this ordinance.

BACKGROUND INFORMATION

In 2000 the Contractor was awarded a \$2,330,000.00 contract by the City to perform work associated with the Project. In accordance with its contractual requirements and State law, the Contractor obtained payment and performance bonds from the Surety. The performance bond insured the Contractor's completion of the construction and the payment bond insured the Contractor's payment to its subcontractors. The Project was completed in 2002.

A series of disputes surrounding delays and the quality of work performed on the Project resulted in the Contractor withholding payment to many of its subcontractors. Therefore, by the terms of its agreement with the Contractor, the City withheld further payments until such time as the disputes were resolved. As a result of the Contractor's failure to pay, several subcontractors filed claims with the Surety seeking payment for work completed. The Surety has made some payments on the claims; however, two of the subcontractors, A.D. Willis and Martin Wright Electric Co., have sued the City, the Contractor and the Surety directly, to recover full payment for their work on the Project. The Contractor has since petitioned for bankruptcy.

On September 15, 2005, the City transferred retained funds in the amount of \$131,396.65 to the Surety, as required under the General Indemnity Agreement between the Surety and the Contractor. The Surety is now seeking any additional funds owed to Contractor, asserting its superior interest in any and all remaining contract funds over the rights which may be asserted by

either the Contractor or its subcontractors. The City has identified \$51,071.08 from appropriated contract funds that were withheld from the Contractor pending resolution of disputes between the Contractor and its subcontractors.

POLICY ANALYSIS

The Contractor failed to make payments to its subcontractors and has subsequently petitioned for bankruptcy. The Surety has been subrogated to the position of the Contractor and has made numerous payments to subcontractors on Contractor's behalf. The Surety is now seeking reimbursement of any and all funds owed to Contractor in accordance with its General Indemnity Agreement with the Contractor. Payment of funds to the Surety requires City Council approval.

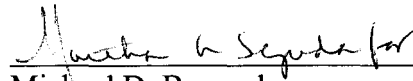
The payment of \$51,071.08 along with the previous payment of \$131,396.65 to Mountbatten Surety Company, Inc. should result in dismissal by the Surety of its suit against the City, without any additional costs.

FISCAL IMPACT

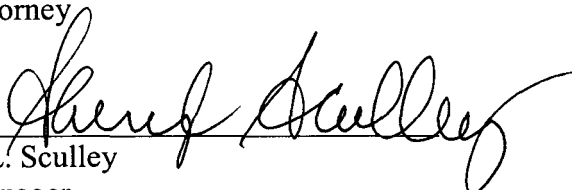
Under the authority of this ordinance, the City will make a payment of \$51,071.08 to Mountbatten Surety Company, Inc. These funds were previously appropriated for the Project, therefore, there is no fiscal impact on the General Fund as a result of this action.

COORDINATION

This item has been coordinated with the Convention Facilities and Public Works Departments.



Michael D. Bernard
City Attorney



Sheryl L. Sculley
City Manager