



Legislation Details (With Text)

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Title: CONSIDER APPROVAL OF A SETTLEMENT AGREEMENT & GENERAL RELEASE OF ALL CLAIMS WITH SIALIC CONTRACTORS CORPORATION DBA SHAWNAN (CITY COUNCIL)
Sponsors: City Attorney
Indexes:
Code sections:
Attachments: 1. Sialic Settlement Agreement

Date	Ver.	Action By	Action	Result
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Report to Mayor and City Council

Tuesday, February 21, 2017

Consent

SUBJECT:

CONSIDER APPROVAL OF A SETTLEMENT AGREEMENT & GENERAL RELEASE OF ALL CLAIMS WITH SIALIC CONTRACTORS CORPORATION DBA SHAWNAN (CITY COUNCIL)

I. SUMMARY

Presented for consideration is an agreement to settle and dismiss, with prejudice, certain litigation entitled *Sialic Contractors Corporation dba Shawnan v. City of Carson, et al.*, Los Angeles Superior Court Case No. TC028350 (the "Lawsuit"), filed on January 15, 2016.

On September 22, 2014, the City of Carson ("City") and Sialic Contractors Corporation dba Shawnan ("Shawnan") entered into a public works contract for the repaving of Avalon Blvd. from Dominguez St. to Victoria St. Shawnan performed additional work to complete the project, including but not limited to the removal of petromat found below the pavement's surface. A dispute arose between the City and Shawnan regarding the authorization or lack thereof for Shawnan's performance of additional work and the amount owed for said work. Shawnan filed the Lawsuit against the City for breach of contract, seeking damages in excess of \$479,447.01 in addition to the release of the retention proceeds. As a result of mediation, the parties have reached a settlement. The City agrees to pay Shawnan \$325,000.00 as the settlement amount for the Lawsuit and will release the retention

proceeds upon the acceptance of the project by the City Council.

The dismissal and settlement of the Lawsuit is conditioned upon City Council approval of the settlement agreement.

II. RECOMMENDATION

TAKE the following actions:

1. APPROVE the terms and conditions in the attached SETTLEMENT AGREEMENT & GENERAL RELEASE OF ALL CLAIMS.
2. AUTHORIZE the City Manager to execute the same following approval as to form by the City Attorney.

III. ALTERNATIVES

TAKE any other action the City Council deems appropriate and consistent with the requirements of law.

IV. BACKGROUND

The City awarded the contract for Project No. 1444 entitled "Avalon Blvd. Pavement Reconstruction from Dominguez St. to Victoria Street" (hereafter, "Project") to Shawnan, the lowest responsible bidder. The parties executed a contract for said Project on or about September 22, 2014.

After beginning construction, the City prepared Change Order No. 1 for additional work in the amount of \$28,444.80. Shawnan completed this work, but the City has not yet paid for it. In addition, Shawnan is seeking an additional \$4,747.68 for work also associated with Change Order No. 1.

Shawnan encountered petromat while grinding the existing asphalt roadway on Avalon Blvd and informed the City of this changed condition. The City obtained a cost proposal from Shawnan for removal of the petromat and agreed to the price informally by email, but no change order was prepared. Pursuant to this informal agreement, Shawnan proceeded with removing the petromat and recycling it.

Thereafter, Shawnan submitted an invoice to the City in the amount of \$479,447.01 for performance of the aforementioned work relating to Change Order No. 1, the petromat, and the traffic loop detector as well as the release of the retention and overhead damages for delays allegedly caused by the City. In response, the City refused to pay the requested amount on the grounds the work relating to the petromat removal was completed without a proper change order and the amount sought was excessive.

Shawnan and City staff met regarding Shawnan's demands for payment for additional work and other matters, but no agreement was reached. On January 15, 2016, Shawnan filed the Lawsuit, seeking damages in the amount of \$479,447.01 in addition to attorney's fees. During discovery, it became clear that the presence of the petromat required Shawnan to

perform additional work to complete the Project. Although the City recognized Shawnan's completion of work relating to the petromat removal was necessary to complete the Project, the City maintained its position that the amount sought was excessive.

On December 8, 2016, the parties participated in mediation. As a result of the mediation, the parties agreed to settle the case for \$325,000 subject to the City Council's approval and the City will release the retention proceeds following acceptance of the project.

To effectuate this settlement, the City Attorney's office and Shawnan have prepared the attached Settlement Agreement & General Release of All Claims, which fully and finally resolves the claims stated in the Lawsuit. The City Attorney's office recommends that the City Council approve the settlement agreement and authorize the City Manager to sign it after it has been approved as to form by the City Attorney.

V. FISCAL IMPACT

The settlement requires the lump-sum payment of \$325,000.00 from the City to Shawnan and the release of the retention proceeds. The foregoing payments will be paid from the Successor Agency bond proceeds that were transferred to the City via the Cooperative Bond Proceeds Agreement.

VI. EXHIBITS

1. Proposed Settlement Agreement & General Release of All Claims (pp 4-10)

Prepared by: Sunny K. Soltani, City Attorney