

AN ORDINANCE **101376**

AUTHORIZING THE TRANSFER OF \$131,028.12 IN RETAINED FUNDS FROM THE CONTRACT WITH SANDOVAL CONSTRUCTION COMPANY (the "CONTRACTOR") TO RENOVATE THE MEXICAN CULTURAL INSTITUTE (the "PROJECT") AS PART OF THE HENRY B. GONZALEZ CONVENTION CENTER EXPANSION PROJECT TO FIRST SEALORD SURETY, INC., FORMERLY KNOWN AS MOUNTBATTEN SURETY COMPANY, INC. (the "SURETY"), WHO ISSUED THE REQUIRED PAYMENT AND PERFORMANCE BONDS FOR CONTRACTOR ON THE PROJECT.

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WHEREAS, a contract was awarded to Sandoval Construction Company (the "Contractor") pursuant to Ordinance No. 93003 passed and approved on November 30, 2000, to renovate the Mexican Cultural Institute (the "Project") as part of the Henry B. Gonzalez Convention Center Expansion Project; and

WHEREAS, in accordance with the terms and conditions of the Contract, the Contractor was required to obtain payment and performance bonds from an approved surety company; and

WHEREAS, the Contractor executed a General Indemnity Agreement ("Attachment I") with Mountbatten Surety Company, Inc., now known as First Sealord Surety, Inc. (the "Surety"), in order to meet the bonding requirements established by the City; and

WHEREAS, additional terms of the contract allowed the City to retain five-percent (5%) of the Contract's total value to ensure that the Contractor completed the Project to City's satisfaction and that all terms and conditions of the Contract were satisfied; and

WHEREAS, a total of \$2,330,000.00 was expended on the contract and the City was thereby authorized to retain \$131,028.12 from the Contractor until all terms and conditions of the Contract were satisfied; and

WHEREAS, disputes arose between the Contractor and its subcontractors and the Contractor withheld payment to subcontractors until such a time as the disputes would be resolved, and

WHEREAS, the City continued to retain funds under the Contract while awaiting resolution of all issues between the Contractor and its subcontractors; and

WHEREAS, two subcontractors have subsequently sued the City, the Contractor and the Surety directly to recover payment for work performed on the Project; and

WHEREAS, by the terms of the General Indemnity Agreement executed by the Contractor and the Surety, the Surety has superior interest in the retained funds over any rights which may be asserted by the Contractor or its subcontractors; and

WHEREAS, by transferring the retained funds to the Surety, the Surety will release the City from any liability for interest, court costs, and attorneys fees that the Surety may be entitled to and also allow City to assert indemnity under the terms of the surety agreement for lawsuits filed against City by subcontractors; **NOW THEREFORE:**

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

SECTION 1. The transfer of \$131,028.12 in retained funds to First Sealord Surety (formerly known as Mountbatten Surety Company) from a contract awarded to Sandoval Construction Company pursuant to Ordinance No. 93003 passed and approved on November 30, 2000 is hereby authorized.

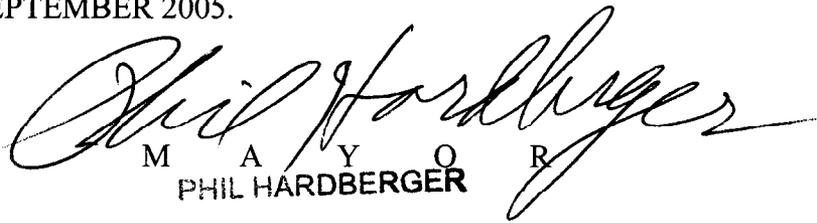
SECTION 2. The City Manager is authorized to execute any and all documents deemed necessary by the City Attorney's Office to meet the purpose and intent of this Ordinance.

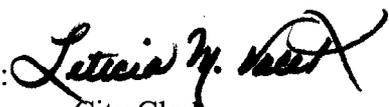
SECTION 3. Funds are available in Fund Number 47001000 as a balance in Fund Number 2120510, entitled "Contracts Retainage Payable." These funds are to be made payable to First Sealord Surety, Inc. in accordance with the General Indemnity Agreement executed between Contractor and Surety and are to be encumbered upon issuance of a purchase order.

SECTION 4. 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.

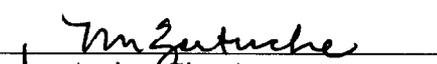
SECTION 5. This Ordinance shall become effective immediately upon the passage of eight affirmative votes and if eight affirmative votes are not received then after the tenth (10th) day after passage hereof.

PASSED AND APPROVED this 15th day of SEPTEMBER 2005.


M A Y O R
PHIL HARDBERGER

ATTEST: 
City Clerk

APPROVED AS TO FORM:


for Acting City Attorney