



CITY OF MARTINEZ

**CITY COUNCIL AGENDA
October 6, 2010**

TO: Mayor and City Council

FROM: Veronica A. F. Nebb, Sr. Assistant City Attorney

SUBJECT: Consideration and Possible Approval of Settlement Agreement in the Matter of *Griffin v Tyson* and Authorize the Mayor to Execute Agreement

DATE: September 30, 2010

RECOMMENDATION:

Approve settlement agreement and authorize the Mayor to execute same in the matter of *Griffin v Tyson*.

BACKGROUND:

The matter of *Griffin v Tyson, et al*, as filed in Solano County Superior Court on October 15, 2009. The case involves labor claims relating to prevailing wage rates associated with two public works projects performed by Robert W. Tyson Construction, one in the City of Dixon and one in the City of Martinez. The City of Martinez project in question was the H Street Storm Drain Replacement project in 2009. The Plaintiff's Griffin and Gonzales, were workers on the H Street project and claimed that they were underpaid wages in accordance with prevailing wage requirements. Tyson denied these claims. Pursuant to stop notices filed by the workers, the City withheld from payment to Tyson an amount equal to the amount of the claimed unpaid wages.

As is true in all cases of this nature, the City does not actively participate in the litigation which does not involve any allegations of any wrongdoing against the City. The City is named as participates merely as a custodian of the funds held pending resolution between the parties. In the present case, the parties have resolved the dispute and propose the attached Settlement Agreement to memorialize the resolution of the case. Pursuant to the Settlement Agreement the City is to pay the retained project funds to the surety who in turn will be paying the claims of the Plaintiffs.

FISCAL IMPACT:

No substantial fiscal impact will result from the settlement. The funds being paid by the City to the surety are funds retained by the City from payments otherwise due to Tyson pursuant to the construction contract for the H Street project between the City and Tyson.

ACTION:

Approve settlement agreement and authorize the Mayor to execute same in the matter of *Griffin v Tyson*.

Attachments: Settlement Agreement

A handwritten signature in black ink, appearing to read "Philip Vance". The signature is written in a cursive style with a large initial "P".

APPROVED BY: City Manager

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into effective August 13, 2010, by and between Martin Griffin (“Griffin”), Anthony Gonsalves (“Gonsalves”), Anthony Florez (“Florez”), Western Surety Company (“Western”), City of Martinez (“Martinez”) and the City of Dixon (“Dixon”) and concerns claims filed in Solano County Superior Court (“the Court”) under case number FCS-034496 (“the Action”). The parties shall hereinafter and collectively be known as “the Party” or “the Parties,” as the case may be.

WHEREAS, on August 13, 2010 the Parties negotiated a settlement of all pending claims in the Action on the terms and conditions set forth below.

NOW, THEREFORE, in consideration of the following covenants and agreements, the Parties agree as follows with reference to the following facts:

RECITALS

- a. Griffin, Gonsalves and Florez filed a complaint in the Action on October 15, 2009, seeking payment of monies due as pay for work on certain contracts between Robert W. Tyson dba Robert W. Tyson Construction (“Tyson”) and Martinez (H Street Storm Drain Replacement Project) and Dixon (2008 Sidewalk Replacement Project).
- b. Griffin and Gonsalves filed stop notices with Martinez relative to said claims for pay and Martinez is holding retention and other money relative to said Project. Griffin, Gonsalves and Florez filed stop notices with Dixon relative to said claims for pay and Dixon is holding retention and other money relative to said Project.
- c. Western issued Bond No. 70631729 on the Martinez H Street Storm Drain Replacement Project and Bond No. 70651825 on the Dixon 2008 Sidewalk Replacement Project #2008-07. Griffin, Gonsalves and Florez duly filed claims on said Bonds.

AGREEMENT

- 1. Incorporation of Recitals. The recitals set forth in paragraphs a through c above are hereby incorporated by reference into this Agreement and made a part hereof.

2. Terms.

- a. Western shall pay to Griffin the sum of \$10,734.91, to Gonsalves the sum of \$10,734.92 and to Florez \$9083.39. Said payments represent the entire penal sum remaining for payment on the Western Bond No.70651825 issued relating to the Dixon 2008 Sidewalk Replacement Project.
- b. Dixon shall pay to Griffin, Gonsalves and Florez in a check made payable to Stephan Wattenberg, Esq. Client Trust Account, an additional sum not to exceed \$9,542.96 from any retention or other monies currently being held by Dixon relating to the 2008 Sidewalk Replacement Project. Any other retention or other monies being held by Dixon on said project over and above the latter sum, shall be paid to Western pursuant to the assignment contained in paragraph 2d below not later than October 15, 2010.
- c. Western shall also pay to Griffin the sum of \$13,932 in full payment of Griffin's claim on the Martinez H Street Storm Drain Replacement Project. Western shall pay to Stephan W. Wattenberg, Esq. the sum of \$2948.67 for legal services performed relating to the Martinez settlement. Martinez shall pay to Western, pursuant to the assignment contained in paragraph 2d below, all retention or other monies being held on said job not later than October 15, 2010.
- d. Griffin, Gonsalves and Florez shall assign to Western Surety all of their right, title and interest in the Action or otherwise relative to the Dixon 2008 Sidewalk Replacement Project and the Martinez H Street Storm Drain Replacement Project to Western.
- e. Griffin, Gonsalves and Florez shall file a dismissal with prejudice of plaintiffs' Complaint within ten business days after Martinez and Dixon pay to Western all retention and other monies held by them on the Projects.

3. Assignment. Each of the Parties hereto represents and warrants to each of the other Parties that said Party has not heretofore assigned or transferred, or purported to assign or transfer, to any person or entity not a Party to this Agreement, any right, claim, demand, damage, debt, liability, obligation, account, reckoning, cost, expense, lien, or action which the Party has ever had against any of the Parties to this Agreement as of the date of execution of this Agreement. Each of the Parties to this Agreement agrees to indemnify each of the other Parties, and to hold each of them harmless, of, from, and against any and all rights, claims, demands, damages, debts, liabilities, obligations, accounts, reckonings, costs, expenses, liens, actions or causes of action (including the payment of attorney's fees and costs actually incurred, whether or not litigation is commenced), based on, arising out of, or in connection with, or otherwise attributable to, any such transfer or assignment.

4. Binding Agreement. The provisions of this Agreement shall be binding upon and shall obligate, extend to, and inure to the benefit of, each of the legal successors, assigns, transferees, grantees, and heirs of each of the Parties, and all persons who may assume any or all of the above described capacities subsequent to the execution or the effective date of this Agreement.

5. Entire Agreement. Except as may be specifically provided herein, this Agreement contains the final complete, exclusive, and entire Agreement and understanding concerning its subject matter between the Parties, and supercedes and/or replaces any and all prior negotiations, settlement offers, proposed agreements or agreements concerning the subject matter hereof, whether written or oral. Each of the Parties acknowledges that no other party, nor any agent or attorney of any other Party, has made any promise, representation, or warranty whatsoever, express or implied, which is not contained herein concerning the subject matter hereof, to induce the party to execute this Agreement, and acknowledges that the Party has not executed this Agreement in reliance upon any such promise, representation, or warranty not contained herein.

6. Modification. This Agreement may not be modified except by writing signed by the Parties.

7. Continuing Cooperation. Each of the Parties hereto agrees to undertake its best efforts, including all steps and efforts contemplated by this Agreement, and any other steps and efforts which may become necessary by order or otherwise, to effectuate the remaining obligations of this Agreement and settlement set forth herein, including, but without limitation, the preparation and execution of any documents reasonably necessary to do so.

8. Tax Consequences. All Parties acknowledge that no person participating in any discussion of this Agreement has made a guarantee of any kind to any Party, and no Party can avoid this Agreement (or any part of this Agreement) or attempt to set it aside for any reason whatsoever based upon any objection concerning tax costs, tax liabilities, or tax consequences, or any claim that taxes imposed or claimed by the taxing entity are contrary to the Party's assumptions, beliefs, or predictions.

9. Governing Law and Jurisdiction. This Agreement shall in all respects be interpreted, enforced and governed by and under the laws of the State of California without giving effect to its conflicts of laws provisions. Venue for all matters arising from this Agreement will be Solano County, California.

10. Interpretation. Whenever in this Agreement the context may so require, the masculine gender shall be deemed to refer to include the feminine and neuter, and the singular to refer to and include the plural, and vice versa. Paragraph headings or other headings contained in this Agreement are for reference purposes only and shall not effect in any way the meaning or interpretation of this Agreement. This Agreement has been fully negotiated between the Parties and their attorneys. The Agreement and each of its provisions will be interpreted fairly and simply, and not strictly for or against either party.

11. Claims Disputed. Each of the Parties hereto understands and agrees that this Agreement is a compromise and settlement of the unpaid wages claims of Griffin, Gonsalves and Florez against Tyson's surety Western, which are disputed, and, except as otherwise set forth herein that the promises and consideration of this Agreement shall not be construed to be an admission of any liability or obligation whatsoever on behalf of any party.

12. Admissible as Evidence. This Agreement is made pursuant to the terms and provisions of California Evidence Code sections 1123 and 1152. It may be used and is admissible and subject to disclosure for any purpose to enforce or uphold the terms of this Agreement, and this document is fully binding upon the Parties.

13. Attorney's Fees and Costs. In the event that any of the Parties bring suit against any of the Parties to enforce or interpret any provision of this Agreement or is required to defend any action brought by any of the Parties, based on, arising from, or related to this Agreement, the unsuccessful Parties agree to pay to the prevailing Parties their actual costs and attorney's fees.

14. Effective Date. The terms of this Agreement shall be effective only after Court approval.

15. Counterparts. The Parties may execute this Agreement in two or more counterparts which shall, in the aggregate, be signed by all the Parties; each counterpart shall be deemed an original instrument as against any party who has signed it. A faxed copy of the signature of any of the Parties shall have the same force and effect as an original signature of such party.

16. Voluntary Agreement. This Agreement is freely and voluntarily entered into by each of the Parties. The Parties acknowledge and agree that each has been represented in a negotiation of this Agreement by counsel of its own choosing, or has had an opportunity and ability to obtain such representation, and has read this Agreement or had it read to it; and each understands this Agreement and is fully aware of the contents and legal effects of this Agreement.

17. Capacity to Execute. Each of the Parties, and each person signing this Agreement, represents and warrants that it and its representatives executing this Agreement on its behalf has the authority and capacity to execute this Agreement.

18. Retention of Jurisdiction for Enforcement. The Superior Court of California for the County of Solano shall retain jurisdiction in Case No. FCS-034496 to enforce the settlement contemplated by this Agreement under California Code of Civil Procedure section 664.6. The Parties agree that any dispute arising from this Agreement will be resolved by submitting the same to the Solano County Superior Court for a ruling on the same.

Dated: September ____, 2010

Martin Griffin

Dated: September ____, 2010

Anthony Gonsalves

Dated: September ____, 2010

Anthony Florez

Dated: September ____, 2010

Western Surety Company by Lisa DeSantis

Dated: September ____, 2010

City of Martinez by _____

Dated: September ____, 2010

City of Dixon by _____

APPROVED AS TO FORM.

LAW OFFICE OF STEPHAN R. WATTENBERG

Dated: September ____, 2010

By: _____
Stephan R. Wattenberg, Esq., attorney for
plaintiffs Martin Griffin, Anthony Gonsalves
and Anthony Florez

Dated: September ____, 2010

By: _____

Esq., Attorney
for Defendant City of Dixon

Dated: September ____, 2010

By: _____

Esq., Attorney
for Defendant City of Martinez

SOLAN & PARK LLP

Dated: September ____, 2010

By: _____
Kevin M. Solan, Esq., Attorneys for
Western Surety Company