



Travis County Commissioners Court Agenda Request

Meeting Date: April 29, 2014

Prepared By/Phone Number: Jason G. Walker/44562; Marvin Brice,
Assistant Purchasing Agent

Elected/Appointed Official/Dept. Head: Cyd Grimes

Commissioners Court Sponsor: Judge Biscoe

Agenda Language: Approve Modification of Contract and Settlement Agreement and Mutual Release arising out of the Forest Assessment of Travis County Parks, with Davey Resource Group.

- **Purchasing Recommendation and Comments:** Purchasing concurs with department and recommends approval of requested action. This procurement action meets the compliance requirements as outlined by the statutes.
- In performing the forest assessment services as described in the Contract (4400001536) Scope of Services, the Consultant, Davey Resource Group (“Davey”), discovered that the number of trees located in the combined project area requiring assessment far outnumbered Davey’s original estimate. Davey readily acknowledged that they were solely responsible for this estimate error and proceeded to assess the additional trees, as well as to perform their contractual obligations notwithstanding the erroneous estimate.
- Davey requested a modification to the contract to increase the contract sum by \$10,263.00, which is the value the additional assessment services carries, however, the County denied the request, resulting in a dispute.
- Both the County and Davey agree to settle this dispute amicably, to avoid the costs and travails of litigation for a total of \$7,600.00, which is the amount of Modification No. 1, as approved by the Purchasing Agent on September 25, 2013. This modification was for 80 additional hours “Arborist Services”, however, performance of these services was postponed pending resolution of Davey’s tree assessment estimation error.
- The Settlement Agreement and Mutual Release addresses the following:
AGENDA REQUEST DEADLINE: All agenda requests and supporting materials must be submitted as a pdf to agenda@co.travis.tx.us by Tuesdays at 5:00 p.m. for the next week’s meeting.

- Award has been protested; interested parties have been notified.
- Award is not to the lowest bidder; interested parties have been notified.
- Comments: N/A

➤ **Funding Information:**

- Shopping Cart/Funds Reservation in SAP:
- Fund Center(s):
- Comments:

TRANSPORTATION AND NATURAL RESOURCES

STEVEN M. MANILLA, P.E., COUNTY EXECUTIVE



700 Lavaca Street-5th Floor
Travis County Administration Building
PO Box 1748
Austin, Texas 78767
Phone: (512) 854-9383
Fax: (512) 854-4697

October 23, 2013

MEMORANDUM

TO: Jason Walker, Purchasing Agent

FROM: Charles Bergh, Director 

SUBJECT: Davey Resource Group Contract # 4400001536

This memo is in response to correspondence dated October 10, 2013 from Michael Sultan with Davey Resource Group (see attached). It is our understanding that per this correspondence they have requested a \$10,263 modification to the original contract. To make sure we understand this situation accurately let me reiterate the facts as we perceive them.

The scope of work in the original contract included:

- A complete tree inventory of approximately 760 acres of high use park land identified by maps provided in the bid package.
- Also included was a GIS analysis of approximately 9532 acres of undeveloped or low use parkland identified by maps provided in the bid package.
- A report providing a detailed management plan for Travis County Park's urban forest.
- A report assessing the value of the Park's urban forest

This contract was a lump sum agreement for \$40,136.40 to perform these tasks and provide these reports. We then submitted a change order request for 80 hours for "Arborist's Services" at \$95 per hour for a total of \$7,600. This request was intended to complete additional areas of high use parkland.

We understand that Davey Resource Group underestimated the time commitment to perform the complete tree inventory of approximately 760 acres that was part of the original contract. We are not inclined to pay an additional \$10,263 to compensate for this; however we are willing to apply the additional 80 hours of "Arborist's Services" contracted for in the change order to be applied to the tree inventory that was part of the original contract.

cc: Robert Armistead, Park Program Manager
Dan Perry, District Park Manager
Kurt Nielsen, District Park Manager

MODIFICATION OF CONTRACT NUMBER: 4400001536, Forest Assessment of

Travis County Parks

ISSUED BY: PURCHASING OFFICE P.O. BOX 1748 AUSTIN, TX 78767	PURCHASING AGENT ASST: Jason G. Walker TEL. NO: (512) 854-9700 FAX NO: (512) 854-9185	DATE PREPARED: April 2, 2014
ISSUED TO: Davey Resource Group 7627 Morro Rd. Atascadero, CA 93422	MODIFICATION NO.: 2	EXECUTED DATE OF ORIGINAL CONTRACT: August 5, 2013

ORIGINAL CONTRACT TERM DATES: 8/5/13 - 8/4/14 CURRENT CONTRACT TERM DATES: 8/5/13 - 8/4/14

FOR TRAVIS COUNTY INTERNAL USE ONLY:

Original Contract Amount: \$40,136.40 Current Modified Amount \$47,436.40.

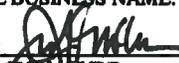
DESCRIPTION OF CHANGES:

1. The contract amount remains unchanged.
2. In summary, pursuant to the attached Modification of Contract and Settlement Agreement and Mutual Release (Attachment 1), in consideration of Consultant's performance of the assessment services not included in Consultant's original tree count estimate, Modification Number 1 is hereby canceled and County will apply the sum of \$7,600.00, encumbered in connection with Modification Number 1, to Items 1 and 2 listed in Paragraph 1.2 of Exhibit 1 Compensation for Professional Services.

Except as provided herein, all terms, conditions, and provisions of the document referenced above as heretofore modified, remain unchanged and in full force and effect.

Notes to Vendor:

- [X] Complete and execute (sign) your portion of the signature block section below for all copies and return all signed copies to Travis County.
- [] DO NOT execute and return to Travis County. Retain for your records.

LEGAL BUSINESS NAME: <u>Davey Tree Expert Company</u> BY: <u></u> SIGNATURE BY: <u>Jack McCabe</u> PRINT NAME TITLE: <u>Regional Ops Manager</u> ITS DULY AUTHORIZED AGENT	<input type="checkbox"/> DBA <input checked="" type="checkbox"/> CORPORATION <input type="checkbox"/> OTHER DATE: April 11, 2014
TRAVIS COUNTY, TEXAS BY: <u></u> CYD V. GRIMES, C.F.P.M., CPPO, TRAVIS COUNTY PURCHASING AGENT	DATE:
TRAVIS COUNTY, TEXAS BY: <u></u> SAMUEL T. BISCOE, TRAVIS COUNTY JUDGE	DATE:

DRAFT

**MODIFICATION OF CONTRACT
AND
SETTLEMENT AGREEMENT AND MUTUAL RELEASE**

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This modification of contract and settlement agreement and mutual release (this "Agreement") is made and entered into by and between Travis County, Texas, a political subdivision of the State of Texas ("County" or "Travis County"), and Davey Resource Group, a Division of the Davey Tree Expert Company, a company authorized to do and doing business in the State of Texas ("Consultant"). All capitalized terms used but not defined herein have the meaning ascribed to them in the Contract, as such term is defined below.

County and Consultant entered into that certain Professional Services Agreement for a Forest Assessment of the Travis County Park System (the "Contract") effective August 5, 2013 (the "Project"), for an original contract sum of \$40,136.40; and

County issued to Consultant a Notice to Proceed on August 19, 2013, at which time Consultant began to perform the forest assessment services described in the Contract Scope of Services; and

Subsequently, Consultant discovered that the number of trees located in the combined Project area that required assessment far outnumbered their original estimate, and readily acknowledged that they were solely responsible for this estimate error; and

Consultant proceeded to assess the additional trees and to perform their contractual obligations notwithstanding the erroneous estimate, and the Parties acknowledge and agree that these services carry a value of \$10,263.00; and

Consultant requested modification of the Contract to increase the contract sum by this amount, which request was denied by County, resulting in a dispute; and

On September 25, 2013, the Parties executed Modification No. 1 pursuant to which Consultant agreed to provide 80 additional hours of "Arborist Services" and County agreed to pay Consultant \$7,600.00 for the same; however, performance of these services was postponed pending resolution of the estimate error; and

By executing this Agreement, the Parties mutually agree to settle this dispute amicably, to avoid the costs and travails of litigation.

NOW, THEREFORE, in consideration of this Modification of Contract and Settlement Agreement and Mutual Release, County and Consultant agree to settle their dispute for a total of \$7,600.00. This will be addressed as follows:

1) Modification No. 1, and all rights and obligations arising under it, is hereby canceled and is of no further force or effect.

2) County will apply the sum of \$7,600.00, encumbered in connection with Modification No. 1, to Items 1 and 2 listed in Paragraph 1.2 of Exhibit 1 of the Contract (entitled, respectively, "Tree inventory and GIS map of trees 8" Diameter or greater in Travis County's high-use Parkland areas" and "Identification of trees and recommended Maintenance with cost estimate to complete the work"), in consideration of Consultant's performance of the assessment services not included in Consultant's original tree count estimate.

3) Consultant, in return for payment by County of the sum of \$7,600.00, which Consultant does declare to be good and sufficient consideration, does fully and forever release, discharge, forego, relinquish, acquit and exonerate County and its officers, employees, agents, successors and assigns from any and all claims, demands, rights, interests, remedies, causes of action for damages either direct or consequential, all suits in law or in equity of whatever kind or nature, for loss of services, loss of income, lost profits, overhead, support or contributions, legal expenses, attorneys' fees, bodily injuries, property damages, including loss of fair market value, claims for delay, interference and all other expenses and claims of any kind, which Consultant may now have or hereafter have or claim to have, and whether the same be now known or not known, in any way arising out of the tree assessment services performed by Consultant under the Contract.

4) County does hereby release, forego and relinquish any and all its rights, interests, causes of action and remedies that County has against Consultant or Consultant's successors and assigns under the Contract.

5) This Agreement is for the benefit of County and Consultant only and is not for the benefit of any third party.

6) As further consideration for the execution of this Agreement, Consultant represents as an inducement to County that:

A. It completely and thoroughly understands that this is a complete and final settlement of any and all claims which it may have against County and it shall not receive any further payment on account of any damages claimed or that could have been claimed in the above described dispute on account of the herein mentioned incident, except those amounts and that consideration specifically stated herein;

B. In entering into this Agreement, it is doing so freely and voluntarily upon the advice of its own counsel and in the exercise of its own free will, act and deed, free of any duress or coercion;

C. Except as specifically contained herein, no representations, promises, or other statements made by Travis County or its attorneys or other representatives have influenced it in

making and executing this Agreement and it realizes that this Agreement is final and conclusive and that it is their desire that it be final and conclusive;

D. Except as specifically contained herein, this Agreement, and the provisions contained herein, are not intended to be, and shall not be taken as, admission of liability by any individual or entity, and this Agreement is made simply as a compromised settlement of the disputed claims.

7) The parties further expressly accept and assume the risk that the facts mentioned above may be found to be other than or different from the facts now believed by the parties to be true, and expressly warrant and represent that the terms of this settlement have been completely read and are fully understood and voluntarily accepted for the purpose of making a full and final compromise, adjustment and settlement of any and all claims, disputed or otherwise, arising out of the Contract requirements and any damages to the parties; and that in making this settlement and in giving this release, the parties rely wholly upon their own knowledge, information and belief concerning such matters.

8) This Agreement will be governed by the laws of the State of Texas and venue will be in Travis County, Texas.

9) Any discussions, communications, conversations and/or meetings between County and Consultant are hereby merged into this Agreement and this Agreement encompasses the full and complete agreement between County and Consultant.

10) Consultant acknowledges this is the only document Consultant will need to sign in order for Consultant to receive funds for the services described herein; the Travis County Auditor will be authorized to release payment upon receipt of this Agreement, as the Travis County Commissioners Court approved this settlement in its _____, 2014 meeting.

11) This Agreement will become effective when both parties have signed this Agreement.

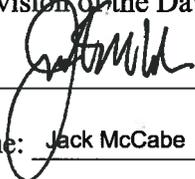
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TRAVIS COUNTY

By: _____
Samuel T. Biscoe
Travis County Judge

Date: _____

DAVEY RESOURCE GROUP,
a Division of the Davey Tree Expert Company

By:  _____

Name: Jack McCabe _____

Title: Regional Ops Manager _____

Date: 04/11/2014 _____