Item 4

Travis County Commissioners Court Agenda Request

Meeting Date: July 22, 2014
Prepared By: Mickey Roberts **Phone #:** (512) 854-4460
Division Director/Manager: Charles Bergh, Director, Parks Division

Department Head: Steven M. Manilla, P.E., County Executive-TNR
Sponsoring Court Member: County Judge Samuel T. Biscoe

AGENDA LANGUAGE: Consider and take appropriate action on an Interlocal Cooperation Agreement with the Lower Colorado River Authority (LCRA) for cultural resources investigation services on lands leased to Travis County owned by the LCRA.

BACKGROUND/SUMMARY OF REQUEST:
Travis County maintains long-term lease agreements with the LCRA to operate the following seven parks within the county parks system: Pace Bend, Hippie Hollow, Mansfield Dam, Arkansas Bend, Bob Wentz at Windy Point, Sandy Creek, and Cypress Creek. The Texas Historical Commission (THC) requires that no culturally or historically significant areas are at-risk of damage or disruption during park development and that proper measures are taken to protect cultural resources at these sites. LCRA is staffed to meet the regulatory standards of the Texas Historical Commission with respect to cultural resource services. The enclosed Interlocal Agreement allows Travis County to utilize cultural resources investigation services provided by LCRA staff on lands it leases from the LCRA to meet requirements set forth by the THC.

STAFF RECOMMENDATIONS:
Staff recommends approval.

ISSUES AND OPPORTUNITIES:
Adoption of this agreement is beneficial to both the LCRA and Travis County. LCRA is staffed to perform cultural resources investigations and desires to do so on LCRA owned land. Travis County will broaden the resources it has available to obtain THC clearance for park development projects on LCRA owned land.

FISCAL IMPACT AND SOURCE OF FUNDING:
No financial impact is associated with adoption of this agreement.

ATTACHMENTS/EXHIBITS:
Interlocal Cooperation Agreement for Cultural Resource Services

REQUIRED AUTHORIZATIONS:

Cynthia McDonald	Financial Manager	TNR	(512) 854-4239
Steve Manilla	County Executive	TNR	(512) 854-9429
Charles Bergh	Division Director	Parks	(512) 854-9408

CC:

Julie Joe	County Attorney	Co. Attorney's Office	
Charles Bergh	Division Director	Parks	
Melinda Mallia	Project Manager	NREQ	

: :

0801 - NREQ -

INTERLOCAL COOPERATION AGREEMENT
FOR CULTURAL RESOURCE SERVICES

This Interlocal Cooperation Agreement (this "Agreement") is made and entered into by and between Travis County, a political subdivision of the State of Texas (the "County"), and the Lower Colorado River Authority, an agency of the State of Texas (the "LCRA") (collectively, the "Parties"), pursuant to the authority granted and in compliance with TEX. CONST. ART. III, Sec. 64, and the Interlocal Cooperation Act, Chapter 791, TEX. GOV'T CODE ANN.

WHEREAS, the County manages parks, preserves, and other lands that it leases from LCRA within Travis County;

WHEREAS, the County desires to have cultural resource investigations (both historical and archaeological) conducted at various parks, preserves, and other lands that it leases from LCRA;

WHEREAS, the LCRA has the professional staff to conduct cultural resource investigations for the County, and whenever it has excess capacity to assist the County, is willing to do so; and

WHEREAS, the County and the LCRA desire to enter into this Agreement to provide for such services;

NOW, THEREFORE, in consideration of the covenants and payments set forth herein, the amount and sufficiency of which are hereby acknowledged, the County and the LCRA mutually agree as follows:

AGREEMENT

I. <u>SERVICES TO BE PERFORMED BY LCRA</u>.

A. The LCRA will provide the Travis County Purchasing Agent a schedule and itemized cost statement within ten working days after accepting a request from the County Executive of the Travis County Transportation and Natural Resources Department or his designee detailing cultural resource services (the "Services") to be conducted by the LCRA for the Project Area specified therein, which may include, but are not limited to, any of the following elements,:

(i) a records search at the Texas Archeological Research Laboratory, the Texas Historical Commission, and the LCRA for previously documented cultural resources;

(ii) obtaining a Texas Antiquities Permit, subject to the provisions

of Paragraph C, below;

(iii) cultural resource investigations of the Project Area as described in the work order, including 100% intensive surveys, test excavations, mitigative excavations, and the documentation and evaluation of any prehistoric and historic sites;

(iv) all necessary laboratory analyses

(v) a report of investigation with recommendations (the "Investigation Report") submitted to the Texas Historical Commission (THC) for review;

(vi) any necessary interaction with the THC;

(vii) monitoring of construction in progress at potential sites;

(viii) consultation or extended site protection planning and/or development of cultural resource educational programs and facilities; and

(ix) oversight of other archaeological contractors conducting cultural resource investigations for Travis County.

Each itemized cost statement prepared by LCRA shall also indicate the cost of the particular cultural resource services to be provided according to the rates set forth below.

B. If LCRA is unable to accommodate a request by the County to perform Services in a timely manner, it will notify the County Executive of the Travis County Transportation and Natural Resources Department within ten (10) days and decline the request.

C. Upon receipt of a schedule and cost estimate from LCRA, the Travis County Purchasing Office will prepare a work order that identifies the nature and extent of services to be provided by LCRA and the schedule for performance of the services. The Travis County Purchasing Office will also include in the work order the itemized cost statement prepared by the LCRA. The terms and conditions contained in this Agreement prevail over different or contrary terms in any purchase order.

D. LCRA will not perform any services under this Agreement unless and until it receives a work order from the Travis County Purchasing Agent or her designated representative.

E. The County Executive of the County's Transportation and Natural Resources Department (the "County Executive") will act on behalf of the

County with respect to the approval and execution of each work order. The County Executive may designate other representatives to transmit instructions and act on behalf of the County with respect to this Agreement.

F. All field work and the Investigation Report shall comply with the guidelines established by the Council of Texas Archaeologists and requirements of the Antiquities Code of Texas (Texas Natural Resources Code, Chapter 191, Subchapter C, Section 191.051, Section 191.053, and Section 191.054).

G. The LCRA's Memorandum of Understanding with the THC allows the LCRA staff archaeologists to conduct cultural resource investigations on LCRA lands and easements of 300 acres or less without applying for a permit for each investigation. As such, if all or a portion of a Project Area is owned by the LCRA, then for such part the LCRA shall (i) submit the Investigation Report in the form of an interim report to the THC and (ii) summarize the results of the investigation in the LCRA's annual report of cultural resource investigations for the calendar year in which it was conducted. The LCRA shall provide the County with three (3) copies of the interim report.

II. TERM OF AGREEMENT.

A. The term of this Agreement shall commence upon execution by both parties and shall remain in effect for a period of one (1) year, unless sooner terminated by either party as provided herein (the "Initial Term").

B. This Agreement shall automatically renew upon expiration of the Initial Term for terms of one (1) year thereafter for an additional five (5) years; provided, however, either party may terminate this Agreement by giving sixty (60) days prior written notice to the other party.

C. For work orders involving 100% intensive surveys, LCRA shall begin the investigation of a Project Area within ten (10) working days of the execution of a work order. Within thirty (30) working days of the completion of the field work, and prior to submittal to the THC, the LCRA shall submit the Investigation Report to the Natural Resources staff of the County's Transportation and Natural Resources Department for review. At such time the County shall have the right to submit any comments concerning the Investigation Report, which the LCRA may then incorporate.

The LCRA shall submit the Investigation Report to the THC within twenty (20) working days of the receipt of any such comments from the County.

D. For work orders involving test excavations or mitigative excavations,

LCRA shall begin the investigation of a Project Area within twenty (20) days of the execution of a work order. Because the scopes-of-work of such projects are variable, and the analyses and reporting of such projects requires more time than 100% intensive surveys, schedules for submittals of Investigation Reports for test excavation and mitigative excavation projects will be detailed in the individual work order. Prior to the submittal to the THC, the LCRA shall submit the Investigation Report of the test excavation or mitigative excavation report to the Natural Resources Department for review. At such time the County shall have the right to submit any comments concerning the Investigation Report, which the LCRA shall then incorporate.

The LCRA shall submit the Investigation Report to the THC within thirty (30) working days of the receipt of any such comments from the County.

III. COST OF SERVICES TO BE PERFORMED.

For and in consideration of the LCRA's performance of cultural resource services, the County shall pay the LCRA according to the following fee schedule:

A. Services of LCRA professional staff at their hourly pay rates including overhead current at the time each individual work order is executed.

B. Travel Reimbursement at the IRS approved rate/per mile.

C. Other professional consultants for required special studies at rates to be determined in individual work orders.

D. A 15% mark-up for each invoice submitted by LCRA to the County for cultural resource investigations to cover the costs of LCRA's administration of the contract.

IV. PAYMENT FOR SERVICES.

A. On or before the fifteenth day of the month following a month in which LCRA performs Services for the County, LCRA will send the County a correct and complete itemized invoice as more fully described below.

The County will make payment by check or by warrant upon satisfactory completion of the Services and submission of a correct and complete invoice to the Travis County Auditor's Office, with copies to the Travis County Purchasing Agent and the Parks Director, at the addresses listed below for orders placed by the Purchasing Agent, or as indicated on purchase orders placed by other authorized County offices and/or departments.

Travis County Auditor's Office
P.O. Box 1748
Austin, Texas 78767

Ms. Cyd V. Grimes, C.P.M., CPPO (or successor)
Travis County Purchasing Agent
P.O. Box 1748
Austin, Texas 78767

Mr. Charles Bergh (or successor)
Parks Director
Travis County Transportation and Natural Resources Department
P.O. Box 1748
Austin, Texas 78767

In order to be considered "correct and complete," an invoice must include at least the following information:

(1) name, address, and telephone number of LCRA and similar information in the event payment is to be made to a different address;

(2) the Agreement and purchase order number;

(3) identification of items and services provided as outlined in the purchase order;

(4) quantity or quantities, applicable unit prices, total prices, and total amount, including date(s) of performance, and the amount of time, materials, and supplies, and all authorized expenses expended in performance of the Services; and

(5) any additional payment information which may be called for by this Agreement.

B. For LCRA's satisfactory performance of Services, the County will pay LCRA at the address shown on its invoice the amount due within 30 days after receipt of a correct and complete invoice as defined above. Interest on delinquent accounts will be governed by Chapter 2251 of the Texas Government Code.

C. At its option and expense, the County may conduct an audit of LCRA's time sheets and materials invoices for work performed under this Agreement to verify that the charges made are justifiable, are calculated in

accordance with generally accepted accounting principles, and are consistent with LCRA's standard accounting methods.

D. The County's obligations are payable solely from current funds appropriated and available for the purpose of this purchase. Lack of funds will render this Agreement null and void to the extent that such funds are not appropriated and available. The County agrees that it will not request Services for which funds have not been appropriated or are not available.

E. Payments received by the LCRA shall be credited to its current appropriation item(s) or account(s) from which the expenditures of that character were originally made.

F. Notwithstanding anything to the contrary in this Agreement, if at any time during the Agreement term the Commissioners Court of Travis County, Texas fails to provide funding for this Agreement for the following fiscal year of Travis County, Texas, the County may, upon giving the LCRA written notice of such failure to fund and termination, terminate this Agreement without any further liability, effective as of the earlier of (a) the last day of the then current fiscal year of Travis County, Texas or (b) thirty (30) days after the County notifies the LCRA in writing of such failure to fund and termination.

V. INDEPENDENT CONTRACTORS.

It is understood and agreed that both parties are executing this Agreement as independent contractors and, as such, are not liable for any claims or causes of action arising from the negligent acts or omissions of the other party, its officers, employees, or agents in connection with this Agreement. Nothing in this Agreement shall create any employer/employee or agency relationship between the parties to this Agreement.

VI. MISCELLANEOUS.

A. Force Majeure. In the event that the performance by the County or LCRA or any of its obligations or undertakings hereunder shall be interrupted or delayed by any occurrence not occasioned by its own conduct, whether such occurrence be an act of God, or the common enemy, or the result of war, riot, civil commotion, sovereign conduct, or the act or conduct of any person or persons not a party or privy hereto, then it shall be excused from such performance for such period of time as is reasonably necessary after such occurrence to remedy the effects hereto.

B. Notice. Any notice given hereunder by either party to the other shall be in writing and may be effected by personal delivery in writing or by registered or certified mail, return receipt requested when mailed to the proper party, at the following addresses:

LCRA: Dan Prikryl
Program Manager, Cultural Resources
Lower Colorado River Authority
P.O. Box 220
Austin, TX 78767-0220

AND: General Counsel
Lower Colorado River Authority
P.O. Box 220
Austin, TX 78767-0220

COUNTY: Steven M. Manilla, P.E. (or successor)
County Executive, TNR
P. O. Box 1748
Austin, Texas 78767

AND: Cyd V. Grimes, C.P.M., CPPO (or successor)
Travis County Purchasing Agent
P.O. Box 1748
Austin, Texas 78767

AND TO: David Escamilla (or successor)
Travis County Attorney
P. O. Box 1748
Austin, Texas 78767
Attn: File No. 291._____

C. Number and Gender Defined. As used in this Agreement, whenever the context so indicates, the masculine, feminine, or neuter gender and the singular or plural number shall each be deemed to include the others.

D. Other Instruments. The Parties hereto covenant and agree that they will execute other and further instruments and documents as may become necessary or convenient to effectuate and carry out the purposes of this Agreement.

E. Invalid Provision. Any clause, sentence, provision, paragraph, or article of this agreement held by a court of competent jurisdiction to be invalid, illegal, or ineffective shall not impair, invalidate, or nullify the remainder of this Agreement, but the effect thereof shall be confined to the clause, sentence, provision, paragraph, or article so held to be invalid, illegal, or ineffective.

F. Current Funds. The party or parties paying for the performance or governmental functions or services shall make payments therefor from current revenues available to the paying party.

G. Venue. TO THE EXTENT ALLOWED BY TEXAS LAW, IT IS AGREED THAT VENUE FOR ALL LAWSUITS CONCERNING THIS AGREEMENT WILL BE IN TRAVIS COUNTY, TEXAS. THIS AGREEMENT CONCERNS REAL PROPERTY LOCATED IN TRAVIS COUNTY, TEXAS, AND IS WHOLLY PERFORMABLE IN TRAVIS COUNTY.

H. Dispute Resolution. When mediation is acceptable to both Parties in resolving a dispute arising under this Agreement, the Parties agree to use a mutually agreed upon mediator or someone appointed by a court of competent jurisdiction for mediation as described in Section 154.023 of the Texas Civil Practice and Remedies Code. Unless both Parties are satisfied with the result of the mediation, the mediation will not constitute a final and binding resolution of the dispute. All communications within the scope of the mediation will remain confidential as described in §154.073 of the Texas Civil Practice and Remedies Code, unless both Parties agree, in writing, to waive the confidentiality.

I. Interpretation. In the event of any dispute over its meaning or application, this Agreement will be interpreted fairly and reasonably and neither more strongly for or against either party.

J. Application of Law. This Agreement is governed by the laws of the State of Texas.

K. Third Party Rights Not Created. This Agreement is not intended to and must not be construed to create any rights or remedies in any person or legal entity that is not a party to it and the Parties are not waiving any defense or immunity to which they are entitled against any person or legal entity that is not a party to this Agreement.

L. Reservation of Rights and Remedies. All rights of both Parties under this agreement are specifically reserved. Any reimbursement, installment, payment, act, or omission by a Party will not impair or prejudice any remedy or right of that Party under this Agreement. Any right or remedy stated in this Agreement does not preclude the exercise of any other right or remedy under this Agreement, the law or in equity, and any action taken in the exercise of any right or remedy must not be deemed a waiver of any other rights or remedies.

M. Taxpayer Identification Number. Upon request, LCRA will provide the County with an Internal Revenue Form W-9 Request for its Taxpayer

Identification Number and Certification that is completed in compliance with the Internal Revenue Code and its rules and regulations and a statement of entity status in a form satisfactory to the County Auditor before any funds are payable under this Agreement.

VII. ENTIRE AGREEMENT.

All oral and written understandings between the parties as to this Agreement have been reduced to writing and are contained in this Agreement except for the subsequent work orders which shall become part of this Agreement when executed by both parties. NO OFFICIAL, REPRESENTATIVE, EMPLOYEE OR AGENT OF THE COUNTY HAS ANY AUTHORITY TO MODIFY OR AMEND THIS AGREEMENT EXCEPT PURSUANT TO SPECIFIC AUTHORITY TO DO SO GRANTED BY THE COMMISSIONERS COURT OF THE COUNTY.

VIII. CERTIFICATIONS.

A. The parties do hereby certify that (i) the services specified above are necessary and essential for activities that are properly within the statutory functions and programs of the respective parties, (ii) the proposed arrangements serve the interest of efficient and economical administration of the state and county government, and the services, supplies or materials contracted for are not required by Section 21 of Article XVI of the Constitution of Texas to be supplied under contract given to the lowest responsible bidder.

B. The County certifies that it has the authority to contract for these services pursuant to Chapter 791, Texas Government Code.

C. The LCRA certifies that it has the authority to contract for these services pursuant to Chapter 791, Texas Government Code.

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the later date set forth below.

– Remainder of page has intentionally been left blank. –

LOWER COLORADO RIVER AUTHORITY

By: Fredrick E. Crawford

Name: FREDRICK E. CRAWFORD

Title: MANAGER, REAL ESTATE SERVICES

Date: 6/30/14

TRAVIS COUNTY

By: _____

Name: Samuel T. Biscoe

Title: County Judge

Date: _____