



Travis County Commissioners Court Agenda Request

Meeting Date: September 2, 2014

Prepared By/Phone Number: L. Perry; M. Brice, CPPB, 512-854-9700

Elected/Appointed Official/Dept. Head: Cyd Grimes

Commissioners Court Sponsor: Judge Biscoe

Agenda Language: Approve settlement agreement for Onion Creek Greenway Park Design - Phase I, Contract No. 440000070, RVi Planning.

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.

- TNR, with Purchasing's concurrence, requests approval of the attached settlement agreement related to design services for Onion Creek Greenway – Phase I, performed by RVi Planning.
- Phase 1 of the Onion Creek Greenway, located in Precinct Four, was the initial phase of a 21 mile greenway to connect the land from McKinney Falls State Park to the confluence of Onion Creek with the Colorado River with recreational facilities. The County contracted with RVi Planning on October 19, 2010 for the design of Phase 1; which included plans for hike/bike trails, kayak/fishing access, wildlife viewing areas, picnic/play areas, and parking at Barkley Meadows Park.
- Once the design services were complete, commencement of construction work began under a separate construction contract. The County was quickly made aware of certain design errors in the plan. RVi Planning has acknowledged these errors and has agreed to reimburse the County \$32,654.50 under the attached settlement agreement.
- TNR and Purchasing has negotiated a reasonable and acceptable amount for reimbursement for the errors and omissions and recommends approval of the Settlement Agreement with RVi Planning in the amount of \$32,654.50

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.

TRANSPORTATION AND NATURAL RESOURCES

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



Lee
3-24
SM

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

MEMORANDUM

DATE: March 17, 2014
TO: Marvin Brice, Assistant Purchasing Agent
FROM: Charles Bergh, Parks Division Director
Charles B. Bergh
THROUGH: Steve Manilla, County Executive, TNR
SUBJECT: Settlement Request for Onion Creek Greenway

RECEIVED
TRAVIS COUNTY
PURCHASING
OFFICE
2014 MAR 21 PM 3:33

Phase 1 of the Onion Creek Greenway, located in Precinct Four, is the initial phase of a 21-mile greenway to connect the land from McKinney Falls State Park to the confluence of Onion Creek with the Colorado River with recreational facilities. The County contracted with RVi Planning + Landscape Architecture (RVi) for the design and construction of Phase 1; which included construction of hike and bike trails, kayak and fishing access, wildlife viewing areas, picnic and play areas, and parking at Barkley Meadows Park.

At this time, the Parks Division feels it is in the best interest of Travis County to procure services for Phase 2 with an RFQ. Therefore, we are requesting Purchasing to proceed with the process to gain compensation in the form of a check of \$32,654.50 from RVi as outlined in the email attached. This settlement from Phase 1 of the Onion Creek Greenway Project, however, does not preclude RVi from responding to the RFQ for Phase 2.

Attachments: Email of reimbursement settlement

CM
CC: Cyd Grimes, C.P.M., Purchasing Agent
Lee Perry, Purchasing
Robert Armistead, TNR Parks
Kurt Nielsen, TNR Parks
Morgan Cotten, P.E., TNR Public Works
Steve Sun, P.E., TNR Public Works
Odette Tan, P.E., TNR Public Works
Isabelle Lopez, TNR Financial Services
Tawana Gardner, TNR Financial Services
Cynthia McDonald, TNR Financial Services
Donna Williams-Jones, TNR Financial Services

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This 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 RVI, a Texas professional landscape architecture services company ("Consultant"). All capitalized terms used but not defined herein have the meaning ascribed to them in the PSA, as such term is defined below.

County and Consultant entered into that certain Professional Services Agreement (the "PSA"), effective October 19, 2010 for professional engineering design services in connection with the Onion Creek Greenway, Phase I project (the "Project"); and

County subsequently awarded a contract for construction of the Project, based on Consultant's design, to Smith Contracting Co., Inc. for an original contract sum of \$2,782,139.50, which construction contract was modified two times, the second modification in the amount of \$33,995.00, which sum was paid in full by County; and

Following commencement of work under the second construction contract modification, County was made aware of certain design errors and omissions in the Work Product that Consultant had delivered under the PSA, which errors and omissions were acknowledged by Consultant; and

County and Consultant agreed that the value of Consultant's design services that did not meet the PSA requirements was \$32,654.50, and agreed that this sum would either be deducted from a subsequently-exempted professional services agreement with Consultant for Phase II Project services, or paid by Consultant in settlement of this dispute; and

County ultimately determined that the Phase II Project design services would instead be competitively procured, and notified Consultant that a settlement would be needed to compensate County for the expenses

incurred in connection with correction of the Phase I errors and omissions;
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 Settlement Agreement and Mutual Release, County and Consultant agree to settle their dispute for a total of \$32,654.50. This will be addressed as follows:

1) Consultant will remit the sum of \$32,654.50 to County within fifteen (15) business days of this Agreement, by check or certified check.

2) County, in return for payment to it of the above-specified sum, which County does declare to be good and sufficient consideration, does hereby release, forego and relinquish its rights, interests, causes of action and remedies that County has against Consultant or Consultant's successors and assigns under the PSA, except for claims for latent defects or deficiencies of which County becomes aware after the Effective Date of this Agreement.

3) Consultant 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 Project services performed by Consultant under the PSA.

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

5) 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 County may have against Consultant and that neither County nor Consultant shall 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 errors and omissions, 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.

6) 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 PSA 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.

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

8) 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.

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

TRAVIS COUNTY

By: _____
Samuel T. Biscoe
Travis County Judge

Date: _____

RVI

By: Barbara Austin

Name: BARBARA AUSTIN

Title: VICE PRESIDENT

Date: AUGUST 5, 2014

RVI

5857

Re.
Pay To Travis County

Check Total: \$32,654.50

08/12/2014

Check No. 5857

Invoice No.
settlement

Invoice Date
08/12/2014

Invoice Amount
32,654.50

Amount Due
32,654.50

Discount
0.00

Apply
32,654.50

Balance
0.00

Contract No. 440000070, Onion Creek Greenway, Phase 1 Design

DR