



County of El Dorado

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Legislation Details (With Text)

File #: 06-1830 **Version:** 1
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On agenda: 12/5/2006 **Final action:** 12/5/2006
Title: Development Services Department recommending Chairman be authorized to sign a contract with RRM Design Group containing non-standard indemnity language, noting the Scope of Work and Budget were previously approved on September 12, 2006, Item 55.
RECOMMENDED ACTION: Approve.

Sponsors:

Indexes:

Code sections:

Attachments: 1. RRM Contract.pdf

Date	Ver.	Action By	Action	Result
12/5/2006	1	Board Of Supervisors	Approved	Pass

Development Services Department recommending Chairman be authorized to sign a contract with RRM Design Group containing non-standard indemnity language, noting the Scope of Work and Budget were previously approved on September 12, 2006, Item 55.

RECOMMENDED ACTION: Approve.

BUDGET SUMMARY		
Total Estimated Cost		\$97,204
Funding		
Budgeted	\$97,204	
New Funding	\$	
Savings	\$	
Other	\$	
Total Funding Available	\$97,204	
Change To Net County Cost		\$ 0

Fiscal Impact/Change to Net County Cost:

Scope of Work and Budget previously approved by your Board on September 12, 2006.

Background: RRM was selected by the Missouri Flat project team to prepare design guidelines and streetscape standards for the Missouri Flat corridor based on their demonstrated expertise and creativity in preparing similar plans throughout the region. Your Board concurred when it approved RRM's scope of work on September 12, 2006 and authorized the Chairman to sign the final contract after it had been completed and routed for review and approval by Counsel and Risk Management. After the draft contract was provided to RRM for review, they indicated that they could not accept the County's standard indemnification language due to legal and insurance carrier objections. Staff and RRM

discussed possible options for modifying the language to address these concerns but were unable to reach agreement on revised language.

RRM has proposed a modification to the County standard indemnification language. RRM proposes language that RRM claims is consistent with recent state legislation governing indemnification provisions in contracts between local agencies and design professionals for construction projects. (AB 573, effective January 1, 2007). However, the legislation cited by RRM does not impact local agencies' ability to require a provision that sets for the contractor's duty to defend any litigation arising from the work performed under the contract, and the legislation will not apply to contracts of this type, which do not involve construction.

County Counsel and Risk Management have not approved the contract because the contractor's duty to defend is eliminated and the duty to indemnify is restricted in the proposed contract language. Counsel has advised that the County not enter into contracts that remove the consultant's express duty to defend in the event of a lawsuit, and that the County continue to require County standard indemnity language in contracts other than construction contracts.

Development Services recognizes that the contract language sought by RRM would be less protective of the County if there was to be litigation concerning the services performed under the contract. However, in this situation, where the services to be provided will result in guidelines that improve the aesthetics of the Missouri Flat corridor, the Department believes that the alternative language is acceptable because the services have a low risk of potential litigation and damages.

Reason for Recommendation: My request for Board approval of non-standard indemnification language applies only to this contract. The services provided under this contract do not involve design or construction of any facilities or preparation of any entitlements or related environmental documents. The project involves preparation of guidelines that will be used by the County in conjunction with future public and private improvements within the project area.

There is a critical need to move forward with this contract. Recognizing your Board's priority to support commercial/industrial development within the Missouri Flat corridor, the work to be performed by this consultant is integral to the Department of Transportation's upcoming Missouri Flat Interchange/Corridor Project that is scheduled to commence next year.

Action to be taken following Board approval:

Upon execution by the Chair, the Board Clerk's office will forward copies to the Development Services Department for distribution, encumbrance, and administration.

Contact: Greg Fuz 5445

Concurrences: