

TO: James L. App, City Manager
FROM: Doug Monn, Public Works Director
SUBJECT: Settlement Agreement - Masonry Design/Constructability Issues at the Public Safety Center
DATE: December 19, 2006

NEEDS: For the City Council to authorize a settlement agreement with RRM Design Group to resolve a dispute arising from the Public Safety Center.

- FACTS:**
1. The City filed suit against RRM Design Group to recover costs the City incurred for design and constructability issues with the masonry walls at the Public Safety Center. The change orders associated with the masonry issues cost the City in excess of \$330,000.00. RRM brought the structural engineers, Englekirk & Sabol, into the action through a cross-complaint.
 2. The City, RRM and Englekirk & Sabol participated in a mediation on October 13, 2006, and subsequently reached a settlement. The settlement provides for the City to receive \$350,000 in settlement of its claims.
 3. RRM and Englekirk & Sabol have signed a settlement agreement.

ANALYSIS &

CONCLUSION: Staff and special counsel recommend that the City Council accept the proposed settlement.

POLICY

REFERENCE: None

FISCAL

IMPACT: \$350,000.00 Settlement proceeds must be allocated to projects funded by the General Obligation Bond referred to as Measure D.

- OPTIONS:**
- a. Adopt Resolution No. 06-xx to accept the \$350,000.00 dollar settlement.
 - b. Amend, modify, or reject the above option.

Prepared by:
Doug Monn, Public Works Director

Attachments (2)

- 1) Resolution
- 2) Settlement Agreement

RESOLUTION NO. 06-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PASO ROBLES TO
ACCEPT SETTLEMENT AND AUTHORIZE CITY MANAGER TO EXECUTE
SETTLEMENT AGREEMENT RE: DISPUTE WITH RRM DESIGN GROUP ASSOCIATED
WITH MASONRY DESIGN/CONSTRUCTABILITY ISSUES AT THE PUBLIC SAFETY
CENTER

WHEREAS, the City did complete construction of a Public Safety Center in 2002; and

WHEREAS, The City filed a lawsuit against RRM Design Group to address claims arising from cost and constructability issues associated with the recommended masonry bearing wall construction recommended by the Architect; and

WHEREAS, The change orders associated with the masonry issues cost the City in excess of \$330,000.00; and

WHEREAS, On October 13, 2006, the City entered into a mediation with the RRM Design Group and Englekirk & Sabol to resolve the City's claims; and

WHEREAS, Following the mediation, the parties reached a settlement based upon the mediator's recommendation. The settlement provides for the City to receive \$350,000 in settlement of its claims.

THEREFORE, BE IT RESOLVED AS FOLLOWS:

The City Council of the City of Paso Robles does hereby accept the proposed payment of \$350,000.00 resulting from the mediation as settlement of the City's claims related to the masonry construction issues at the Public Safety Center.

The City Council of the City of Paso Robles does hereby authorize the City Manager to execute the settlement agreement for the settlement described above.

PASSED AND ADOPTED by the City Council of the City of Paso Robles this 19thst day of December 2006 by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

Frank R. Mecham, Mayor

ATTEST:

Deborah D. Robinson, Deputy City Clerk

SETTLEMENT AGREEMENT
AND
MUTUAL RELEASE OF CLAIMS

This Settlement Agreement and Mutual Release of Claims (the "Agreement") is made this 27th day of October 2006 between the City of El Paso de Robles (the "City"), RRM Design Group ("RRM") and Englekirk & Sabol Consulting Engineers, Inc. ("E&S") with reference to the following facts and circumstances:

RECITALS

- A. The City contracted with RRM Design Group ("RRM") to design the City's Public Safety Center (the "Project"). RRM in turn contracted with E&S to perform the structural engineering for the Project.
- B. Disputes arose during construction of the Project, including the City's allegations that RRM failed to properly design and perform its services for the Project resulting in, among other things, non-constructible masonry walls and other design errors. RRM and E&S deny these allegations. The City issued and paid change orders to the general contractor on account of the design issues.
- C. On March 25, 2005, the City filed its complaint for breach of contract, professional negligence, and breach of warranties against RRM seeking damages in an amount in excess of \$711,134.00 and on February 17, 2006, RRM filed its cross-complaint against E&S for indemnity arising out of the City's complaint. These actions are referred to collectively as the "Lawsuit".
- D. On October 13, 2006, the City, RRM and E&S participated in a mediation of their disputes with Kenneth Gibbs. The mediation concluded with Mr. Gibbs making a mediator's proposal, to which all parties subsequently agreed; the City's agreement being conditioned upon City Council approval.
- E. In order to avoid expenditure of further attorney's fees and costs in connection with these disputes, and in consideration of the terms, conditions and covenants set forth below, the parties have arrived at a resolution of their dispute, as follows:

AGREEMENT

1. By November 27, 2006, RRM shall pay the City \$100,000.00 and E&S shall pay the City \$250,000.00 for a total settlement sum of \$350,000.00 (the "Settlement Sum").
2. Upon receipt of the Settlement Sum, the City shall dismiss its complaint, with prejudice, and RRM shall dismiss its cross-complaint, with prejudice. The City also

agrees to send a letter to RRM and E&S as follows: "The City of Paso Robles is satisfied with the architectural design of the Public Safety Center. As an Essential Services building the structural and mechanical systems performed satisfactorily during the 6.5 San Simeon fault earthquake that occurred on December 22, 2003."

3. This Agreement, including all releases, covenants, promises and terms contained herein, is expressly conditioned on City Council approval of this Agreement and the terms contained herein. The City will endeavor to place the consideration of this Agreement on the City Council's agenda for November 7, 2006, or as soon thereafter as the agenda allows.

4. When the City has received the entire Settlement Sum, the City, RRM and E&S mutually release each other and each other's directors, officers, elected and appointed officials, employees, insurers, and attorneys, from any and all claims, demands, actions or causes of action, past, present or future, known or unknown, that were the subject of the Lawsuit, except for claims for latent defects, warranties not otherwise expired as of the date of this Agreement, claims for indemnity and contribution for third-party claims and defenses to such claims. The City's release includes the Americans with Disabilities Act issues identified in Exhibit A, attached hereto and incorporated herein by reference.

5. Subject to the exceptions to the release in paragraph 4, above, the parties expressly waive all rights under Civil Code section 1542, which provides as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

6. This Agreement contains the entire agreement of the parties as to the disputed claims, counterclaims and issues described herein and supersedes any prior written or oral agreement among the parties concerning such matters. No supplement, modification or amendment to this Agreement shall be binding unless executed in writing. No waiver of any provisions of this Agreement will be deemed or will constitute a waiver of any other provisions, whether or not similar, nor will any waiver constitute a continuing waiver. No waiver will be binding unless executed in writing by the party making the waiver.

7. Each party hereby affirms, acknowledges and warrants that such party has completely reviewed the terms of this Agreement with that party's own legal counsel, fully understands and appreciates the meaning and effect of this instrument and voluntarily accepts the benefits and obligations thereof.

8. This Agreement was the subject of negotiation between the parties, and no ambiguity or uncertainty in this Agreement shall be construed against any of the parties based upon drafting/authorship of any of the provisions contained herein.

9. The Parties shall bear their own costs, attorney's fees, and other expenses incurred in connection with this Agreement. However, if any action or other proceeding is brought for the enforcement or interpretation of this Agreement or because of an alleged dispute, default or misrepresentation in connection with any of its provisions, the successful or prevailing party shall be entitled to recover reasonable attorneys' fees and other costs incurred in the action or proceeding, in addition to any other relief to which such party may be entitled.

10. This Agreement shall in all respects be interpreted, enforced and governed by and under the laws of the State of California.

11. Should any provision of this Agreement be declared or be determined by any court to be illegal or invalid, the validity of the remaining parts, terms or provisions shall not be affected thereby. In such event, the illegal or invalid part, term or provision shall be deemed not to be a part of this Agreement.

12. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

<p>RRM Design Group:</p> <p>By: _____</p> <p>Date: _____</p>	<p>The City of El Paso de Robles:</p> <p>By: _____</p> <p>Date: _____</p>
<p>Englekirk & Sabol Consulting Engineers, Inc.:</p> <p>By: _____</p> <p>Date: _____</p>	

APPROVED AS TO FORM:

<p>KENNEDY, ARCHER & HARRAY</p> <p>By: _____ Stan L. Linker Attorney for RRM Design Group</p> <p>Date: _____</p>	<p>McDONOUGH HOLLAND & ALLEN PC</p> <p>By: _____ Linda Beck Attorney for The City of El Paso de Robles:</p> <p>Date: _____</p>
<p>WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP</p> <p>By: _____ Robert M. Young, Jr. Attorney for Englekirk & Sabol Consulting Engineers, Inc.</p> <p>Date: _____</p>	