

AGENDA



Thursday, May 13, 2010

**Austin Water Utility
RECOMMENDATION FOR COUNCIL ACTION****Item No. 4**

Subject: Approve an ordinance authorizing negotiation and execution of a cost reimbursement agreement with ONION ASSOCIATES, LTD., for Fox Hill Subdivision, providing terms and conditions for the reimbursement of the engineering and design costs of a 42-inch water main and appurtenances to provide water service to the Fox Hill Subdivision located east of South IH-35, south of Onion Creek and west of Bradshaw Road with City cost reimbursement for an overall total amount not to exceed \$310,000; waiving the requirements of Sections 25-9-61, 25-9-63, 25-9-66, and 25-9-67 of the City Code relating to cost reimbursement and repealing Ordinance No. 20081218-006 relating to construction of the 42-inch water main. The 42-inch water main has been identified as part of the South IH-35 Water and Wastewater Infrastructure Improvements Program and will be constructed under the Program.

Amount and Source of Funding: Funding is available in the amount of \$310,000.00 in the Fiscal Year 2009-2010 Capital Budget of the Austin Water Utility.

Fiscal Note: A fiscal note is attached.

For More Information: Seyed Miri, P.E. 972-0202; Denise Avery, 972-0104

Boards and Commission Action: Recommended by the Water and Wastewater Commission.

Prior Council Action: December 18, 2008 - Council approved Onion Associates, Ltd., Developer Agreement, Ordinance No. 20081218-006.

The City Council approved the negotiation and execution of a developer agreement with Onion Associates, Ltd. (the "Developer") of Fox Hill Subdivision, on December 18, 2008, with City cost reimbursement not to exceed \$3,737,500.00 for the actual hard construction costs of approximately 4,500 linear feet of 42-inch water main and appurtenances to provide water service to approximately 214 acres of proposed development located east of South IH-35, south of Onion Creek and west of Bradshaw Road (the "Property") and the surrounding area. The prior Council action also approved cost reimbursement for engineering, design and project management "soft" costs of the 42-inch water main and appurtenances, and cost reimbursement of the soft costs in one (1) payment to the Developer within 30-days after the opening of the bids for the 42-inch water main and appurtenances, for a total not to exceed 15% of the actual hard construction costs of the 42-inch water main and appurtenances or \$560,625.00, whichever is less. Approximately 41% of the Property is within the City's full-purpose city limits, the Council approved Impact Fee Boundary, and also within the Desired Development Zone and Onion Creek Watershed. The 42-inch water main has been identified as part of the South IH-35 Water and Wastewater Infrastructure Improvements Program and will be constructed under the Program.

The design, construction plans, and specifications are now complete and permitted. The City recently advertised and opened the bids for the water project and has tentatively selected the lowest qualified bidder. The low bid amount submitted by the lowest qualified bidder was \$1,478,629.95, and 15% of this amount is \$221,794.49. This bid amount is substantially lower than the \$3,737,500.00 hard construction cost estimate made in 2008 and the recently submitted engineer's cost estimate required under the Program.

The originally approved cost reimbursement maximum is the lesser of \$560,625.00 or 15% of the hard costs for the soft costs. In this instance, the lesser amount is 15% of the hard costs, however, because of a significant drop in construction costs, this does not cover the cost of the construction plans. This request is for Council to modify the reimbursement amount to a not-to-exceed \$310,000.00 amount which will be sufficient to cover the actual costs of the plans and is still significantly less than the originally approved maximum amount of \$560,625.00.

Because an application for cost reimbursement under Section 25-9-61 of the City Code applies to entities that construct a facility, waiver of this section is requested, as reimbursement is for engineering and design costs without construction which will be done by the City.

Because the requested amount for soft costs is greater than the maximum cost reimbursement percentage set by City Code for soft costs, a waiver from City Ordinance requirements of Section 25-9-63 of the City Code relating to maximum percentage for soft costs is required. This action waives the requirements of Section 25-9-63, thereby allowing the maximum percentage for soft costs to be increased to allow for the cost reimbursement of \$310,000.00, for the soft costs.

Section 25-9-66 of the City Code requires that prior to cost reimbursement that an entity constructing a facility meet certain requirements such as posting of fiscal securing and providing a warranty on the facility, which are inapplicable since the City will be doing the construction. This action therefore requests that this section be waived.

Under the original Council authorization, Council approved cost reimbursement of the soft costs of the 42-inch water main and appurtenances in one (1) payment to the Developer within 30-days after the opening of the bids for the 42-inch water main and appurtenances. Under Section 25-9-67 of the City Code relating to cost participation and cost reimbursement payments, this Section states that cost reimbursement payments are to be made in one (1) payment 90-days after final acceptance of the required improvements. This action waives the requirements of Section 25-9-67, thereby allowing the cost reimbursement payment for the soft costs to be made in one (1) payment 30-days after the City's processing and approval of the paid invoices associated with the engineering and design costs of the approximately 4,500 linear feet of 42-inch water main and appurtenances.

Ordinance No. 20081218-006 relating to cost reimbursement to the Developer for construction of the 42-inch water main is repealed by this action and the City, rather than the Developer, will now construct the 42-inch water main.