

**APPROVED**  
SEP 06 2006

REPORT OF GENERAL MANAGER

NO. 06-250

DATE September 6, 2006

BOARD OF RECREATION  
and PARK COMMISSIONERS

C.D. 7

BOARD OF RECREATION AND PARK COMMISSIONERS

SUBJECT: TOBIAS AVENUE PARK (#1351A) (W.O. #E170937F) - CONTRACT NO. 3134 -  
MUTUAL RELEASE AND CLOSEOUT SETTLEMENT AGREEMENT

|            |       |           |       |
|------------|-------|-----------|-------|
| J. Combs   | _____ | J. Kolb   | _____ |
| H. Fujita  | _____ | F. Mok    | _____ |
| S. Huntley | _____ | K. Regan  | _____ |
| B. Jensen  | _____ | *M. Shull | _____ |

*Robert H. Jensen (G)*  
General Manager

Approved \_\_\_\_\_ Disapproved \_\_\_\_\_ Withdrawn \_\_\_\_\_

RECOMMENDATION:

That the Board:

1. Approve the proposed Mutual Release and Closeout Settlement Agreement (Agreement) with the contractor, Ryco Construction, Inc., on file in the Board Office, relating to the Tobias Avenue Park Project, in accordance with the terms contained in the body of this report;
2. Direct the Board Secretary to transmit the attached Agreement to the Mayor in accordance with Executive Directive No. 3 and to the City Attorney for review as to form;
3. Authorize the President and Secretary of the Board to execute the agreement upon receipt of necessary approvals; and,
4. Authorize the Department's Chief Accounting Employee to pay Ryco Construction, Inc., \$30,914.32, from Fund 302, Account No. 460K, within 30 days of the full execution of the Agreement.

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### SUMMARY:

On October 6, 2004, the Board awarded a construction contract to Ryco Construction Inc., in the amount of \$780,594.00 (Board Report No. 04-290) for the construction of a new neighborhood park, including a play structure, two half-sized basketball courts, shade structures, picnic tables, security lighting, planting, irrigation and associated park furnishings, in Tobias Avenue Park, located at 9122 Tobias Avenue. However, the Notice to Proceed was not issued by the Recreation and Parks Board office until January 19, 2005. The delay in the issuance of the Notice to Proceed involved a 20-foot by 161-foot strip of land located in the eastern portion of the southern boundary of the project site which was determined to be an undedicated alley. As permission to utilize the alley for park development from the underlying fee owner of the alley could not be obtained, the 20-foot by 161-foot strip of land was eventually excluded from the project boundary via a change order, and a Notice to Proceed was issued on January 12, 2005.

The Bureau of Engineering (BOE) was the construction manager for the project. Construction of the project is 100% complete. On May 3, 2006, the project was accepted as complete by the Board (Board Report No. 06-103). As of that date, seven change orders were issued, for a total of \$28,759.81, or approximately 3.8% of the original contract amount.

The project was completed on November 16, 2005 and the Department took beneficial occupancy of the project on that date. The contractor submitted a "Request for Payment" claim to the Bureau of Engineering on February 1, 2006. However, due to a delay claim filed by the contractor alleging that costs were incurred due to the delay of the start of construction (i.e., delay in issuance of the Notice to Proceed), the project was not closed out immediately and the project was not accepted by the Board until May 3, 2006. Per the Bureau of Engineering letter dated April 5, 2005, it was determined that the contractor may be entitled to costs incurred during the time between the contract execution date of November 9, 2004, and the issuance of the Notice to Proceed date of January 12, 2005. Due to the pending resolution of the claim, the acceptance Board report recommended that \$65,000 in project funds be held in reserve for the settlement of the claim.

In a Bureau of Engineering letter, dated July 18, 2006, it was determined by BOE that Ryco is entitled to \$30,914.32 for increased cost of materials and increased cost for the substitution of the fencing and landscaping subcontractors approved per Board Report No. 05-82 attributable to the delay in issuance of the Notice to Proceed. Public Contracts Code Section 7107(f) provides that retention payments not made within 60 days of completion (beneficial occupancy) of the project are subject to a 2% per month interest payment. As the Department took beneficial occupancy of the project in November 2005, but did not release the retention until May 2006, the contractor is owed four months of interest totaling to \$3,237.42. Therefore, the total settlement amount, including the interests cost due to the delay of release of retention is \$34,517.74.

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There are adequate remaining funds in the project account from Fund 302, Account No. 460K to pay for this proposed mutual release and closeout settlement agreement.

FISCAL IMPACT STATEMENT:

There is no fiscal impact to the Department. Adequate project funds remain in the project budget to fund the proposed mutual release and closeout settlement agreement.

Prepared by Alice Gong, Project Manager, reviewed by Neil Drucker, Program Manger, Recreational and Cultural Facilities Program; and by Bradley M. Smith, P.E., Chief Deputy City Engineer, Bureau of Engineering.