



Board of County Commissioners - Staff Report

Meeting Date: August 2, 2022 **Presenter:** Keith Gingery
Submitting Dept: Attorney **Subject:** Fire station #1 Architect Fee Settlement

Statement / Purpose: Settlement of billing issues with Dubbe Moulder Architects (DMA) in regards to Fire Station #1 in the amount of \$295,000.00

Background / Description (Pros & Cons): Teton County entered into a contract on April 3, 2015 regarding the design of Fire Station #1 located on Pearl Street in Jackson, Wyoming. Different billing issues have arisen regarding, primarily dealing with construction administration. Fire Station #1 is now complete. All 3rd parties have been paid in full. The 2015 contract stated that DMA would accomplish all tasks including construction administration for an amount not to exceed \$200,000. The project changed substantially from 2015 to 2022. DMA never amended their original 2015 contract to account for the change in the project, specifically in regards to construction administration. The parties have agreed that \$295,000.00 is the appropriate amount for the payment for the services performed by DMA.

Stakeholder Analysis & Involvement: Fire Station #1 is complete. All 3rd parties have been fully paid. The parties have known that there was an ongoing issue regarding payment for construction administration to the architect, but the parties had agreed to wait until the project was complete, so as to fully analyze the issue.

Fiscal Impact: \$295,000.00

Staff Impact: None

Legal Review: Gingery

Staff Input / Recommendation: Approve

Attachments: Settlement Agreement and Mutual General Release of all Claims

Suggested Motion: I move to approve the Settlement Agreement and Mutual Release of all Claims with Dubbe-Moulder Architects in the amount of \$295,000.00.

SETTLEMENT AGREEMENT AND MUTUAL GENERAL RELEASE OF ALL CLAIMS

This Settlement Agreement and Mutual General Release of All Claims (“Agreement”) is made between Teton County, Wyoming, a duly organized county of the State of Wyoming located at 200 S. Willow St., P.O. Box 1727, Jackson, Wyoming 83001 (“County”) and Dubbe Moulder Architects, a Wyoming Professional Corporation located at 1160 Alpine Lane, Ste. 2A, P.O. Box 9227, Jackson, WY 83001 (“DMA”) (collectively referred to as the “Parties”), with respect to the following facts:

- A. The County entered into two (2) separate contracts with DMA in relation to Fire Station #1 located on Pearl Street in Jackson, Wyoming. The first contract is dated April 3, 2015, dealing with the Fire Station #1 and a second contract dated August 15, 2017, dealing with the Temporary Pavilion project for a temporary location for the fire department while Fire Station #1 was completed. Different billing issues have arisen, primarily related to construction administration. The Fire Station #1 is now complete. All 3rd parties have been paid in full.

- B. The Parties now desire to settle all claims that could have been asserted, by each of them, including, but not limited to, any claims that may have arisen out of architectural services provided regarding Fire Station #1 or the Temporary Pavilion project.

NOW, THEREFORE, in consideration of the promises and agreements set forth below, IT IS HEREBY AGREED:

- 1. Settlement Funds. County agrees to pay DMA the sum of \$295,000.00 (the “Settlement Payment”), on the terms and conditions set forth in this Agreement. County shall make the Settlement Payment within ten (10) days of mutual execution of this Agreement.

- 2. Mutual Release. County and DMA, for themselves and their respective attorneys, directors, officers, employees, shareholders, principals, agents, successors, assignors, parent organizations, subsidiaries, affiliates, heirs, executors, administrators and assigns, if any, hereby mutually release, remise and forever discharge each other, each others’ respective, attorneys, and past and former directors, officers, employees, shareholders, principals, agents, successors, assignors, parent organizations, subsidiaries, affiliates, heirs, executors, administrators and assigns, if any, and all other persons and entities, whether individual, corporate or otherwise, who are or may become liable in any fashion for any or all liabilities or claims arising from or related to the have arisen out of architectural services provided, known or unknown, accrued or un-accrued, whether in law or in equity, and whether in contract, warranty, tort or otherwise, which either, jointly or severally, ever had, now has or may have, claim,

allege or assert, relating to or arising from all liabilities or claims arising from or related to the have arisen.

3. Covenant Not To Sue. County and DMA, for themselves and their respective attorneys, directors, officers, employees, shareholders, principals, agents, successors, assignors, parent organizations, subsidiaries, affiliates, heirs, executors, administrators and assigns, if any, hereby mutually agree and covenant that they will forever refrain from instituting any suit, action, litigation or proceeding of any nature against each other, jointly or severally, their respective attorneys, and past and former directors, officers, employees, shareholders, principals, agents, successors, assignors, parent organizations, subsidiaries, affiliates, heirs, executors, administrators and assigns, if any, or any person or entity, whether individual, corporate or otherwise, who may become liable in any fashion for any or all liabilities or claims arising from or related to providing architectural services.
4. After Discovered Facts. Each party and signatory to this agreement acknowledges and is aware that they or their attorneys may hereinafter discover facts different from or in addition to the facts which they or their attorneys now know or believe to be true with respect to the subject matter of this Agreement, but it is their intention to fully and finally release each other from any and all manner of liabilities and claims as described in this Agreement which exist or may exist.
5. No Admissions. It is understood that the settlement is not an admission of liability, but is in compromise of disputed allegations. The parties agree that their settlement and the Agreement shall not be admissible in any proceeding or action involving any party to the Agreement, except one to enforce the Agreement.
6. Entire Agreement. This Agreement contains the entire agreement between the County and DMA with respect to the subject matter hereof. It is agreed that there are no collateral agreements or representations, written or oral, which are not contained in this Agreement. Any modification of this Agreement must be in writing and signed by the parties.
7. Severability. Should it be determined that any term of the Agreement is unenforceable, it is the parties' intention that that term shall be deemed to be deleted and the validity and enforceability of the remaining terms remain intact.
8. Headings and Construction. The headings set forth in the Agreement are for convenience only and shall not be used in interpreting the Agreement. The Agreement has been drafted by legal counsel representing the County, but DMA has participated in the negotiation of its terms. DMA further acknowledges that it has had an opportunity to review and discuss each term of the Agreement with legal counsel and, therefore, the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of the Agreement.

9. Modifications. The Agreement may be amended only by a written instrument executed by all parties hereto.
10. Assignment. The parties warrant and represent that they have not assigned or transferred to any person not a party to the Agreement any released matter or any right to any of the consideration provided by either party pursuant to the Agreement. The Agreement shall inure to any successor(s) of DMA.
11. Governing Law, Venue and Jurisdiction. This Agreement shall be construed under the laws of the State of Wyoming for all disputes arising out of or relating to this Agreement.
12. Representation of Understanding. All parties and signatories to this Agreement acknowledge and agree that the terms of this Agreement are contractual and not mere recital, and all parties and signatories represent and warrant that they have carefully read this Agreement, have fully reviewed its provisions with their attorneys, know and understand its contents and sign the same as their own free acts and deeds. It is understood and agreed by all parties and signatories to this Agreement that execution of this Agreement may affect rights and liabilities of substantial extent and degree and with the full understanding of that fact, they represent that the covenants and releases provided for in this Agreement are in their respective best interests.
13. Counterparts. This Agreement may be executed in counterparts and shall be binding on all parties when each has signed either an original or copy of this Agreement. Signatures contained on pages transmitted by facsimile or via PDF attachment to email shall constitute an original signature for all purposes.

The parties to the Agreement, with the benefit of representation and advice of counsel, have read the foregoing Agreement and fully understand each and every provision contained herein, and intend to be fully bound by its provisions.

WHEREFORE, the parties have executed the Agreement on the date shown below.

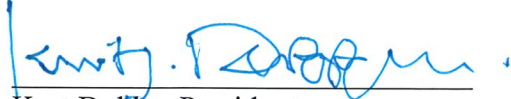
TETON COUNTY, WYOMING

Luther Probst, Vice-Chairman
Teton County Board of County Commissioners


Attest:

Maureen E. Murphy
Teton County Clerk

DUBBE MOULDER ARCHITECTS, P.C.


Kurt Dubbe, President

Attest:


Jolene Moulder, Secretary/Treasurer